International Labour Conference

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PART TWO

PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

I. OBSERVATIONS AND INFORMATION CONCERNING REPORTS ON RATIFIED CONVENTIONS (ARTICLE 22 OF THE CONSTITUTION)

A. General Observations and Information concerning Certain Countries

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

The Worker members emphasized that the fulfilment of the obligation to submit reports was a key element of the supervisory system of the ILO. The information contained in these reports also needed to be as detailed as possible. They regretted that the changes that had been made during the past years in the submission procedure of reports with the intention of simplifying the task for governments had not resulted in an improvement in the situation. The countries that had not fulfilled their obligation to submit a report benefited from an unfair advantage, since the absence of a report made it impossible for the Committee to review their national law and practices with regard to ratified Conventions. Consequently, the Committee should urge member States to adopt the necessary measures so that in the future they could fulfil this obligation.

The Employer members had previously pointed to the fact that the ILO supervisory machinery was considered to be the most efficient system in the entire family of United Nations agencies. This, however, had to be viewed in relative terms, since no action at the level of international law could occur unless States voluntarily cooperated with the supervisory process, as they were sovereign States. Therefore, the first step of the process was for member States to submit reports on the application of ratified Conventions. In this respect, the Employer members recalled that the reporting process had been facilitated some years ago when the intervals between reporting periods had been extended. The Employer members were happy to note that many countries complied with their reporting obligations. Unfortunately, many other countries were still not supplying reports to the Committee of Experts. This was regrettable, as the Committee was therefore unable to ascertain whether those member States were complying with the standards which they had agreed to implement. This gave those countries an unfair advantage over the countries that complied with their reporting obligations. They therefore urged those member States listed in paragraph 187 to comply with their obligations in the future.

A Government representative of Bosnia and Herzegovina recalled that her country had a particularly specific type of structure and organization and for this reason had encountered certain problems concerning the functioning and coordination between the institutions of the Federated State and its two Entities. Added to these difficulties, it had faced problems due to the lack of experience in the area of the preparation of reports, which explained why it had not yet been able to comply with its obligations to submit reports in due time under the ILO Constitution.

She expressed the conviction that the new Government, formed in March, would make every effort to comply with the requirements and recommendations stated in the report of the Committee of Experts. The Ministry of Civil Affairs and Communications of Bosnia and Herzegovina, as the national institution responsible for the coordination between the Entities, undertook to draw up a general report on the basis of the partial reports already prepared on two Conventions by the two Entities, which would be transmitted to the ILO in the shortest possible time.

The speaker thanked the ILO for its understanding in the light of the complex situation faced by Bosnia and Herzegovina and for its support and willingness to assist, if necessary, the Government in the translation of its documents.

A Government representative of Denmark regretted that the ILO had not received reports from the Faeroe Islands. The Danish Government had asked the Faeroe Islands to comply with its reporting obligations. The Government had had several exchanges with the Faeroe Islands in this regard, talked to the relevant officials, sent letters requesting that the reports be provided, and had informed them of their obligation to report on ratified Conventions. He reminded the Committee that the Faeroe Islands had complete autonomy in the area of social policy, and as a result the Government of Denmark could not intervene, nor could it submit the reports for the Faeroe Islands. Nevertheless, he assured the Committee that his Government would continue to urge the Faeroe Islands to comply with their reporting obligations.

The Employer members noted that few governments had asked to address the Committee on this subject. Many governments were not accredited to the Conference and, of those that were, only two had taken the floor. A Government representative of Bosnia and Herzegovina had referred to her Government's lack of experience in explaining its failure to supply reports. While this was understandable, the Employer members considered that it should be possible to overcome this obstacle with the technical assistance of the Office. They also pointed out that countries received clear instructions from the Office on how to draft reports. Responding to the Government representative of Denmark's comments on the Faeroe Islands, the Employer members understood that Denmark was powerless to intervene. Nonetheless, they considered that the central Government should be in a position to wield some influence to encourage the Faeroe Islands to comply with their reporting obligations. In this regard, they recalled that it was of the utmost importance that governments meet these obligations, particularly where reports had not been supplied for many years. The failure to supply reports should therefore be noted in the general report of the Conference Committee.

The Worker members noted that only two countries had provided explanations regarding their failure to comply with the obligation to provide reports. Other countries were either absent or not accredited to the Conference. The countries that had provided an explanation had referred to a number of elements to justify their failure to submit the reports. However, the Worker members considered that the Committee needed to continue to urge member States to take all possible measures to fulfil this obligation. The need to strengthen the supervisory system would never be achieved in practice if governments did not fulfil the obligation to submit reports on the Conventions they had ratified. Finally, the Worker members emphasized that the Committee should remind governments that they could request technical assistance from the ILO.

The Committee recalled the fundamental importance of the supply of reports on the application of ratified Conventions within the stipulated time limit. This obligation constituted the foundations of the supervisory system. The Committee expressed its firm hope that the governments of Afghanistan, Armenia, Bosnia and Herzegovina, Democratic Republic of the Congo, Denmark (Faeroe Islands), Equatorial Guinea, Kyrgyzstan, Lao People's Democratic Republic, Sao Tome and Principe, Sierre Leone, Solomon Islands, United Republic of Tanzania (Zanzibar), The former Yugoslav Republic of Macedonia, Turkmenistan and Uzbekistan, which had not to date submitted all or the majority of the reports on the application of ratified Conventions, would do so

as soon as possible, and decided to mention these cases in the appropriate section of its General Report.

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

The Employer members stressed the importance of first reports and noted the emphasis placed on first reports by the Committee of Experts. They pointed out that only where a first report was submitted on a ratified Convention could the Committee of Experts determine whether the country was complying with its newly acquired obligations under that Convention. Submission of a first report should not present an insurmountable obstacle. The Employer members cautioned member States against considering ratification as an automatic procedure and noted that careful examination and deliberation were necessary to determine whether a country could ratify a Convention. This examination of national legislation and practice was the basis for the first report. Therefore, once the decision to ratify was made, it presupposed that all the prerequisites for the first report existed, and countries should comply with that obligation. To do otherwise would indicate that the ratification process had been carried out without careful consideration of the consequences. It was therefore surprising to the Employer members that countries ratified Conventions and then failed to submit first reports. They regretted this and called upon member States to submit their first reports. In conclusion, they invited governments to reply to the comments of the Employer members on this point.

The Worker members expressed their agreement with the Employer members that first reports on the application of ratified Conventions were particularly important, as they represented the basis on which the Committee of Experts could review the law and practice of countries. First reports also prevented errors of interpretation regarding the Conventions. The Worker members recalled that the submission of first reports constituted an indispensable element of the supervisory system and they called on the member States concerned to comply with their obligation to submit first reports on ratified Conventions.

A Government representative of Liberia indicated that his country had communicated with the Committee of Experts concerning the first report due on Convention No. 133. He informed the Committee that his Government's lateness in supplying a first report on Convention No. 133 was due to the fact that the relevant government agencies responsible for maritime issues had not provided the necessary information. However, prior to the meeting of the Conference Committee, meetings had been held and the relevant information had been provided. The first report on that Convention was therefore now being prepared and it would be submitted in the near future.

A Government representative of Mongolia apologized for Mongolia's late submission of first reports, noting that these had been sent to the ILO on all 12 Conventions mentioned by the end of May 2001. She explained that Mongolia's delay in submitting the first reports had been due to institutional changes that had taken place in July 2000, when the Ministry of Health and Social Welfare had been split into two entities: the Ministry of Social Welfare and Labour and the Ministry of Health. It had taken some time to re-establish the Ministry of Social Welfare and Labour and most of the staff was still new and inexperienced; however, she assured the Committee that her Government would provide timely reports in the future.

A Government representative of Botswana indicated that the preparation and submission of detailed reports on Conventions Nos. 111 and 151 had taken a long time due to the extensive consultations held with other government ministries and departments and the social partners. She informed the Committee that she was in possession of the two outstanding reports and would submit them during the course of the Conference. She apologized for the delay in submitting the reports and reaffirmed her country's commitment to abide by its obligations.

A Government representative of Burkina Faso stated that with regard to the failure to supply first reports on the application of Conventions, his Government welcomed the pertinence of the comments of the Committee of Experts, the objective of which was to strengthen the effectiveness of the supervisory system. The reports in question related to Conventions Nos. 141, 161 and 170, ratified by Burkina Faso in 1997, and were among a list of around 20 Conventions for which reports had been requested for the period ending 31 May 1999. The reports had been sent to the ILO in October 2000, with an indication that those on Conventions Nos. 141, 161 and 170 would be sent at a later date. Due to administrative constraints, these reports had unfortunately not been sent in due time. The Government wished to apologize for the inconveniences caused by this delay to the Conference Committee and supervisory system and undertook to take all the necessary measures to submit reports in accordance with the ILO's constitutional provisions.

The Worker members emphasized the fact that only four countries had provided explanations concerning the failure to comply with the obligation to supply the first report on ratified Conventions. They noted that the same reasons were often given and stated that it was unacceptable that the first report had not been provided by certain countries since 1992. If a country was experiencing a problem, it should inform the Office as early as possible so that it could benefit from technical assistance. They expressed the hope that the Office would contact these countries with a view to identifying the causes of the delay.

The Employer members agreed with the Worker members' comments that the explanations provided by the Government representatives had referred to difficulties of an administrative nature that they should be able to overcome. As no government had replied to the Employer members' question, they would repeat this question next year, as they had done in previous years. They therefore reiterated that the ratification of Conventions called for a thorough examination to determine whether the country was in a position to ratify the Convention. As the results of such an examination should serve as the basis of the first report, the Employer members failed to understand how governments could ratify Conventions and then be unable to supply first reports on those instruments.

The Committee noted the information supplied and the explanations given by the Government representatives who took the floor. It reiterated the crucial importance of submitting first reports on the application of ratified Conventions. The Committee decided to mention these cases, namely *since 1992*: Liberia (for Convention No. 133); *since 1995*: Armenia (for Convention No. 111), Kyrgyzstan (for Convention No. 133); *since 1996*: Armenia (for Conventions Nos. 100, 122, 135 and 151), Grenada (for Convention No. 100), Uzbekistan (for Conventions Nos. 47, 52, 103 and 122); *since 1998*: Armenia (for Convention No. 174), Equatorial Guinea (for Conventions Nos. 68 and 92), Mongolia (for Convention No. 135), Uzbekistan (for Conventions Nos. 29 and 100); *since 1999*: Burkina Faso (for Conventions Nos. 141, 161 and 170), Cyprus (for Convention No. 175), Turkmenistan (for Conventions Nos. 29, 87, 98, 100, 105 and 111) and Uzbekistan (for Conventions Nos. 98, 105, 111, 135 and 154), in the appropriate section of the General Report.

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

The Worker members emphasized that failure to supply information in reply to the comments made by the Committee of Experts hindered the work of the Conference Committee and the Committee of Experts. The comments made by the Committee of Experts needed to be taken seriously and countries needed to fulfil their obligations.

The Employer members stated that the cases listed in paragraph 198 of the General Report formed part of the general obligation of member States to report on ratified Conventions. Reports might often be difficult to understand or be incomplete, thereby requiring the Committee of Experts to ask additional questions. Accordingly, the obligation to supply information in reply to comments made by the Committee of Experts went hand in hand with States' general reporting obligations. They noted that there were 389 such cases of failure to reply concerning 42 countries noted in the report. This was a substantial number which, when compared with 411 cases concerning 46 countries last year, did not indicate much improvement. These cases were mentioned individually in the Committee of Experts' report. The Employer members reminded States that, to ensure the proper functioning of the supervisory system, it was important for governments to supply information, including responses to the additional questions raised by the Committee of Experts.

A Government representative of Algeria explained that the information requested by the Committee of Experts had been prepared with the assistance of a number of relevant ministerial departments and sent to the International Labour Standards Department last May. He regretted that the documents had not been received in time, which would have avoided his Government being called upon in this context. He reiterated the will and commitment of his Government to comply rigorously with the constitutional obligations of the ILO, particularly in relation to standards, and requested the Conference Committee to take account of his comments on this subject.

A Government representative of Cameroon, with reference to the comments of the Committee of Experts, said that, following a seminar on international labour standards organized in Yaoundé with the assistance of the ILO and the MDT, reports had started to be sent to the ILO in a gradual manner. Although some reports might not arrive in time, the situation would be resolved soon.

A Government representative of the Czech Republic informed the Committee that his Government had already complied with its

reporting obligations. The information which had been provided was contained in a written communication submitted to the Committee.

A Government representative of Congo indicated that his Government had already provided all the requested information to the Committee of Experts, as indicated in a written communication submitted to the Committee. He regretted that the information had not been received in time and stated that his Government would take all the necessary measures to ensure that this would not be repeated in the future.

A Government representative of Côte d'Ivoire assured the Conference Committee that his country would not shirk its obligations and that the failure to supply information in time had been due to the difficulties faced by his country during 2000. Indeed, the year 2000 had been a black period in the history of Côte d'Ivoire, a time of military transition in which everything had functioned in slow motion and many changes had taken place in the various sectors. Côte d'Ivoire undertook to supply the reports due to the Committee of Experts as soon as possible.

A Government representative of Denmark referred to his previous statement concerning the Faeroe Islands. With regard to Greenland, he said that it was regrettable that it had not reported on the Conventions it had ratified and replied to the direct requests made by the Committee of Experts. In the past, Greenland had usually supplied the reports due. However, due to a change in staff in the Ministry of Social Affairs in Greenland, nobody had the necessary experience in reporting. Denmark had therefore started to train the new staff on reporting on Conventions.

A Government representative of Slovakia emphasized his country's commitment to providing meaningful information to the ILO supervisory bodies. He therefore regretted that it had not been possible to supply in due time some of the reports requested in reply to comments made by the Committee of Experts, due to staffing problems. The requested reports and information had now been prepared and elaborated and would be supplied to the Office during July and August 2001 in accordance with articles 22 and 23 of the ILO Constitution and by virtue of Article 5, paragraph 1(d), of Convention No. 144, which had been ratified by Slovakia. He apologized for this shortcoming. With regard to Convention No. 87, he said that the report and relevant information would be supplied to the Office in July or August 2001. Amendments to the Act on Collective Bargaining had been adopted on 18 May 2001 and would be covered in the report and information in relation to the Convention concerned. With regard to Convention No. 89, he said that his country would denounce the Convention this year and the relevant information would be supplied to the Office. For Convention No. 95, the report had been supplied to the Office in April 2001, and the report on Convention No. 155 had been supplied to the Office in May 2001. He added that the reports on Conventions Nos. 115, 122, 148 and 159 would be provided to the Office in August 2001.

A Government representative of Fiji provided information to the Committee regarding the current situation in his country. He noted that the Government had been unable to fulfil its constitutional obligations to the ILO due to the consequences of the unsuccessful coup which had taken place on 19 May 2000. The attempted coup had resulted in a political crisis which had greatly damaged the economy and the social fabric of the society. This crisis had not yet been successfully resolved and had led to the breakdown of the relationship between the social partners, and particularly between the Interim Government and the national trade union centre, the Fiji Trade Union Congress. This crisis had delayed Fiji's compliance with its reporting obligations. The Government had been in the process of submitting all outstanding reports, as well as instruments for the ratification of the fundamental human rights Conventions, to the Labour Advisory Board when the attempted coup had taken place.

He explained that the Labour Advisory Board was the main tripartite body dealing with labour and industrial relations matters. He added that, on 18 May 1998, his Government had ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Labour Advisory Board was the highest tripartite consultative body under the provisions of that Convention. Following the attempted coup, the most representative workers' organization, the Fiji Trade Union Congress, had become involved in the political process by opposing the Interim Government's attempts to guide Fiji back to parliamentary democracy, and had refused to participate in the meetings of the Labour Advisory Board as well as of other tripartite bodies. Most recently, it had refused to form part of the Fiji delegation to the ILO Conference, in the light of its refusal to recognize the Interim Government. The Fiji delegation wished to highlight that challenges to the legality of the Interim Government were currently before the country's courts of appeal. Therefore, he considered that any pronouncement in this regard would be premature and would challenge the jurisdiction of the appellate court. In the meantime, the Interim Government had charted a course for the restoration of parliamentary democracy, with general elections scheduled for 12 August 2001. This plan had been supported by the relevant international bodies, who had agreed to monitor the election process. He stressed that it was fundamentally important in this time of crisis that workers' rights remain protected under the national legislation. Moreover, the Government did not wish to breach article 23 of the ILO Constitution and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), by sending its reports directly to the ILO without the required tripartite consultations. The Government called for the full cooperation of the social partners, to enable it to proceed towards economic recovery and comply fully with its reporting obligations. He could not give the Committee a definite time frame within which his Government would be able to comply with its obligations in this regard, but noted that it should be able to do so after the general elections in August 2001. At that time, the Government hoped to re-establish responsible and productive relationships with the social partners. In the meantime, he thanked the ILO and the member States, particularly the countries of the Asia-Pacific region, as well as the Conference Committee, for their continued cooperation and support. He indicated that his comments constituted Fiji's reply to the comments contained in paragraphs 198 and 230 of the General Report.

A Government representative of France expressed his regret for the failure to supply information and repeated his Government's willingness to fulfil its obligations relating to the submission of reports and replies to comments made by the Committee of Experts. France had opted for a broad, often systematic, policy of extending ratified Conventions to its non-metropolitan territories under article 35 of the ILO Constitution. He emphasized that, for this reason, his country easily held the absolute record for the number of reports due. This resulted in a significant administrative burden and sometimes in coordination difficulties which, in turn, had an impact on the dialogue with the Committee of Experts and replies to its comments. Out of a total of 2,943 reports requested this year from all member States, 275 had been requested from his country, or 10 per cent of the total. This was not an excuse, of course, but began to explain the problem. He emphasized that France would evidently continue the dialogue and make every effort to meet the deadlines more closely.

The Worker member of France stated that he endorsed the comments made by the Worker and Employer members in general terms. He noted the comments made by the Government representative of France and wished to make it clear that Réunion was a French Department and not an overseas territory. He recalled the importance of the Conventions in question, which concerned the life and health of workers. These Conventions were therefore absolutely fundamental. He therefore hoped that the reports requested would be submitted the following year.

A Government representative of Guatemala indicated that his Government shared the Committee of Experts' criteria regarding the importance of supplying information and reports in reply to the Committee's comments, since the supervision of standards constituted an essential activity and was the basis of the ILO's activities to guarantee the rights of workers and employers and the development of societies. Therefore, he considered that any explanation could appear to be an excuse, which should not be interpreted as a lack of commitment by his Government. He indicated that Guatemala had ratified 71 Conventions, which represented a great amount of work. However, he added that the necessary efforts had been made for Guatemala to fulfil its obligations. These had included restructuring the Ministry of Labour and strengthening the administrative department responsible for the submission of reports by employing more personnel and appointing a new director. He hoped that these measures would allow the Government to fulfil its obligations towards the supervisory bodies of the ILO more efficiently and rapidly. He regretted not having been able to submit in a timely manner the information required by the Committee of Experts and added that the above information would soon be submitted since the reports were already being prepared by the International Affairs Unit in the Ministry of Labour.

A Government representative of Jamaica explained that his Government had been unable to submit all the reports due because of administrative difficulties, including staff turnover and the late submission of information by the various government agencies. He informed the Committee that these problems had now been resolved. He confirmed that Jamaica was conscious of its obligations to the Committee and undertook to submit the outstanding reports by September 2001.

A Government representative of Liberia indicated that his Government had replied to most of the comments of the Committee of Experts over the past two years. However, his Government's failure to respond in detail was due to its need for technical assistance. He noted that the ILO Dakar Office had begun providing the requested assistance, which would soon enable the Government to provide

the requested reports. He indicated that, apart from the issue of the maritime Conventions, to which he had previously responded, he wished to note that regarding Convention No. 87, the relevant provisions which were not in conformity with the instrument had been effectively repealed. With regard to Convention No. 29, he noted that forced labour did not exist in Liberia, even in its mildest forms. During the last four years, the civilian authorities had implemented the provisions of the Convention and there was now no trace of any use of forced labour, coercion or harassment, as mentioned in the comments of the Committee of Experts.

A Government representative of the Libyan Arab Jamahiriya noted, with reference to paragraph 198 of the report of the Committee of Experts, that his country had paid special attention to the report, indicating the benefits drawn from its working methods and the bringing of national legislation into conformity with the international labour standards. In response to the Committee of Experts' comments, the General People's Committee, which served as the Council of Ministers, had promulgated Order No. 259 of 1999, which provided for the setting up of a Standing Technical Committee to prepare the requested replies. The Technical Committee was composed of experts in the field of labour legislation, human resources and international labour standards. Section 2 of the same Order specified that the Technical Committee was responsible for the following tasks: bringing national legislation into conformity with international labour standards and their submission to the General People's Committee; the preparation of periodic reports and replies to the various requests and observations made by the Committee of Experts; and the submission of all the Conventions adopted by the International Labour Conference at its previous sessions to the General People's Committee for ratification. The same section of the Order required all relevant bodies to collaborate with the Technical Committee to fulfil its work and provide it with the necessary information in accordance with the legal provisions. The Technical Committee had started its work the previous year when it had submitted its report for the year 2000 to the Director of the International Labour Standards Department. After examining the comments of the Committee of Experts, the Technical Committee had divided its work into three segments relating to the following: the segment relating to Conventions requiring an amendment of national legislation; that relating to Conventions requiring the preparation of periodic reports, including various statistical information; and that relating to Conventions requiring submission to the competent authority, pursuant to article 19 of the ILO Constitution. He referred to the Conventions under the first segment, namely Nos. 1, 29, 52, 53, 95, 100, 103, 105, 111 and 138. The Technical Committee had also drafted bills to amend the legislation concerning the above Conventions to bring it into conformity with the comments made by the Committee of Experts. These bills had been sent to the General People's Committee, which had in turn submitted them to the General People's Conference for their consideration by the Basic People's Conferences which had the final say in deciding on the promulgation of laws or their amendment.

With regard to Conventions Nos. 81, 121, 122, 128, 130 and 152, he indicated that the comments of the Committee of Experts had been taken into account in preparing the reports which were submitted to the Director of the International Labour Standards Department in its consolidated report for the year 2000. He noted that Libya had ratified Conventions Nos. 87 and 182. In doing so, it had completed the ratification of all the fundamental human rights Conventions (Nos. 29, 98, 100, 105, 111 and 138), relevant to the ILO Declaration on Fundamental Principles and Rights at Work. He concluded by assuring the Committee that Libya was ready to take into account the comments of the Committee of Experts and to cooperate in strengthening labour standards, as well as protecting workers' fundamental rights.

A Government representative of Mongolia indicated that her comments regarding paragraph 198 of the General Report applied equally to paragraph 194, regarding Mongolia's failure to supply a first report on the Workers' Representatives Convention, 1971 (No. 135).

A Government representative of Nigeria explained that his Government had failed to provide the requested information due to communication problems. He assured the Committee, however, that Nigeria would respond as quickly as possible to the requests of the Committee of Experts. Turning to the issue of Nigeria's ratification of ILO Conventions, he noted that his Government had ratified five of the eight fundamental Conventions. The ratification process for the three remaining Conventions (Conventions Nos. 111, 138 and 182) had been initiated. He indicated that the relevant tripartite institution, the National Labour Advisory Council, had examined Conventions Nos. 111, 138 and 182 and submitted them to the Government for ratification, in accordance with national legislation. With regard to the application of Convention No. 87, he reminded the Committee that Nigeria had experienced problems in implementing the Convention while the country had been under military rule. With the advent of the civilian administration in Nigeria, the problem had now been resolved and trade unions could now operate independently, without government intervention, for the promotion of industrial peace and harmony. In addition, with regard to the application of Convention No. 29, he noted that his Government had recently established the Women Trafficking and Child Labour Eradication Foundation. In conclusion, he reiterated the commitment of his country to comply with its reporting requirements.

A Government representative of the Netherlands recalled that the Kingdom of the Netherlands was divided into three parts, namely a European part and two separate Caribbean parts, Aruba and the Netherlands Antilles, which could perhaps be better termed "countries" within a federal association. According to the Charter, which was the highest Constitution in the Kingdom, each country was autonomous with regard to reporting to the ILO. Consequently, Aruba and the Netherlands Antilles were themselves responsible for fulfilling their constitutional obligations. The partner in Europe could not do much to affect this situation. Nevertheless, the European partner had on several occasions in the spring made requests at the ministerial level to the other partners to fulfil their ILO obligations. The Netherlands Antilles had that morning handed in to the Secretariat the requested document. He regretted to note that there had not yet been any positive result in so far as Aruba was concerned. He assured the Committee that the European partner in the Kingdom would do its utmost to redress the failure of Aruba as soon as possible.

A Government representative of Papua New Guinea reaffirmed his country's commitment to the objectives of the ILO and recognized the importance of the ILO Declaration on Fundamental Principles and Rights at Work and the eight fundamental Conventions, which had been ratified by his country. He also emphasized his Government's commitment to meaningful dialogue with the ILO's supervisory bodies and to continuing to improve its compliance with reporting obligations. He regretted that his country had not been able to supply in good time the reports due in reply to the direct request made by the Committee of Experts on Conventions Nos. 29 and 122. This had been due to the sudden departure from the Department of Labour and Employment of the officer responsible for drafting ILO reports. However, detailed reports had now been prepared and would be supplied before 1 September 2001 for examination by the Committee of Experts at its next session.

A Government representative of the United Kingdom apologized for the fact that Anguilla and Jersey had not met the deadline for responding to the comments made by the Committee of Experts. He assured the Conference Committee that the United Kingdom made every effort to endeavour to ensure that its non-metropolitan territories met their reporting obligations in full and in due time. However, the territories in question were largely autonomous administrations. Moreover, the administrative burden of the reporting process on small territories could be onerous. He confirmed that the territories concerned were fully aware of their reporting responsibilities and were actively examining the issues raised by the Committee of Experts with a view to responding as soon as possible.

A Government representative of Belize said that, although his country had made progress in its compliance with other obligations, such as providing the reports due under article 22 of the Constitution, some of its replies to the comments made by the Committee of Experts were still outstanding. In that respect, he informed the Conference Committee that, in keeping with his Government's commitment to the modernization of the Ministry of Labour, the Cabinet had recently approved a significant increase in the number of labour officers and secretaries to the Labour Department. New members of staff were currently being recruited, and the Ministry of Labour had recently appointed a new ILO Desk Officer. His country had requested assistance from the ILO to train the new person.

The Employer members noted that a number of explanations had been provided by government representatives to explain their failure to reply to the comments of the supervisory bodies. Many of the explanations had not been new. The speakers had pointed to a number of problems, including administrative difficulties, the workload involved in reporting obligations, and the problems experienced by central governments with their autonomous non-metropolitan territories. In that respect, they considered that the problem could not be resolved at the higher ministerial level, but rather by sending experts to remind the federal governments of the need for solidarity with the central government, deriving from the obligation of mutual commitment at the governmental level. While they did not wish to condemn countries which had failed to reply to the comments of the supervisory bodies, they nevertheless noted the situation with concern. The problems which arose in this respect gave grounds for reflecting on the manner in which standards policy could be improved, but not abolished. They emphasized that the communication of information and reports was a principal part of the supervisory system which needed not only to be maintained, but also improved.

The Worker members noted that similar reasons had been given in the past for the failure of governments to supply information in reply to comments made by the Committee of Experts. Many promises had been made, but several governments had not spoken despite the opportunity given to them. In view of the importance of the requirement to submit reports, it was necessary to urge governments to take all the necessary measures to reply in due time to the comments made by the Committee of Experts. Furthermore, among the countries that had not complied with this obligation, some had or should have the necessary technical capacities and, to this end, should reinforce their system of labour administration.

The Committee took due note of the various information provided and explanations given by the Government representatives who took the floor. It insisted upon the great importance, for the continuation of an essential dialogue, of communicating clear and complete information in response to comments made by the Committee of Experts. It reiterated that this was an aspect of the constitutional obligation to report. In this connection, it expressed its profound concern at the high number of cases of failure to supply information in reply to comments made by the Committee of Experts. It reiterated that assistance from the ILO could be requested by Governments in order to overcome any difficulties they may be facing.

The Committee urged the governments concerned, namely, Afghanistan, Albania, Algeria, Antigua and Barbuda, Belize, Bosnia and Herzegovina, Cameroon, Côte d'Ivoire, Democratic Republic of the Congo, Denmark (Faeroe Islands and Greenland), Dominica, Equatorial Guinea, Fiji, France (Réunion), Gabon, Guatemala, Haiti, Jamaica, Kyrgyzstan, Lao People's Democratic Republic, Liberia, Libyan Arab Jamahiriya, Mongolia, Myanmar, Netherlands (Aruba), Nigeria, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Tajikistan, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, United Kingdom (Anguilla and Jersey) and Viet Nam to spare no effort to provide the information requested as soon as possible. The Committee decided to mention these cases in the appropriate section of its General Report.

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

Algeria. Since the meeting of the Committee of Experts, the Government has sent the reports due on unratified Conventions, Recommendations and Protocols.

[1] The list of the reports received is to be found in Part Two: I C of the Report.

Botswana. Since the meeting of the Committee of Experts, the Government has sent most of the reports due concerning the application of ratified Conventions, as well as the first reports on Conventions Nos. 29, 87, 95, 98, 100, 105, 138, 144, 173 and 176.

Central African Republic. Since the meeting of the Committee of Experts, the Government has sent most of the reports due concerning the application of ratified Conventions, as well as replies to most of the Committee's comments.

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

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

Egypt. 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 reports due on unratified Conventions, Recommendations and Protocols.

Georgia. Since the meeting of the Committee of Experts, the Government has sent the first reports concerning the application of Conventions Nos. 105 and 117.

Libyan Arab Jamahiriya. Since the meeting of the Committee of Experts, the Government has sent the reports due on unratified Conventions, Recommendations and Protocols.

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

Swaziland. Since the meeting of the Committee of Experts, the Government has sent the reports due on unratified Conventions, Recommendations and Protocols.

Convention No. 29: Forced Labour, 1930

India (ratification: 1954). **A Government representative** informed the Committee that a detailed report in accordance with article 22 of the Constitution for the period 1 June 1998 to 31 May 1999, covering the observations made in 1998 and 1999 by the Committee of Experts and comments of the Conference Committee in 2000 had been sent to the ILO in January 2001. He regretted the delay, which had meant that the report had not been taken into account in the observation of the Committee of Experts. The report had contained the information called for in an exhaustive and comprehensive manner. Indeed, the information had been obtained from no less than 28 states and seven union territories, and no fewer than eight central trade union organizations and employers' organizations had been consulted, along with central ministries and departments. The delay should not therefore be attributed to any lack of interest or commitment. With regard to bonded labour, he emphasized that there was absolutely no reason to assume that the Government did not have the will nor the intent to abolish it. Moreover, the Government had the machinery and infrastructure to reach down to the grassroots to do so. He said that vigilance committees were the most appropriate mechanisms for the identification of bonded labour, with the central Government's role consisting of the coordination of a national policy on bonded labour, while responsibility for the implementation of the policies rested with the states. The Government's commitment to eradicate the problem was borne out by article 23 of the Constitution, which prohibited the trafficking of humans, begging and other similar forms of forced labour. India had ratified Convention No. 29 way back in 1954. The Bonded Labour System (Abolition) Act, 1976, provided for the abolition of the system of bonded labour and freed unilaterally all bonded labourers from bondage, with the simultaneous liquidation of their debts. The Supreme Court of India had directed the National Human Rights Commission to oversee and supervise the implementation of the Act and the progress made by state governments. The legislative provisions and related actions therefore amply demonstrated the country's commitment to eliminate bonded labour. However, he emphasized that the problem of bonded labour was closely linked to the broader socio-economic problems of unemployment, landlessness, poverty and migration. It therefore required a holistic and integrated approach so that the various developmental efforts could be concentrated on the most deprived sections of society, which were clearly most vulnerable to bondage. India's massive anti-poverty programmes were geared to serve just such groups, and they not only prevented bondage but also helped the rehabilitation process. A specific scheme for the rehabilitation of bonded labourers was also being implemented and had been updated with increased levels of assistance since May 2000. Between 1998-99 and 31 March 2001, a total of 14,390 freed bonded labourers from seven states had been rehabilitated under the scheme. He added that landmark judgements of the very proactive Supreme Court had had far-reaching implications for the definition of forced labour. Under the terms of the Convention, the term "forced or compulsory labour" meant "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily". In the Bonded Labour System (Abolition) Act, 1976, bonded labour was defined as a service rendered by a person or his family members under compulsion to another to pay off a debt and who as a consequence had been denied freedom of movement, choice of employment and the right to sell his property or products at market rates. Both definitions covered the coercion aspect, although the latter emphasized indebtedness and an unequal exchange system. However, the Supreme Court judgements went far beyond the stipulations of the Convention. In 1982, the Court had given its opinion that, where a person provided labour or service to another for remuneration less than the minimum wage, the labour or service fell clearly within the scope and ambit of the words "forced labour" under the Constitution. In 1984, it had found that whenever it was shown that a labourer was made to provide forced labour, the court would raise the presumption that he was required to do so in consideration of an advance or other economic consideration received by him and was therefore a bonded labourer. Also in 1984, it had found that whenever a person was forced to provide labour for no remuneration or nominal remuneration, the presumption would be that this was a bonded labourer, unless the employer or the state government was in a position to prove otherwise. It should therefore be noted that the Supreme Court decisions presumed bondage even if there was no indebtedness of any kind, and even if the person had offered himself voluntarily but was being paid less than the minimum wage. This went far beyond the definition of forced labour in the Convention. He said that this was presumably the cause of the confusion in the minds of observers, who tend to apply these judgements to the implementation of the Convention. He expressed pride in the tradition of his country of being ahead but warned that much more would be involved in complying with the judgements of the Supreme Court and further work would therefore be required. This question was being monitored regularly by the Supreme Court. However, with regard to the implementation of the Convention, which was the concern of the Conference Committee, India should be treated in the same way as other countries based on the definition of forced labour laid down in the Convention.

Turning to the first point raised in the report of the Committee of Experts concerning the necessity to compile accurate statistics of the number of bonded labourers, and the Conference Committee's view that the Government should undertake a comprehensive and authoritative survey, he noted that reference had been made to the statistics on bonded labour quoted by the Gandhi Peace Foundation in 1978-79. However, he said that the Government was unable to accept the figures of bonded labour quoted by the Foundation, since no approved statistical tools or methodology had been adopted for collecting the primary data. The Foundation had estimated the number of bonded labourers at 2.6 million on the basis of a survey based on a random sample drawn from around 450,000 villages in ten selected states, from which 1,000 villages had finally been selected. Every 450th village in the census list of villages of each state had been selected. It was not known if the sampling was representative in terms of the population. The findings of the survey in respect of the above 1,000 villages had been projected by multiplying by 450 to arrive at the total number of bonded labourers in ten states. As the methodology was not acceptable, the Government had had to reject the findings. He stated that under the Bonded Labour System (Abolition) Act, 1976, the identification and release of bonded labourers and their rehabilitation was the direct responsibility of the concerned state governments. The central Government had advised the state governments to conduct periodic surveys, in the form of household surveys undertaken by the Revenue Department, during the survey/census undertaken to identify target groups for the allotment of house sites and/or houses, or through surveys integrated with preparations of village plans under the integrated rural development programmes. On the basis of such surveys, the governments of Andhra Pradesh, Bihar, Karnataka, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu, Maharashtra, Uttar Pradesh, Kerala, Haryana and Gujarat had reported the identification of 251,424 bonded labourers up to 1995, of which 230,915 had been rehabilitated. The remaining bonded labourers were not available for rehabilitation. All the state governments had stated in their affidavits filed with the Supreme Court in 1995 that all the identified bonded labourers who were available had been rehabilitated in their states. To verify these statements, the Supreme Court had nominated a voluntary organization and an advocate for each state, while the Government had issued an order to conduct a fresh survey to identify bonded labourers. Surveys had therefore been conducted by all the state governments in October-December 1996. As a result of these surveys, seven state governments (Arunachal Pradesh, Karnataka, Madhya, Pradesh, Maharashtra, Uttar Pradesh and Tamil Nadu) had identified 28,916 bonded labourers. The remaining state governments had again filed affidavits with the Supreme Court to the effect that no incidence of bonded labour had been found in their states during the survey. He emphasized that the existence of bonded labour could occur and reoccur at any time in any industry or occupation. Continuous vigilance and surveillance were therefore required, backed up by institutional arrangements for complaints/grievances received from those who worked and lived under conditions of bondage. In May 2000, the Government had modified the centrally sponsored scheme for the rehabilitation of bonded labour. It now provided for 100 per cent financial assistance to be provided to state governments to conduct surveys of bonded labour. Each state government was required to identify sensitive districts where the system of bonded labour was reported to exist in one form or another. Such surveys were required to be conducted on a regular basis once every three years in such districts. Under the scheme, financial assistance had been provided to several state governments in 2000-01 to conduct such surveys in 25 districts. During the current financial year 2001-02, financial assistance had been provided for surveys in

32 more districts. The remaining state governments were being requested to send proposals for conducting surveys in sensitive districts. The modified scheme also provided for grants for the creation of awareness and evaluatory studies and surveys, and the preparation of five evaluatory studies by state governments every year of the impact of existing land-debt relationships affecting bonded labourers and the effectiveness of poverty alleviation programmes and the financial assistance provided. He emphasized that the information from the surveys received by the Government provided authentic and reliable statistics on the system of bonded labour. The evaluatory studies would give an idea of the performance of the programmes and suggest corrective measures. It should be noted in this respect that the efforts to eliminate the problem were backed by a strong commitment, supportive action and the resolution to create a genuine database in the face of tremendous difficulties in identifying bonded labour in the first place. The figures on bonded labour had been furnished to Parliament and had not been rebutted by any NGO before the Supreme Court.

With regard to the comments made concerning the non-functioning of vigilance committees, he said that the state governments had stated that vigilance committees had been constituted at the district and subdivisional levels and that meetings were held regularly. However, it was possible that, considering the number of districts and the many functions of district functionaries, there might be some instances when vigilance committees did not meet regularly, although this was not widespread. With the modified scheme for the rehabilitation of bonded labourers, funds would be available to raise public awareness and the various surveys would involve continuous field visits by the members of the vigilance committees at the district and subdivisional levels, as well as institutional arrangements to receive complaints and grievances from those who work and live under conditions of bondage. There were 172 sensitive districts in 13 states where incidents of bonded labour were reported frequently. Surveys and awareness-raising activities would be undertaken with a view to bringing conceptual clarity to the definition of bonded labour, bonded debt and the different forms of the bonded labour system in the country. There was a need for constant efforts to inculcate a sense of individual and social identity in the minds of the socially and economically deprived of their basic legitimate rights. This would require certain time-bound programmes and activities at the district and subdivisional levels, and the use of existing public relations machinery, as well as innovative activities, such as street plays and local folk theatre to emphasize and propagate the absolute unacceptability of the bonded labour system, which was a negation of human rights. Local talent and NGOs working in the area would be encouraged to support and contribute to these activities. Moreover, the rehabilitation grant had been doubled and the state governments would provide matching grants under the modified scheme. These changes had been made after consultations with the state governments. As they had taken effect in May 2000, it was too early to provide information on the responses and action taken by the states. However, the scheme should not be seen in isolation. Its performance was closely linked to that of other poverty-reduction programmes. He was optimistic that the scheme would achieve notable progress in the next few years. However, he warned that achievements could never be measured solely in numbers, in view of the extreme sensitivity of the problem and the silence that often disguised bondage. In the end, it would be through empowerment in every sense of the word that the pernicious practice would be eliminated. Although actual numbers relating to prevention would never be available, what would be seen would be the gradual dissipation of the problem with the reduction of poverty and increased awareness and general confidence building.

In paragraph 4 of its report, the Committee of Experts had requested written information on the progress achieved. In addition to the changes in the scheme for the rehabilitation of bonded labour, he indicated that, to review and monitor progress in the implementation of the Bonded Labour (Abolition) Act, 1976, senior officers had visited Chennai, Bangalore, Betiah, Bagaha, Madhubani, Saharsa and Patna between July 1999 to April 2000, as well as to monitor the utilization of funds released for the rehabilitation of bonded labour. Following discussions with the officers of the state governments dealing with the rehabilitation of bonded labour, they had been advised to use funds from other poverty-alleviation programmes for the rehabilitation of bonded labourers to enable them to obtain maximum assistance in regaining their material status and identities. He added that a meeting had been held with the representatives of state governments in April 2000 to review the implementation of the Bonded Labour System (Abolition) Act, 1976 and the scheme for the rehabilitation of bonded labourers. It had been decided to conduct fresh surveys, identify bonded labour, issue release certificates as soon as bonded labourers were identified, make arrangements for their repatriation in case of migrant workers, formulate proposals for psychological and economic rehabilitation at a place of their choice and initiate action against the employers under the Act. For this purpose, it had been emphasized that vigilance committees at the districts and subdivisional levels should meet regularly in accordance with the Act and continuously monitor the incidence of bonded labour in their areas. By 31 March 1999, a total of 243,375 bonded labourers had been rehabilitated and an amount of Rs.464,985 million had been released to state governments under the scheme for the rehabilitation of bonded labourers. In 1999-2000, Rs.38.2 million had been released and 8,195 bonded labourers rehabilitated in four states. In 2000-01, Rs.86.5 million had been released to three state governments for the release of 5,256 bonded labourers. He added that the National Human Rights Commission oversaw and supervised the implementation of the 1976 Act on the instructions of the Supreme Court. A central action group had been constituted in August 1998 under the chairmanship of a former Chief Justice of India. The group had so far held four meetings. Finally, he noted that the information requested regarding the release and rehabilitation of bonded labourers, reports of visits of senior officials, a copy of review meetings and other available papers had already been sent to the ILO.

In paragraph 5 of its observations the Committee of Experts had referred to the ILO project developed as a direct response to the adoption of Convention No. 182 and the ILO Declaration on Fundamental Principles and Rights at Work and had hoped that it would be of assistance to the Government in combating bonded labour. He said that the project was to be implemented in three states. He expressed support for the initiative and, if it worked well, a model could be developed for its replication or application with modifications to other areas.

He then turned to some comments made by Worker and Employer members. One Employer member had requested information on the number of federal and civil servants working on a day-to-day basis on the identification and eradication of bonded labour. In response, he said that it was very difficult to provide government officials exclusively to deal with the subject of bonded labour, since they were also responsible for other matters, such as the enforcement of other labour laws and other important executive functions which enable them to exercise their influence on the work relating to bonded labour in an executive manner, for example, in the case of Collectors and Sub-Divisional Officers. An Employer member had stated that the phenomenon of bonded labour had increased with the rise in population, that the number of persons living below the poverty line had risen and that the Government's policies did not address the problems, but only added to poverty in rural areas. However, the Government representative said that there was no basis for such an assumption and, as shown by the latest survey in 2000, poverty levels had declined from 40 to 26 per cent. With regard to the alleged increase in bonded labour, he recalled that the affidavits filed by state governments before the Supreme Court in 1995 had stated that bonded labourers had been rehabilitated. New surveys conducted in 1996 had resulted in only two state governments, namely Arunachal Pradesh and Tamil Nadu, identifying 28,916 bonded labourers, while the remaining state governments had indicated that there was no incidence of bonded labour in their states. Nor had the Government come across any complaints that bonded labourers had returned to bondage. Referring to the comments made by a Worker member concerning letters alleging the prevalence and perpetuation of bonded labour in the state of Punjab, and particularly concerning the rape of a girl who had been working with her mother, he said that the allegations had been taken up at the highest level. It had been found that the complainants had been working in the houses of some farmers and providing domestic services on their own volition and in the houses of their choice. There was therefore no cause to consider them as bonded labourers, as they were working of their own choice and will. However, the case of rape had been confirmed and compensation and legal aid had been provided to the victim. With regard to the issue of child labour, he stressed that concern for children and the problem of child labour continued to be an area of great concern and commitment of successive governments. Census data for 1991 had estimated that the number of children working in the country was in the order of 11.28 million. The results of the census held early this year were still awaited. He recalled that, following the adoption of a resolution by the ILO in 1979 on child labour, a national policy on child labour had been announced in 1987, consisting of a legislative plan, the focusing of general development programmes on children whenever possible, and the formulation of project-based action plans in areas of the high concentration of child labour engaged in wage and quasi-wage employment. The Ministry of Labour had launched the National Child Labour Projects (NCLP) in 1988 for the rehabilitation of child labour in the country. He noted in this connection that the number of NCLP districts had increased to 100

this year, the number of occupations and processes where child labour had been banned had increased to 70 this year from the figure of 64 the previous year, the outlay for child labour elimination programmes had been raised to Rs.670 million this year from its level of Rs.360 million in the last financial year or an increase of over 86 per cent, and the increased emphasis placed on up-scaling efforts both financially and programmatically in the next five-year plan to cover all the endemic districts in the country which had not yet been taken up. The objective would be to bring new approaches to the projects, including a strong effort for the convergence of all social welfare schemes in such areas as education, health and income generation activities. Gaps in existing schemes were being identified with a view to initiating new approaches through a detailed evaluation exercise of all the projects in the country. Implementation mechanisms would be internalized and strengthened, and successful models being implemented by NGOs would be replicated, with emphasis on project activities which involved the mainstreaming of children into the formal education and schooling system. The Government was also examining the possibility of filling gaps in existing projects through schemes such as enhanced vocational training, regular health checks and other important social interventions for children attending the schools set up under the projects. A few initiatives had also been launched in the form of IPEC-assisted projects in the states most affected by child labour. He indicated that these formed part of the Government's continuous efforts to ensure that schools opened for children involved in hazardous work not only took them away from their place of work but also equipped them to become self-reliant and provided them with the opportunities to better themselves. The Government believed that the only way to eliminate child labour was to mainstream children into formal schools, where they could be provided with education and the chance to choose their preferred vocation. He also informed the Committee that the examination of Convention No. 182 was at an advanced stage and would be submitted to an inter-ministerial committee in the near future, with a view to expediting the procedures for its ratification.

Turning to the problem of prostitution and sexual exploitation, he emphasized that there existed a strong legal framework in India to deal with the crimes of immoral trafficking and prostitution of persons, including children, and that his Government had a strong will and commitment to address the problem. The basic legal measure was the Immoral Traffic (Prevention) Act 1956. The Supreme Court had also delivered two important decisions on this subject, which had strengthened efforts to deal effectively with the phenomenon. The Government planned the establishment of a Central Cell in the Ministry of Home Affairs with a view to monitoring and coordinating the action taken by the different national agencies and programmes for the prevention, rescue and rehabilitation of women and child victims. The Government was also preparing a manual containing guidelines for the judiciary and police regarding cases pertaining to the trafficking of women and children, with a view to securing speedier justice for them and ensuring more stringent action against traffickers, under the aegis of the National Human Rights Commission and the Department of Women and Child Development. He emphasized that prostitution and trafficking were of great concern to the Government. Since the incidence of prostitution was related to the low status of women in society, it would be difficult to take real action to combat the problem unless progress was made in the economic empowerment of women. The Government was therefore implementing various programmes for this purpose, including a programme to provide microcredit to poor women in the informal sector. A number of support services had been developed, including short-stay homes, crèches and family counselling centres. Awareness programmes for women had also been established to disseminate information on their rights. His Government had demonstrated its commitment in this respect by ratifying the international Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. India had also drafted a regional convention on the prevention and combating trafficking of women and children for the purposes of prostitution. His Government had also taken the lead in seeking the cooperation of Nepal and Bangladesh in combating the trafficking of persons.

In conclusion, he emphasized that his Government had continued to provide written and oral reports to the ILO on the questions raised by the supervisory bodies. His country had adopted an open attitude to the question and had set up the necessary institutional arrangements. It had always shown its willingness to cooperate with the ILO and he hoped that the Committee would take into account that it was an open and democratic society, with an independent judiciary and total freedom of expression. Few developing countries could boast these advantages. He therefore called for the understanding and the appreciation of the Committee in relation to the problems experienced and called upon it not to overlook the need to address the underlying causes of the problems, which lay principally in the large-scale unemployment in the country and the very large informal sector. Without effective action to combat poverty, it would be very difficult to tackle these problems effectively.

The Employer members agreed with the Government representative that the problems of bonded labour and child labour needed to be seen in the center of the broad picture of national development. Although the Government clearly had a whole range of structures in place to address these issues, no amount of structures would be effective in addressing the much larger economic issues of development and poverty eradication. The problems faced included a small formal sector and a large informal sector in the country. The Employer members noted that, despite the provision of some new information this year, there was an abiding impression that very little had changed in the case over the many years that it had been examined by the Committee. It had been unfortunate in that respect that the Government's report had arrived after the meeting of the Committee of Experts. The Employer members noted the statement of the Government representative that the necessary legislative structure was in place and that priority was given to rehabilitation schemes and to the work of vigilance committees in identifying bonded labourers for rehabilitation. However, it was understandable that such mechanisms might not work uniformly well in such a vast country. Although the Committee had been examining the case for a number of years, it was still confronted with widely ranging estimates of the extent of bonded labour. They emphasized that reliable statistics were necessary to define the scope of the problem and the strategies needed to address it. Despite the fact that the Government had not accepted the figures provided by the Gandhi Peace Foundation, the impression remained that the Government had not established the necessary structures to identify the real scope of the problem. It was for this reason that the Government had been requested to put in place a comprehensive and authoritative survey. An additional problem appeared to concern the lack of a precise conceptual definition of bonded labour, with the interpretations of the Supreme Court envisaging the issue in a much broader manner than the definitions contained in the Convention. Clarification was therefore required as to the concepts used by the Government in the figures that it had provided for bonded labour. Were these based on the definition in the Convention or on the broader concept developed by the Supreme Court? The Employer members emphasized that, in the absence of reliable statistics, it was unclear whether the bonded labour problem was increasing or decreasing. Moreover, the Government appeared to have no adequate means of rehabilitating bonded labourers. They wondered whether the ILO project to which reference had been made could be of assistance in this respect. The Employer members added that it did not appear that the Government's efforts were succeeding in eliminating child labour. The Committee of Experts had called for changes in the child labour legislation, but the Government representative had not addressed this issue. While welcoming the future ratification by India of Convention No. 182, the Employer members recalled that, even if all the necessary laws and regulations were in place, if the situation was not solved in practice, the Government would not have complied with the Convention. Noting the figures provided the previous year that there were between 70,000 and 100,000 prostitutes in India, the Employer members referred to the explanations provided by the Government representative that this situation was largely due to poverty and unemployment, and that the legislation was in place to prevent the trafficking in women and children. They believed that the most appropriate policy, in addition to more focused programmes and measures, would be to seek to remedy the problem through economic growth, job creation, the development of the educational system and the improvement of conditions allowing people to move from the informal to the formal sector of the economy.

The Worker members thanked the Government representative for the comprehensive information provided, although they regretted that the Government had not been able to submit this information in its report to the Committee of Experts in time for its session at the end of 2000. This would have facilitated the work of the Committee of Experts and the Conference Committee. They did not disagree with the comments of the Government representative that India was a huge country which was poor and still developing, and that a lot of time would be needed to overcome the problems that existed. However, they recalled that India had ratified the Convention in 1954 and had adopted legislation on the abolition of child labour 25 years ago. The plea of poverty could not therefore be used when assessing the manner in which India had complied with its obligations under the Convention. They recalled that the Committee had been examining the case for 15 years and that similar information had been provided almost each year. They had therefore reached the sad conclusion that very little had changed.

Although there had been progress in some areas, such as the microfinance project in Andhra Pradesh, as well as in two states, including Kerala, success stories had been few and far between. They nevertheless welcomed the news concerning the ratification of Convention No. 182. In their view, the biggest obstacle to progress was the Government's persistent refusal to recognize the extent of the problem. This persistent refusal made it difficult for the Government to formulate an appropriate response. Indeed, if the Government continued to say that the problem was smaller than it actually was in practice, this would affect the priority given to resolving the issue, as well as the resources allocated. More importantly, state governments would follow the central Government in giving low priority to the issue. The Worker members noted that the Government had persistently rejected all survey findings on the number of bonded labourers in India, including those of the Gandhi Peace Foundation and the National Labour Institute, which had placed the total number of bonded labourers at 2.6 million. They recalled in that respect that the National Labour Institute was a government establishment. Other estimates put the figure much higher, at around 10 million. Instead, the Government claimed that, since the enactment of the Bonded Labour (Abolition) Act, 1976, some 280,411 bonded labourers had been identified by vigilance committees. When compared with other recent figures, this suggested that only 71 new cases had been discovered during the course of the past year. This seemed quite unbelievable, especially since the report of the Commission on Bonded Labour in Tamil Nadu to the Supreme Court in 1995 had estimated that there were over 1 million bonded labourers in that state alone. Other reports had found a high incidence of bonded labour among the 3 million mine and quarry workers in Rajasthan State, with 95 per cent of those affected being low-caste or indigenous groups. The Worker members also referred to the statement by the Government representative that bonded labour had been reported in 13 states, but as a result of concerted efforts had been eradicated in two states. This would suggest that there were still 11 states where it had not been eradicated. These figures clearly indicated that there was a serious problem of under-reporting and the Worker members therefore supported the call by the Committee of Experts for the compilation of accurate statistics of the number of persons who continued to suffer bonded labour, using a valid statistical methodology. They encouraged the Government to work closely with the ILO for that purpose. A second aspect raised by the Worker members concerned the effectiveness of the measures put in place by the Government to identify and rehabilitate bonded labourers. This responsibility had been delegated to state governments, which were supposed to set up vigilance committees and maintain registers on bonded labour. Despite the Government's assertion that these committees were working satisfactorily, the evidence suggested the contrary. In a presentation to the National Consultation on Forced Labour in September 2000, the former Secretary of Labour to the Government of India had stated that a few state governments had come to the conclusion that there were no bonded labourers in their states even without constituting vigilance committees. Moreover, the vigilance committees that had been set up were not meeting at close and regular intervals. The failure of the vigilance committees was illustrated by the case of Punjab, where Volunteers for Social Justice, an Indian NGO, had indicated that there were 698 cases of bonded labourers on which the authorities had failed to take action. In virtually all of these cases, complaints had been registered with either the Punjab Human Rights Commission or the High Court. It should also be noted that these cases had been uncovered by an NGO, but not by the Punjab vigilance committees. In the past, numerous calls had been made for the Government to improve its coordination and supervision of activities to combat bonded labour. The Worker members urged the Government to take full responsibility for this task and to do much more to ensure the effectiveness of the vigilance committees and other measures. Despite the initiatives taken in the form of field visits and review meetings, the evidence showed that this was not sufficient. Perhaps a multidisciplinary approach was required, involving the central and state governments, district committees, trade unions and NGOs. The Worker members added that the Committee of Experts had requested the Government to provide information on the number of prosecutions, successful convictions and sentences passed against those using bonded labour. Such information was important in showing the effectiveness of the legislation for the eradication of bonded labour. However, once again, no statistics had been provided. It would not appear to be difficult to provide such information, unless of course there had been in practice very few or no prosecutions and convictions. If this was the case, the Committee should be so informed. They therefore called upon the Government to provide the necessary information to demonstrate that the enforcement mechanisms really worked. Turning to the question of child labour, the Worker members fully shared the concern expressed by the Committee of Experts and the United Nations Committee on the Rights of the Child that large numbers of children were involved in child labour, including bonded labour, especially in the informal sector, household enterprises, domestic service and agriculture, with many of them working under hazardous conditions. They were also concerned that minimum age provisions were rarely enforced and appropriate penalties and sanctions were not imposed to ensure that employers complied with the law. They endorsed the recommendation of the Committee of Experts that the existing legislation, such as the Child Labour Act and the Factories Act, should be amended to ensure better protection for children and prohibit exemptions in areas such as work at home, government schools and training centres and certain factories and workshops. They called for the Government to provide information on the number of employers who had been prosecuted for violations of the Child Labour Act and the Factories Act, and on the penalties imposed. They also urged the Government to indicate a specific time-frame for the adoption of amendments to the legislation. With regard to prostitution and sexual exploitation, they welcomed the fact that the Government representative had provided detailed statistics. The problem of the prostitution and sexual exploitation of children appeared to be serious. They therefore shared the concern of the Committee of Experts that enforcement mechanisms should be strengthened, all complaints properly investigated and all offences punished. They expressed concern that the cases registered under the Immoral Traffic (Prevention) Act, 1956, had declined. This could not be due to a lack of violations, as the Government had indicated that 100,000 girls were caught in this misery and that the practices of kidnappings, abductions and even forced marriages existed to transfer girls from rural areas to locations where they were in demand. They called upon the Government to provide information on the number of girls who had been freed from such exploitation and rehabilitated. In conclusion, they urged the Government to comply with its obligations under the Convention to suppress the use of forced or compulsory labour in all its forms in the shortest possible time. In so doing, it would be living up to the ideals of a more just and equal society espoused by Mahatma Gandhi.

The Worker member of India expressed the opinion that, while some progress had been achieved in India, the problem was by and large still very serious. It was therefore necessary to pay proper attention to it. He added that there were many problems involved in assessing the real extent of the problem. For example, employers would never readily admit that they employed bonded labourers, and even workers subject to bonded labour might be unwilling to admit their situation. Moreover, there was normally no record of the money that they had borrowed. The problem therefore gave rise to genuine statistical difficulties, despite the development of modern statistical methods. The situation was compounded by the fact that, although the district administrations had been given the responsibility to enforce the legislation, the vigilance committees were not functioning properly. Many of them had not even been reconstituted, and some had stopped working. In addition, many vigilance committees had stopped collecting data. Another issue which arose was the question of the involvement of the social partners in the implementation of the Convention. The Government representative had not commented on this issue. He recalled that there was still no national tripartite committee monitoring the work of the district administrations in resolving the problem. He believed that trade unions would be able to help the Government in this respect and that greater attention should therefore be paid to this solution. With reference to the interpretations of the Supreme Court concerning the concept of forced and bonded labour, he called for a serious attempt to be made to ensure compliance with the minimum wage provisions. However, he noted that these interpretations focused on the issue of work that was paid at rates lower than the subsistence wage, and that they therefore did not cover the whole concept of forced and bonded labour. These interpretations should therefore be seen within the correct context. He emphasized that, following the adoption of the legislation on bonded labour, and particularly over the past ten years as a result of globalization, new forms of bonded labour were emerging. Under pressure from liberalization and the removal of restrictions, traditional and small-scale industries were collapsing. As a result, the workers affected were needing to borrow money to cover their subsistence needs, and therefore risked becoming bonded labourers. He added that the growth in the number of EPZs, in which labour legislation did not apply and which were not covered by ILO Conventions, also ran the risk of promoting new forms of bonded labour. He emphasized that the phenomenon of child labour was still a major problem in his country, and that particular problems arose with the girl child. Unfortunately, insufficient measures had been taken to ensure the full rehabilitation of children released from child labour. An important

consideration in this respect was land reform, which had not been implemented in all states. Many workers and children could be freed from bonded labour if they had access to their own land. These problems could therefore be reduced considerably by the pursuance of land reform measures. Turning to the question of prostitution, which was a very serious problem in his country, he noted that most of the measures taken were not within the ambit of the Ministry of Labour. Action would be more effective in this respect if the Ministry of Labour also adopted the relevant measures, since the situation had been aggravated by problems related to employment. Finally, he regretted the fact that, although the relevant legislation existed, there were a very small number of prosecutions, and the resulting number of convictions was also very low. He called upon the Government representative to provide detailed information on this problem, which required serious attention in order to improve enforcement.

The Employer member of India submitted that most of the problem with regard to bonded labour has arisen due to lack of conceptual clarity of the term “bonded labour”. There is a confusion arising out of Supreme Court judgement and ILO Convention No. 29. He questioned the validity and authenticity of the surveys conducted by the private bodies and said that government surveys should alone be recognized. In this respect, he observed that the statistics provided by the Government were based on thorough surveys. With reference to the issue of child labour, he indicated that many children accompanying their parents to the fields as no one is available at home to look after them, are termed as child labourers which is a misnomer. He, however, disagreed with the fact that the Factories Act should be amended to cover even household industries, as household industries are an important source of self-employment. He believed that these industries should not be subjected to labour inspection. In conclusion, he emphasized that India was a democratic country with a welfare system, in which the executive legislation and the judiciary are all keen to address the problems of bonded labour and child labour.

The Worker member of Colombia said that the state of poverty, social exclusion and the depth of the social problems faced nowadays by the majority of workers in India was a challenge to everyone. He underlined that it must be concluded, from the report of the Committee of Experts and the Government’s statements, that the concerns of the past had not lost their force. He wondered what the fate of the world’s workers would be without the ILO. He indicated that when speaking of bonded labour, the figures were very contradictory, some talking of 300,000 others of 2.5 million and some mentioned other figures. The question that must be asked was what were the real numbers. In fact, the numbers were not important, since the reality was self-evident. He expressed the wish that, with the ILO’s support, reliable statistics would be available on the number of human beings exposed to such suffering. It was not possible to apply a correct remedy to a disease if its basic nature was not known. The international community should urgently call for the liberation of workers enslaved under the system of bonded labour. He indicated that, when it came to bonded labour of children, domestic labour, agriculture, manufacturing, etc., there would always be a justification on the grounds of poverty and that was heard repeatedly not only in India but in all developing countries. However, one could not remain indifferent to that scourge, nor to prostitution, nor to anything that demeaned the worker. Consequently, he urged the Government of India and all the ruling class to take the necessary corrective measures to prevent such indignity. He also called on the governments of other countries to assist with determination and social commitment to combating the poverty in many countries of the world. However, he said that the aid requested must be merited and that could be achieved by adopting measures to address the problem at its roots. In the case of India, that could begin with the ratification of Conventions Nos. 138 and 182 and the full implementation of Convention No. 29.

The Government representative thanked the Employer and Worker members for their very constructive suggestions and urged them to look upon the problem of bonded labour in his country, which had come before the Committee on numerous occasions, in a very dispassionate and objective manner. He recalled the importance of vigilance to the identity cases of bonded labour and for schemes to rehabilitate bonded labourers. Turning to the issue of statistics of bonded labour, he reaffirmed that the figures provided by the state governments were given on oath to the Supreme Court. He wondered whether the NGOs which offered different figures would be prepared to make such a commitment to the Supreme Court, particularly in view of their liability if the statistics were wrong. Moreover, India was a free country and official statistics could be challenged if necessary. He feared that many of the figures put forward concerning bonded labour in India were no more than fantasy. He therefore called upon the Committee of Experts and the Conference Committee to respect the figures provided by the Government. He recalled that bonded labour was a dynamic problem. The situation changed rapidly. However, when cases of bonded labour were identified, the framework existed for action to be taken. Moreover, he refuted accusations that the vigilance committees were not working well. Although a certain number of shortcomings were always possible in such a large country, he recalled that the whole process was overseen by the National Human Rights Commission under the instructions of the Supreme Court. Moreover, in view of the political structure of India, there was no option but to involve state governments. He added that the composition of the vigilance committees was laid down by law and included a wide variety of members representing both official bodies and the population at large. He welcomed the views expressed by the Employer members and their understanding of the fact that it was necessary to tackle the root causes underlying the problem, with particular reference to the creation of employment and the improvement of the educational system. This was precisely the approach that the Government was adopting in endeavouring to address these very serious problems. He also noted the comments made concerning the number of prosecutions and convictions under the legislation respecting bonded labour. He undertook to obtain the necessary figures. However, he added that with a problem as complex as bonded labour, the imposition of sanctions and the creation of further social tension was not necessarily the best approach. There was a need for a stable social situation to exist at the grassroots level in order to address the problem adequately. In that respect, he welcomed the reference to the high ideals of Mahatma Gandhi and assured the Committee that his Government attached the greatest importance to improving the situation of the needy and the deprived and of those who were subject to discrimination. It was necessary to give such persons the confidence to participate in the mainstream of society. With regard to the lack of conceptual clarity concerning the issue of forced and bonded labour, particularly in view of the interpretations of the Supreme Court, he urged the Committee to confine itself to the provisions of the Convention when examining the situation in his country. He also called on other members of the Committee who had referred to information that was not in the possession of the Government to provide it with the relevant data. He welcomed the suggestion made by the Worker member of India that trade unions should be more involved in the action taken to eradicate bonded labour. However, he refuted his suggestion that labour legislation was not applied in EPZs. Referring to his comment that new forms of bonded labour were emerging, he called for studies to be undertaken to assess them. Moreover, he welcomed the statement of the Worker member of Colombia that powerful governments needed to provide other countries with assistance with a view to combating poverty. Turning to the issue of child labour, he expressed the belief that observations of the Committee that home-based work done by children be prohibited, went well beyond the provisions of Convention No. 182. He warned that in the gigantic task of combating child labour, the first objective needed to be to focus on those children who were engaged in hazardous work. Another priority was to ensure that such children were linked to school, so that they could find their freedom from child labour through education. The eradication of child labour would have to be a step-by-step process, concentrating in the first place on the most hazardous forms of work. Nevertheless, he looked forward to creating the framework for the ratification and implementation of Convention No. 182.

The Employer members emphasized that the situation was very serious. The argument was not only about statistics, since it was clear that the problem was immense, even using the Government’s figures. As all the information would be provided to the Office by the end of July, they hoped that the Committee of Experts would be able to provide a clear description of the elements of the case so that the Conference Committee would in future be in a better situation to deal more concretely with the problems of bonded labour, child labour and prostitution and sexual exploitation in the country. It was sincerely to be hoped that the members of the Committee would in their lifetime be able to see that India had embarked on the path to eliminating forced labour.

The Worker members thanked the Government representative for the additional information provided and expressed their agreement with the view that bonded labour, child labour, prostitution and sexual exploitation were all extremely complex issues which could not only be addressed by specific schemes, but also required measures in such fields as education, health care and social development. They reminded the Government representative that, if help were required, the ILO could provide technical assistance and the IPEC programme could offer more practical solutions to overcoming some of the difficulties involved. They added that serious consideration should also be given to the involvement of trade unions which, particularly as representatives of grassroots organi-

zations, could make an important contribution. The Worker members also emphasized that accurate statistics were not only a matter of intellectual curiosity, but were an essential means of ascertaining the true extent of the problem, so that the issue could be viewed with the necessary clarity. With regard to the references made to the interpretation of the concept of forced and bonded labour by the Supreme Court in relation to the provisions of Convention No. 29, they recalled that there was a very strong body of jurisprudence in the ILO concerning bonded labour which could help to clarify the situation. They therefore recommended that the Government should enter into dialogue with the Office on this matter. Clarification of the conceptual issues would be important in influencing the surveys to be carried out and in ensuring that statistical surveys had a viable conceptual basis. Turning to the issue of child labour, particularly when carried out in the home, the Worker members recalled that, when India ratified Convention No. 182, it would need to devote attention to the issue of inspection, which was not place bound and would cover all locations where children worked as recommended by the Meeting of Experts on Labour Inspection on Child Labour in September 1999. They emphasized that the work carried out by children at home should also be covered by labour legislation. Finally, they hoped that the Government would be willing to accept the assistance and projects offered by the ILO in relation to these problems.

The Government representative wished to clarify that he had not in any way wished to give the impression that the interpretations by the Supreme Court of the concept of forced labour, although very broad, were incorrect or that he did not agree with them. He had merely wished to say that they went beyond the definition of forced labour set out in the Convention.

The Worker members emphasized that it had not been their intention to suggest that the Government representative did not accept the interpretations of forced labour by the Supreme Court of India. They had merely indicated that the Government representative felt that the interpretations were too wide and resulted in a lack of conceptual clarity in relation to Convention No. 29.

The Committee noted the detailed information supplied by the Government representative and the subsequent discussion. The Committee noted with regret that 25 years after the adoption of the Bonded Labour (Abolition) Act, 1976, little progress had been made in identifying, freeing and rehabilitating bonded workers, despite repeated observations by the Committee of Experts and numerous discussions of the case in the present Committee. The Committee, like the Committee of Experts, deplored the fact that the Government had not submitted in time the report that should have been examined at its last session. The Committee urged the Government once again to undertake a statistical survey on bonded labour throughout the country, using a valid methodology in cooperation with workers' and employers' organizations and with human rights' organizations and institutions. The Committee noted the Government's efforts to eradicate child labour in collaboration with the Office but observed that the situation of children in bondage and other forms of compulsory labour had not sufficiently improved. The Committee expressed the firm hope that the Government would continue to endeavour to systematically apply the laws on child labour and eradicate exploitations of children, particularly in the informal sector and dangerous activities. With respect to the prostitution and sexual exploitation of children, the Committee urged the Government to continue to supply full and detailed information on that question, including reliable statistics, as well as information on measures taken to free and rehabilitate sexually exploited children. The Committee once again expressed the firm hope that the necessary measures would be taken at national, state and local level with a view to achieving concrete and significant progress in the application, in law and in practice, of this fundamental Convention in the near future.

The Government representative regretted that the comments he had made during the discussion had not been taken into account in the Committee's conclusions. He felt that it seemed that the Committee had finalized their conclusions even before he had put across the Government of India's view.

Sudan (ratification: 1957). **A Government representative of Sudan** noted that his delegation had studied the report of the Committee of Experts and wished to provide information to the Committee on the points raised therein. He noted that the issue of the kidnappings and abductions of women and children had been discussed in the report of the United Nations Commission on Human Rights and in the United Nations General Assembly in the framework of human rights in Sudan and these bodies had concluded that these were not forced labour practices, but were simply abductions. He stressed that his Government condemned the use of all forms of slavery and referred the Committee to article 20 of the Constitution of Sudan. He also pointed out that the Criminal Code of Sudan imposed a sanction of ten years in prison for kidnapping and seven years in prison for abduction. The Government representative noted that the information contained in the Committee of Experts' report came from Christian Solidarity International (CSI). In his Government's view, this organization was not a neutral, reliable source and took an aggressive position against the Sudanese Government. As an example, he cited a communication sent by the CSI to the United Nations High Commission on Human Rights on 5 July, alleging that 133 children in a CEAWC UNICEF programme who were being taken to join their families had been lost on the way. In a letter dated 25 July 2000, UNICEF clarified that these children had in fact arrived safely and provided names and dates. His Government had provided information regarding this incident to the Committee of Experts, but unfortunately it had not been referred to in the report. The Government representative stated that the war in southern Sudan had caused negative consequences, including the kidnapping of women and children among tribes in that region. He pointed out that this practice was very old and could also be seen in other parts of the African continent, particularly where there were conflicts, instability and lack of security. The practice of kidnapping of women and children among tribes was particularly common among the Dinka tribe and other tribes in the south. An agreement was signed in March 1997 between the Dinka and other tribes stipulating that kidnapped women and children should be returned. Due to the ongoing war, the heads of tribes that used to settle these problems and return kidnapped persons were no longer doing so. To fill the vacuum resulting from the migration of these tribal elders, in May 1999, the Ministry of Justice set up the Committee for the Eradication of the Abduction of Women and Children (CEAWC). This had been described by the United Nations bodies as a positive step taken by the Government to eradicate this practice. He noted that this Committee was composed of government and non-government members and members of the tribes concerned. While the Government was fully committed to the eradication of this problem, it faced a number of difficulties in achieving this goal. First, the kidnappings and abductions occurred in a vast region with no paved roads to enable the authorities to gain access to the area. The security forces had no communications and transport facilities to cover the area, due to the bad economic situation. Moreover, the roads in the region were not accessible at certain times of the year, particularly during the rainy season. He stressed that the kidnappings and abductions occurred in areas where the civil war was going on. Further, the CEAWC faced many difficulties which hindered it from carrying out its mandate. First, it was difficult to reach the families of abducted children since these people were in a region under the control of the rebel army. The Government had attempted to use neutral persons to transfer children from its regions to areas under control of the rebels, but had not received much cooperation in this regard from the rebels. This problem was compounded by the logistical difficulties posed by the need to move and feed these persons during the transfer. The issue of reuniting families also led to conflicts with the interests of the rebels. The rebel militia urged the tribes to carry out raids. This conflict was also intensified by rebel movement, leading to an increase in kidnappings and abductions, which complicated the task of the CEAWC. Sudan had asked the international community for help to eradicate this practice and had received assistance from the European Union, Save the Children, the United Kingdom and UNICEF. Despite these difficulties, the Government was determined to eradicate this practice through its legislation and through raising awareness in order to establish a peaceful coexistence between tribes. To that end, he indicated that the Government had issued radio transmissions in the regions affected. He gave examples of measures taken, including symposia conducted by the CEAWC and a mission sent to investigate the kidnapping of 12 children by the Dinka from other tribes in the south. As a result of the mission conducted in July 2000, two children had joined their families; the Government was still attempting to reunite one child with his family, and one child was moved to Khartoum for medical treatment. He cited examples of other successful tracing of abducted children which took place from December 2000 to January 2001. Pointing discrepancies in the statistics presented by the Government in 2000 and the data presented by the CEAWC in 1999 and 2000, he pointed out that the Government had given the correct figure in its submission in the Conference Committee, indicating that 353 of the persons abducted had been returned to their families, not 1,258, as stated in the report of the Committee of Experts. In conclusion, he recalled that in August 2000, an ILO expert from the MDT in Addis Ababa, had visited the Sudan for a three-week mission. During that time, he had spoken with representatives of the Government, that the CEAWC and other members of civil society. The Government had responded to all of the experts' questions

and cooperated with his mission, but this was not mentioned in the report of the Committee of Experts.

The Employer members pointed out that the case of Sudan's application of Convention No. 29 had unfortunately gone on for a very long time. They recalled that the Committee of Experts had been commenting on this matter consistently since 1989 and the Conference Committee had addressed this case on six occasions. The report of the Committee of Experts followed up on points raised in previous years. However, no decisive improvements in the situation had been made to date. On the contrary, the report of the Committee of Experts cited many violations of the Convention which were confirmed by various sources, including major trade union federations, a Canadian assessment mission and the Special Rapporteur of the United Nations Commission on Human Rights. These violations involved acts of cruelty, concerning the abductions and kidnappings of women and children and incidents of murder, rape and slave labour. These practices primarily involved the Dinka community and the inhabitants of the Nuba mountains. Many witnesses had attested to these violations, as well as to the fact that these groups were allied with the armed forces of the Government. In fact, the report of the Canadian assessment mission, a mission which had received a mandate from the Sudanese Foreign Minister, reflected that the wages of these marauders consisted solely of stolen booty. The Government representative had not responded to the most recent points raised by the Committee of Experts. Instead, he had focused on explaining why more had not been done to correct the situation. As in past years, the Government had indicated that the practice of kidnapping and abduction among members of tribes in the southern Sudan formed part of their tradition and was a normal practice, thereby giving the impression that the Conference Committee should accept this practice as some type of folk tradition. However, these were practices that involved murders and other cruel acts and affected the lives of many victims in the country. The Committee of Experts had noted some progress in its prior report in that the Government had established the Committee on the Elimination of Abductions of Women and Children (CEAWC). The CEAWC's mandate was correct on paper, namely to end the practices described and ensure the safe return of those kidnapped or abducted. However, the Employer members questioned whether the CEAWC had the support of the tribal elders concerned and whether it was bringing to justice the persons committing such acts. As in the past, the Government representative had commented on the discrepancies in the statistical data contained in the Committee of Experts' report concerning those abducted and those released. However, the Government representative had not stated whether there were any new figures available which might demonstrate whether the CEAWC had had any success in fulfilling its mandate. While the accusation had been made that the CEAWC worked too slowly, the Employer members questioned whether this might be due to a lack of political and financial support from the Government. In this context, the Government representative had indicated that the Government had requested financial aid from the European Union and UNICEF. The Employer members welcomed this, but pointed out that the Government must also adopt and enforce effective criminal provisions. In fact, Article 25 of Convention No. 29 required governments to adopt and implement effective sanctions to punish the exaction of forced labour. They noted that the current penalty in Sudan for exacting forced labour was only one year in prison. The Employer members considered that, after many years of this practice, there was good reason for the Government to increase sanctions considerably, particularly when one considered that the practice of exacting forced labour had become almost routine. This unacceptable situation could not be changed unless the existing sanctions were significantly increased. Such legislative changes were also justified in light of the seriousness of the crime, its resulting injury, and the unanimous assessment by the different international organizations that there was an urgent need for the Government to take steps to end these practices. In conclusion, the Employer members stressed that the Committee must see much greater efforts on the part of the Government than it had seen in the past and urged the Committee to express this in its conclusions.

The Worker members stated that their analysis of this case had been covered by the statements of the Employer members and that they would restrict themselves therefore to an elaboration of their conclusions. A large consensus of different independent sources had confirmed the continuation of the practices of kidnapping, forced labour and slavery in Sudan as well as the Government's active or implied involvement in such practices. The Worker members expressed their concern over the significant risk of an increase in such practices further to the discovery of oilfields. The CERFE should have been able to provide a means to implement the political will in order to eradicate such abominable practices; instead, it had become at best a timid initiative and at worst a means to camouflage the absence of the Sudanese Government's political will to comply with Convention No. 29. In the report of the Committee of Experts, the Government had expressed its desire to eliminate the practice of the abduction of women and children and subjecting them to forced labour, but nothing had confirmed the existence of this desire. On the contrary, proof of the Government's active or implied collusion in such forced labour was increasing. Last year, for example, the Government had had the opportunity to prove its good will by accepting the ILO's direct contacts mission to examine, in the strictest confidence, the issues relating to compliance with Convention No. 29 and to submit a report to the Committee of Experts. The Government should of course allow such a mission entry to the entire territory and access to all players able to assist it in fulfilling its mandate. The Government representative was invited to express himself clearly on the acceptance of such a mission and its implementation before the end of this year. A negative response was already feared to be the sure outcome. The Committee should express its severest condemnation of the Government's violation of Convention No. 29, should it refuse to accept such a mission, given that the abovementioned practices constituted grave violations of Convention No. 29 and crimes against humanity.

The Worker member of Côte d'Ivoire recalled that this case had already been the subject of special paragraphs, but without any positive evolution of the situation. The practice of slavery still existed in Sudan and had as its corollary rape, murders and abductions. The principal victims were women and children. Slavery and forced labour were systematic and institutionalized, even in regions under government control where the sadly renowned peace camps existed. Moreover, the Penal Code provided for a sanction of only one year of prison for perpetrators of forced labour. Such a penalty did not constitute an effective sanction but rather a means of encouragement. The information provided by the CERFE must ensure that sight was not lost of the suffering of women and children who had been the victims of kidnappings. Concrete measures must be undertaken in order to put an end to this situation which did not bring honour to the African continent.

The Worker member of the United Kingdom noted that he had commented on this case last year, and regretted that he had to speak again. However, the case of the application of Forced Labour Convention, 1930 (No. 29) in Sudan was a persistent and egregious case which concerned the abduction mainly of women and children, and their use as chattel slaves — a practice which was being used as an instrument of war. He noted that, although the number of women and children abducted and enslaved during raids had varied over the years since the resumption of the civil war in Sudan in 1983, it was clear that slavery remained a reality in Sudan, with thousands of people awaiting release and new abductions still taking place. The Government had consistently denied, from the time of the first public reports in 1987 until 1999, that either militia raids or slavery were occurring. However, after the United Nations Commission on Human Rights stopped referring to slavery in 1999, and spoke instead of abduction and forced labour, the Government set up the Committee for the Eradication of Abduction of Women and Children (CEAWC). He noted that the geography and ethnic dimensions of this appalling case had been noted by the Committee of Experts. He wished to add some information communicated to his national trade union centre by Anti-Slavery International (ASI), a highly respected organization with which the TUC had had a long and cooperative relationship. In October 2000, two ASI representatives had visited Sudan to assess the impact of the CEAWC's work. They had interviewed members of the CEAWC, the Dinka Committee, the Dinka community living in north Sudan and former slaves living in three transit centres managed by the CEAWC. In April 2001, ASI submitted a report to the Government summarizing the information collected during that visit and presenting a series of recommendations to the Sudanese authorities. While he noted that the Government representative of Sudan condemned all forms of slavery, he also noted that ASI had found that the government officials and others did not consider that abducted persons absorbed into the household of another family — whether by sale, false adoption, marriage, or as a result of the passage of time — were victims of human rights violations, let alone slavery. He urged the Conference Committee to condemn, not only abductions, kidnapping and forced labour, but also false adoptions, debt bondage, the practice of employing children away from home and without the consent of their parents or guardians, and the practice of coercing or persuading girls and women into marriage, while keeping them ignorant of their origins or their rights. The Government should ensure that Sudanese legislation prohibited all these practices, and that the penalties imposed were commensurate with human rights violations. Exacting forced labour was in fact currently an offence under the 1991 Criminal Act, but the penalty was only one year of imprisonment. He pointed out that the ASI had observed that,

while the CEAWC had secured the release of some abducted women and children, progress in this regard was extremely slow. From May 1999 to July 2000, the CEAWC identified 1,230 abductions in south Darfur and west Kordofan. However, by April 2001, less than half of those abducted had been returned to their homes. The total number waiting to be released was widely considered to be between 5,000 and 14,000. He considered that some of this slow pace might be attributable to a flare-up in the fighting. However, the CEAWC had not pursued prosecutions. It had merely adopted procedures to try to identify who should be released and securing releases — involving both representatives of the Dinka victims and the community holding them. The process has been unacceptably slow. Indeed, the Dinka had strongly criticized the Government for not facilitating the Dinka Committee's work on releasing slaves. In the opinion of the head of the Committee, the Government's inaction had the effect of encouraging more abductions. In addition, he noted that the Dinka representatives also continued to face harassment in carrying out their work. He therefore urged the Government to take urgent steps to hasten releases and publicly end the de facto amnesty for those abducting or holding victims. They must pursue prosecutions. They must also support the CEAWC and make it clear to local officials that they must cooperate with both the CEAWC and the release process and protect Dinka representatives from harassment. Officials or individuals who obstructed its work should be punished. No action had been taken to prevent new abductions, and raids in January and February had included two in which over 400 women and children were abducted. He urged the Government to take immediate action to stop attacks on civilians and prevent new raids and abductions. He suggested that the Government establish and maintain a land or air corridor from north to south Sudan, under the supervision of a suitable neutral organization, to enable victims released to return home safely to the areas under SPLA control from which they were abducted. Further, the ILO must be provided with detailed information on the legal proceedings initiated against those responsible for these crimes, and the Government should take measures to prevent further abductions. Noting that the Government had asked for help from the international community, he suggested that a direct contacts mission go to Sudan to obtain full factual information and to examine what effective assistance could be made available by the ILO to the Government to eradicate this practice.

The Government member of the United States stated that his Government remained gravely concerned by the persistence of reports from many sources, relating to abduction, trafficking and slavery — accompanied by extreme violence — affecting thousands of women and children in Sudan. The alleged role played by the Sudanese Government in these atrocities was most troubling, notwithstanding the Government's stated commitment to eradicate these practices and to cooperate with the international community in doing so. In the past, the Conference Committee had referred to the Committee for the Eradication of the Abduction of Women and Children (CEAWC) as a positive first step, but it remained far from sufficient. The Conference Committee should therefore insist that the Government, as a matter of extreme urgency, take all necessary steps to stamp out these practices of slavery, particularly through measures to ensure that the perpetrators of these acts were brought to justice and convicted, and that meaningful penalties were imposed upon them, so as to secure observance of the provisions of Convention No. 29 for every person in Sudan.

The Government representative thanked the Committee members for their keen interest when discussing this case. The dialogue had been constructive and fruitful. He wished to make the following observations. There was still talk about slavery and bondage. The resolution of the United Nations Commission on Human Rights issued in April 1999 did not talk about slavery but kidnappings and abductions. His Government did not deny that abductions were taking place. Rather, it had responded favourably by establishing the Committee for the Eradication of the Abduction of Women and Children (CEAWC), which was responsible for ensuring that the abduction of women and children was eliminated. The present Committee had noted the difficulties facing the Government in its attempts to deal with the problem of abductions, including its inability to access some of the relevant areas where the abducted persons were held. While the speaker shared the concerns of other Committee members regarding these abductions, he pointed out that the problem could only be resolved by supporting the CEAWC as well as an end to the civil war in Sudan. He hoped this Committee would ask the international community to support peace initiatives to this end.

Another Government representative emphasized that his Government was committed to the respect and promotion of human rights in Sudan. His Government's policy was not to deny human rights violations in Sudan if they occurred but to acknowledge them and to try to resolve them. Hence, cooperation and not confrontation was the approach preferred by his Government. Because of this constructive approach, the CEAWC had been established in collaboration with UNICEF and some Western governments. Several hundred women and children had been saved thanks to the work of the CEAWC. The speaker underlined, however, that his Government needed this Committee's understanding in resolving the problem of abductions in Sudan. In this respect, he noted the positive contributions made by members of this Committee when discussing this case.

Another Government representative, the Minister of Labour and Administration Reform, indicated that his Government wished to cooperate with the ILO in finding the appropriate ways and means of solving this problem. The most important thing was to admit that there was a problem. He emphasized that the problem of abductions was due to the civil war raging in Sudan during all these years. As long as the war continued, there would be violations of human rights. This was not particular to Sudan but had happened in other parts of the world when there was war, including in Europe. He had noted the suggestion by the Worker members about the undertaking of a direct contacts mission. His Government would look into it to see how such a mission could be carried out. He assured the Committee that with the activation of the CEAWC and with its strengthened ability, more work could be done with a view to eradicating the abduction of women and children.

The Employer members were surprised by the Government representative's reaction in respect of the difficulties facing the CEAWC, particularly with regard to its human and financial resources. These difficulties were well known. It was true that the war had played a major role in the incidence of forced labour in the country. However, in earlier discussions on this case, the Government representatives had stated that the abduction of women and children was inherent in tribal life, since tribes fought each other for agricultural land. Regarding the Government representative's request for technical assistance, the Employer members recalled that a more far-reaching proposal had been made, that of the undertaking of a direct contacts mission to the country. However, the Government representative had not given a clear reply in this regard and a direct contacts mission could only be carried out with the Government's agreement. Therefore, the Government representative had to provide a clear statement as to whether or not his Government would welcome such a mission, which could possibly constitute an appropriate tool to address the very serious human rights violations. In conclusion, the violation of human rights in Sudan was very serious and there was a continued failure by the Government in applying the relevant provisions of Convention No. 29.

The Worker members stated that this was an extremely sad situation. The practice of kidnapping, trafficking of persons, forced labour and slavery affected thousands of women and children from the south of Sudan and constituted grave violations of Convention No. 29. These were crimes against humanity and slavery was the consequence of abduction, even though the Government refused to adopt the term "slavery". The active or implicit involvement of the Government in these practices was to be regretted. Regarding the clear question asked by the Worker and Employer members, namely the Government's acceptance or otherwise of the proposal to send an ILO direct contacts mission, the Government had answered by using the same language that it used last year. This should be interpreted as a new refusal to collaborate. As a result, they requested that this case be included in a special paragraph of the Committee's report.

The Committee took note of the information provided by the Government representative on the causes of abduction of women and children, the measures taken to eliminate forced labour of which they were the victims and the subsequent discussion. The Committee highlighted the extreme gravity of the case which affected fundamental human rights for which reason it had been included in a special paragraph in 1997, 1998 and 2000. The Committee noted that the Committee of Experts had observed that there was a broad consensus among the relevant instances of the United Nations agencies and workers' representative organizations concerning the persistence and extent of the practice of abduction and imposition of forced labour, and concluded that such situations were very serious violations of Convention No. 29. The Committee noted the information supplied by the Government representative on the practical difficulties faced by the Committee for the Eradication of the Abduction of Women and Children in carrying out its task of identifying and ensuring their return to their homes and found that the measure was inadequate. The Committee expressed its profound concern at the serious situation in Sudan and urged the Government to initiate systematic actions concomitant with the magnitude and gravity of the problem and to reply to the questions

raised by the Committee of Experts, in particular with respect to the relevant preventive measures, identification of those responsible for exacting forced labour and the imposition of appropriate penal sanctions. The Committee noted that the Government representative rejected the proposal that a direct contacts mission should visit the country to work with the Government in finding solutions to eradicate the practice of forced labour, but had announced that it would consider that possibility. The Committee decided to include this case in a special paragraph of its report as a case of continued failure to apply the Convention.

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

Chile (ratification: 1935). **A Government representative** emphasized the special concern of her Government to faithfully promote the principles, Conventions and Recommendations of the ILO through the adoption of the legislative and administrative measures that were relevant and possible to comply with its commitments.

With regard to the Convention, she described the characteristics of the Chilean pensions system established in 1980 by Legislative Decree No. 3500. The Chilean pensions system had a long tradition with its origins in the social legislation adopted in 1924. From that time, a gradual process had commenced of extending the coverage of the system to all sectors, with the result that it was possible to state that the Chilean legislation covered all dependent workers and a significant proportion of the self-employed. In 1980, a substantial reform had been commenced to the pensions system, consisting of the establishment of an insurance scheme based on individual capital accumulation, with emphasis on the participation of private entities in its management. However, the binding nature of the legislation had been maintained, with compulsory affiliation, financed through a system based on contributions which had to be paid by insured persons, as well as the system of benefits, all of which led to the unavoidable conclusion that in legal terms this was a public law system. Furthermore, the private entities which were permitted by law to participate in the management of these schemes were subject to rigorous supervision obliging them to abide by the instructions and recommendations of a technical service in the central administration, known as the AFP Superintendency, which had the responsibility of safeguarding the public interest. In turn, this service was subject to parliamentary scrutiny.

The State, as the guarantor of the right to social security and, in practical terms, of pensions schemes, was responsible for ensuring that everyone had equal access to benefits, including the right to the minimum pension. This explicit mandate was set out in article 19(18) of the Political Constitution of the Republic of Chile.

The private entities entrusted with the management of the system were profit-making and had to take the form of limited liability companies, in accordance with the requirements of the law. As a consequence, anyone who fulfilled the necessary requirements, including workers concerned with the development of the system, could be involved in their establishment, as had occurred in practice, as reported by the Government in its reports to the ILO. She recalled that the operations of such entities were subject to the public regulations and controls set out in the legislation establishing the system. The supervision of pension fund administrators was carried out by the AFP Superintendency which, with the necessary autonomy, was under the authority of the Sub-Secretariat of Social Insurance.

She added that, with regard to rights that were currently being acquired by workers insured under the former social insurance systems, the law established a transitional scheme allowing them to continue to be covered by the above systems with the maintenance of their rights, even though the financial assets of the social security system no longer existed. This made it necessary for the Treasury to make substantial contributions to finance the pensions of these workers. A public body existed to manage this scheme, namely the Insurance Standardization Institute, which acted as the legal coordinator of the former social insurance funds.

With regard to the financing of the pension benefits provided for in Legislative Decree No. 3500 of 1980, she indicated that contributions to the scheme were paid by workers, although some employers were not dispensed from also making contributions. This was the case for the scheme for arduous categories of work, for which the law required a joint contribution from both employers and workers equivalent to 2 per cent of taxable remuneration to the individual capital account of each worker. Moreover, workers and employers could conclude individual or collective agreements providing that the latter would make contributions, known as agreed deposits, to the individual capital account of the insured person with a view to increasing the balance so as to improve the pension.

In relation to the employer's contributions referred to above, it should be noted that in Chile the financing of the social security scheme for employment accidents and occupational diseases was based on contributions paid exclusively by employers. The State had not disregarded its obligation to contribute to the financing of contributory schemes, and could not do so in view of the clear provisions of the Political Constitution. As a result, the Treasury was obliged to finance fully the minimum pensions provided by both the reformed system and the transitional scheme referred to earlier.

She added, in general terms, that the management and administration of the schemes and the participation of those concerned and insured persons in the various schemes which made up the pensions system, as well as the most appropriate methods of financing benefits, were currently subjects which were giving rise to intense debate in various circles, which had resulted in the series of reforms of various types undertaken in many countries throughout the world. This new situation relating to social security institutions was recognized by the ILO which, with a clear vision of the future, had called for a very interesting debate in the Social Security Committee of this Conference.

Her Government, in collaboration with all the social sectors, and particularly workers and employers, as part of a process of setting out points of view either directly, or through Parliament, had adopted measures designed to improve the individual capital accumulation scheme, especially in the areas of profitability, transparency, costs and coverage, as well as the information required by insured persons concerning the options available to them. She said that the education and culture of citizens in matters relating to social insurance had become an objective of the public authorities, which had given rise to interest in all sectors. She expressed the opinion that, in view of the difficulties that were arising concerning the coverage of the increasingly extensive categories of informal sector workers, it was necessary to raise awareness of the importance of affiliation to the various social protection schemes, as well as of continuing the payment of contributions. In addition, other policies had been adopted to create incentives to make affiliation attractive. She indicated that Chile had recently enacted legislation establishing an unemployment insurance scheme which, among other objectives, was intended to provide a replacement income for insured workers, not only in the event of the loss of their jobs for reasons which were not attributable to them, but also in a series of other contingencies.

With regard to the payment of contributions by employers, she expressed the opinion that in an increasingly globalized world, characterized by a large degree of informality in labour relations, it was necessary to adjust rules for the collection of contributions. She stated that the efforts made by the Government in this respect were recognized by Chilean workers and employers. With a view to adequately safeguarding the rights of insured persons, including those in pension schemes, and in an effort to comply with its international commitments, policies and standards along the lines indicated had recently been adopted. Labour inspectorates had recently intensified inspection activities concerning compliance with the rules relating to the deduction, collection and payment of contributions by employers. Standards had also come into force preventing employers from terminating the employment contracts of their employees if they had failed to pay contributions to the corresponding insurance entity. The so-called "Bustos" Act, named after the late distinguished trade union leader who had urged its adoption, did not permit the termination of the employment relationship of workers whose insurance situation was incomplete due to the absence of periods of contributions that the employer should have paid at the time. With a view to facilitating the collection of unpaid contributions, she indicated that an Act had recently been adopted allowing employers who were in arrears with their compliance with this obligation to conclude agreements with the entities entrusted with the management of social security to reprogramme the payment of arrears in such a manner that the level and updated value of the contributions owed was not affected. Finally, in relation to the effective compliance of employers with contribution requirements, she indicated that a few months ago a forum had been established for the reform of labour and social insurance law composed of specialists of all the sectors involved. The intended objective was to present a project for the review of the labour process in Chile, with special emphasis on the payment of contributions which were in arrears. In the medium term, it was hoped to undertake a far-reaching reform of the legislation relating to labour procedures with a view to the establishment of a specialized body specifically covering the payment of insurance contributions.

She reaffirmed that the measures announced would have to be accompanied by proposals to promote the inclusion and effective payment of workers' contributions in the so-called informal sector of the economy. The Government, in consultation with the social partners concerned, was currently developing proposals to include

in social protection various categories of occasional workers, including women occasional workers who were heads of households.

On the subject of the level of pensions, concerning which information had been provided by a number of organizations of public officials and workers connected with the public sector, who had indicated that they had opted to join the pensions system established by Legislative Decree No. 3500, the level of the pension had turned out to be lower than the guaranteed minimum in some cases. She said that the transitional scheme established to maintain the rights that were being acquired by workers affiliated to the former pensions insurance schemes also envisaged the possibility of these workers opting to join the new individual capital account system. In such cases, they would be entitled to a tax credit known as a recognition bond, allowing them to increase the amount of their individual capital account in relation to their membership of the former system. The law allowed those affiliated to the new system, and who had not been entitled to a recognition bond, to opt once again to rejoin the former system, in which the rights that they were building up were maintained.

Finally, it should be noted that the State guaranteed for all workers affiliated to any pension system a guaranteed minimum pension in cases in which, under the specific legislation, the resulting level of the pension was lower than the minimum level, for which the legislation required the completion of a period of contributions in accordance with the relevant rules.

She reaffirmed that her country had constantly taken care to comply with the noble principles and standards adopted by the ILO with a view to facilitating the harmonious and successful development of labour relations. In this respect, and with regard to the need to harmonize the provisions adopted by the ILO and those approved and ratified by Chile in the field of social security, she emphasized the special concern of the democratic governments as of 1990 to carry out the necessary reforms to improve the industrial relations system. The Sub-Secretariat of Social Insurance had required the technical bodies which lay within its competence to give priority to carrying out the necessary studies identifying the measures which would need to be adopted to progress in the process of ratifying the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128). The studies carried out up to now showed that in general there were no inconsistencies or incompatibilities between domestic legislation in this field and the provisions of the Convention. In this way, once a number of doubts of a technical nature had been resolved, it was possible that the Government might decide in the near future to take the necessary measures to finalize the instrument of ratification of the Convention, which had already been submitted by Chile and approved by its legislative authority. The finalization of the instrument of ratification would result, in accordance with the provisions of Convention No. 128, in the denunciation of the older Conventions Nos. 35 to 38 which, because of their age, were not adapted to the needs of today, nor to the policies that modern states had to adopt to protect their workers, including the important changes imposed by the economic, social and cultural development of countries throughout the world.

In conclusion, she emphasized that her country was making every effort to find solutions to harmonize Chilean internal law and policy with the international standards and undertakings which it had contracted. She hoped that, as had hitherto been the case, this would be achieved with the valuable technical assistance of the ILO.

The Worker members recalled that this case had been examined by the Committee the previous year and that they had mentioned it in their statement presenting the list of individual cases. At the time, they had indicated that they would come back to the difficulties concerning the application of the Convention by Chile if real progress had not been achieved in the meantime. They also recalled that the case had been examined by the Conference Committee on the last occasion in 1995 and that it had been once again discussed by the Governing Body in March 2000 when examining a representation submitted under article 24 of the ILO Constitution.

The present case concerned an important aspect of social security, namely old-age insurance. The Worker members attached great importance to ILO Conventions on social security and believed that they played an essential role in combating poverty. Old-age insurance was the indispensable safety net which ensured a dignified old age to those who had worked for the whole of their active lives and had earned the right to rest.

They said that the case of Chile was of particular interest since it raised the question of the difficulties which often arose when certain branches of social security were privatized. Chile had made the transition to a private old-age insurance system, which had created many types of problems.

The first point raised by the Committee of Experts in its observation concerned the financing and management of old-age insurance. For many years, the Committee of Experts had been requesting the Government to amend its 1980 legislation, which did not provide for the obligation for employers to contribute to the financial resources of the insurance scheme, in accordance with Article 9, paragraph 1, of the Convention. Moreover, the legislation did not provide for the contribution of the public authorities to the financial resources or benefits of insurance schemes, in accordance with Article 9, paragraph 4, of the Convention.

The second point raised by the Committee of Experts concerned the absence of participation by insured persons in the management of insurance institutions. Article 10, paragraph 4, of the Convention provided that "representatives of the insured persons shall participate in the management of insurance institutions under conditions to be determined by national laws or regulations (…)". Although there was a broad margin for manoeuvre with regard to the conditions under which insured persons would participate, the Convention left no room for doubt concerning the principle of such participation. The fact that, under the national law that was in force, it was "possible" for insured persons to participate was not sufficient to ensure compliance with the Convention.

The third point raised by the Committee of Experts on which the Worker members commented concerned the situation of public officials. According to the information provided by several organizations of workers in the public service, the level of the pensions paid to public officials had fallen steeply. For this reason, they called upon the Government to take effective measures to ensure that the rights set out in the Convention were ensured for all workers without distinction whatsoever.

They noted that, as in the discussion of the case by the Committee in 1995, the Government had once again expressed its good will. It had stated that it wished to maintain a constructive dialogue and had undertaken to provide additional information. However, they noted that since the establishment of the new pensions system in Chile no significant progress had been noted in relation to the discrepancies identified by the Committee of Experts for many years. These consisted of serious violations which could have dramatic consequences on the situation of retired workers. They therefore believed that it was high time that the Government took measures rapidly to bring its old-age insurance system into conformity with the Convention. They drew the Government's attention to the fact that it could always have recourse to the technical assistance of the ILO.

The Employer members indicated that Article 10 of the Convention was central to the comments of the Committee of Experts. This case had been the subject of the Committee of Experts' comments since 1983 and had been discussed in this Committee since 1995, following the introduction of a new old-age pension system in 1980 by Legislative Decree No. 3500. 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 in the new pension system. However, the Government member had indicated that the new system was more successful than the former one since the latter was in less and less of a position to provide benefits. While 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 functioning successfully. In this regard, the Employer members recalled the decision adopted by the Governing Body of the ILO inviting parties to Convention No. 35 to denounce this Convention, since it had been considered to be obsolete. At the same time, the Governing Body had invited the member States concerned to contemplate ratifying the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128). However, regarding the administration and funding of pensions, Convention No. 128 did not differ from Convention No. 35. The Employer members considered this whole discussion to be somewhat strange. While they agreed with the Governing Body decision to classify Convention No. 35 as obsolete, they recalled that this Committee had already concluded in 1995 that this Convention 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 observe Convention No. 35. Although the new pension system in Chile was a clear violation of the Convention, the Employer members considered it to be a contradiction in terms to request the Chilean Government to ensure the application of this Convention. This was especially so in the light of the ILO's own view that the Convention was obsolete. In conclusion, the Employer members would not support such a contradiction in terms in the Committee's conclusions.

The Worker member of Chile indicated that the evaluation of the pension scheme was negative for two reasons. Firstly, because

the system of individual capitalization was imposed on terms unfavourable to the workers and, secondly, because the ensuing profits went to company owners and the losses to the State. He proposed that a mixed scheme should be introduced, and rejected the compulsory imposition of the individual capitalization scheme. He expressed his concern that it would lead to a technical approach far removed from the social type of scheme and would adversely affect workers with the lowest incomes. Decisions should be taken in consultation with the people and not against the people. He agreed with the Government member of his country that a debate should be opened on the subject to ensure the existence of social security in Chile.

The Employer member of Chile endorsed the comments by the Employers' spokesperson. He emphasized that in 1995, the Committee had stated that this Convention should be revised. For the same reason, the corresponding law was revised in Chile, and later by Peru, Argentina and Mexico. He indicated that in the 1960s, the ratio of active workers to pensioners had been ten to one and in the 1980s two to one. Consequently, the former pension scheme had not been viable. For that reason, an individual capitalization scheme had been chosen. He said that after 20 years, the results were clearly positive. He added that everyone was entitled to their own opinions, but not their own facts. In that respect he said that: (a) the return on the scheme, i.e. on individual accounts, had been 11 per cent from the 1980s up to the present; and (b) in economic terms, the scheme had contributed to the economic development of the country, since workers' savings, which amounted to $38 billion invested in securities issued by private companies, represented a significant percentage of Chile's GDP. With respect to the statement by the Worker member of Chile, in which he demanded state intervention in the scheme, the speaker said that such intervention already existed since the State guaranteed minimum pensions, for example, in the case of redundancies. The speaker maintained that it was a successful system which combined economic and social solutions in support of workers' social welfare. While it was true that the scheme had been created under an authoritarian government, it was subsequently endorsed by democratic governments. Finally, he emphasized that in the case of a successful scheme it was not reasonable to ask to turn back the clock to the detriment of the workers.

The Employer member of Colombia, speaking on behalf of Latin American employers, highlighted the importance of the scheme in Chile which had served as a model for other countries in the region some of which, like Mexico, had adopted them. The personal savings scheme had been established in his country in 1993, with a guaranteed minimum return to workers of 5 per cent. The return was currently over 10 per cent which showed that the experiment of combining a personal savings scheme with an average premium or contributory scheme was to the advantage of workers. In Colombia, workers could choose their scheme and change every three years from one scheme to another as they wished. He pointed out that over half of them had opted for the personal savings scheme, which was a clear evidence of its success.

The Worker members stated that they noted the reasoning of the Employer members without understanding its logic. The Governing Body had in fact requested the States parties to Convention No. 35 to consider ratifying Convention No. 128 and, at the same time, denouncing the former. The aim was to ensure that the denunciation of Convention No. 35 was not made before the ratification of Convention No. 128. In spite of the argument put forward by the Employer members, it was worth highlighting that so long as Convention No. 35 remained in force, it had to be fully applied in practice. The Worker members recalled that the Convention did not prohibit social security benefits under private schemes. However, the Convention specified the conditions that needed to be met for ensuring benefits under private or public schemes.

The Employer members noted that that the Worker members disagreed with their views. It was true that the Governing Body did indicate that the member States concerned ratify Convention No. 128 before denouncing Convention No. 35. However, the Governing Body had also stated that Convention No. 35 was obsolete. There was no doubt that the pension system introduced in Chile in 1980 was not in conformity with Convention No. 35. The consequence of this state of affairs was that the Committee could take note of this but could not urge a member State to comply with an obsolete Convention. This contradiction in terms should not be contained in the Committee's conclusions which should only reflect the points of consensus in this Committee.

The Committee took note of the detailed information presented by the Government member. The Committee recalled that the case had been examined in 1987, 1993 and 1995, and had been the subject of three representations. The Committee recalled the importance of the social security Conventions bearing in mind the significant role that they played in the battle against poverty. In that respect, old-age insurance played a fundamental role. As for the application of the principles of the Convention, the Committee of Experts had indicated that the private pension scheme established by Legislative Decree No. 3500 of 1980 did not meet the requirements of Convention No. 35 in the following ways: (a) the scheme did not provide for any direct contribution by employers to the financial resources of insurance funds; (b) contributions by the Government to financial resources and benefits was of an ad hoc and, ultimately, exceptional nature; (c) the pension fund administrators (AFP) were private for profit-limited liability companies; and (d) with the exception of certain trade union AFPs, the insured persons did not participate in the management of the AFP. The Committee took note that the Government had responded positively to the invitation by the Committee of Experts that Chile should contemplate ratifying the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) and denounce Convention No. 35. It noted with interest, in that respect, that the Government had adopted appropriate measures to complete the act of ratification of Convention No. 128 which had already been signed by Chile and approved by its legislative body. The Committee confirmed that the Governing Body had proposed the ratification of Convention No. 128 and the corresponding denunciation of Convention No. 35. The latter Convention, according to the Governing Body, had been closed to ratification. With respect to the application in practice of the Convention, the Committee took note in particular of the information provided by the Government in reply to the observations of various academic associations in the public sector concerning the level of pensions. The Committee hoped that the information concerned would be examined by the Committee of Experts at its next meeting. It noted that the Government intended to do all that was necessary with the support of the ILO to identify appropriate solutions.

Convention No. 81: Labour Inspection, 1947 [and Protocol, 1995]

Uganda (ratification: 1963). **A Government representative** stated that there were two counts of charges in respect of this case. The first was that the consequence of the decentralization of labour inspection had been to weaken labour inspection so that it was unable to protect the workers. In effect, this was in violation of Article 4 of Convention No. 81 which required labour inspection to be under the purview of the central Government. The second charge was that labour inspection in Uganda was inadequately facilitated. In particular, transport and transport facilities were very inadequate. The reason for this was the inadequate budget. Convention No. 81 required labour inspection institutions to be adequately facilitated. The consequence of this was that workers were inadequately protected. The speaker acknowledged that both charges were correct and legitimate. Hence, there was a need for a frank and candid discussion of the situation since there was no issue to challenge. He wished to report on what had happened. Uganda had undergone decentralization. The spirit of decentralization was to give power to the people and take services closer to them. The purpose was not to weaken labour administration and deprive the workers of their rights. The weakening of labour inspection had not been intended and was an unfortunate outcome. He further acknowledged that consultation prior to decentralization had been inadequate. He assured the Committee that a review of this situation would be undertaken. The review would involve all stakeholders and had to be comprehensive. The process would take some time and Uganda would, no doubt, need technical assistance.

The Worker members stated that in the case of Uganda's application of Convention No. 81, issues were raised of particular importance in the context that, on the one hand, it was a characteristic situation regarding the application of this Convention in African countries and, on the other hand, it raised the problem of the impact of the AIDS epidemic in the world of work. In this respect, the Committee of Experts had indicated that inadequate work inspection resources encouraged a general slackening on behalf of employers and their legal obligations relating to health and safety at work as well as in respect of other conditions in the workplace. The AIDS epidemic certainly had disastrous economic consequences but the experts' observations also showed that it was a problem involving organization. The economic situation of the country cannot always be invoked to justify the inertia of work inspection services resulting from a bad system of decentralization. It was therefore of the utmost importance that, as the Committee of Experts stated, measures be taken in order to ensure that the proportion of the national budget devoted to work inspection services be determined in accordance with the urgency of the objectives in question, which itself should be guided by the application of the terms of the Convention. The AIDS epidemic was a problem which must be consid-

ered in the context of the workplace. In this way, the work inspectors who were the primary critics of the labour legislation must be provided with the necessary practical and financial means to discern the problems at hand. Inertia in work inspection services would only increase tenfold the consequences of the epidemic which continued to claim its victims in the world of work. They requested that the Government take all necessary measures as quickly as possible to allow the work inspection services to achieve their objectives, measures which should be granted to them, in the application of the terms of the Convention.

The Employer members recalled that this case had already been discussed by this Committee ten years ago and the Committee of Experts had been making comments on it for a number of years. Convention No. 81 was of great importance since a functioning and well-established labour inspection system provided important information for all parties concerned, the authorities, the social partners and the ILO. The results of labour inspections were therefore a source of inspiration for further measures to be taken in order to ensure the application of national labour legislation. The Employer members noted that draft legislation had been prepared recently with ILO technical assistance in the context of a cooperation project with the United Nations Development Programme (UNDP). Labour inspection duties would increase in importance, particularly against the background of the socio-economic impact of the epidemic of HIV infection. In this context, they noted the conclusions of a report by a joint ILO/UNDP/EAMAT mission undertaken in 1995 on labour administration, indicating that the structures of the labour inspection system in the country were in a critical situation. The decentralization of the organization and of the management of services and personnel of the labour inspectorate was resulting in practice in serious shortcomings in supervising the application of legal provisions for which the labour inspectorate was responsible. In this regard, the Government had indicated the very rapid growth in the number of national and foreign private industrial enterprises. The Employer members welcomed this development, for the growth in the number of private enterprises was certainly an advantage regarding the further development of the country. However, it was important to have the necessary material and human resources at the disposal of the labour inspectorate. The lack of such resources constituted a serious obstacle to carrying out labour inspections efficiently. The Government representative had not tried to water down the situation of the inspection system in the country today. The Government representative had nevertheless indicated that the review of the decentralization process of the labour inspection system would require comprehensive consultations with all parties concerned and was therefore likely to take some time. However, the Employer members considered that the process needed to be accelerated since the problem had been ongoing for quite some time. While they welcomed the Government representative's request for technical assistance, they considered that the necessary resources to be placed at the disposal of the labour inspectorates had to be offered by the Government itself. In conclusion, the Government needed to strengthen its efforts to comply with the provisions of the Convention.

The Worker member of Côte d'Ivoire declared that the case was a problem in the operation of labour inspection as well as that of the repercussions of AIDS on the workplace. Labour inspection was the first legal authority encountered by the worker, especially when he was in conflict with his/her employer, or when the matter related to the interpretation and monitoring of regulatory and legislative provisions in the field. He added that, as a first controller of labour legislation, labour inspection should be objective and independent. In that context, he regretted that labour inspections lacked the material and financial means which had a direct impact on the objectivity and the independence which should prevail. He pointed out that labour inspectors received salaries which did not meet their basic family needs, thereby leading to corruption. He added that inspectors lacked also the material means in the exercise of their mandate, especially in relation to transport and communication. He criticized the current practice of developing countries which brandish the excuse of budgetary constraints in order to get out of their obligations aimed at improving safety and health at work. Labour inspection was the last concern by the majority of such countries which, in spite of their economic difficulties, succeeded in finding the necessary funds to pay for their armies. He noted that Uganda had ratified Convention No. 81 in 1963, and highlighted that the situation of labour inspection services could greatly improve if there were a true political will by the Government. In that context, it would be appropriate to ask the Committee to examine ways of strengthening Convention No. 81. He emphasized the damage caused by AIDS in the world of labour, and recalled the need for States, especially African ones, to guarantee a minimum salary in order to ensure a decent life.

The Worker member of France indicated that Uganda was one of the worst victims of the epidemic of AIDS which destroyed the country's lifeblood and led to the disorganization of the society and the economy. The situation was all the more aggravated by the lack of access to efficient therapies at reasonable prices by the large pharmaceutical laboratories, which imposed exorbitant prices. In Uganda, labour inspection services suffered even more as the Government did not provide them with the material and human means needed for their administration, nor did it fulfil its managerial and supervisory functions. He highlighted that Convention No. 81 was an extremely important Convention because labour inspection constituted the first level of a system of control governing the application of Conventions, and in general, of the right to work. He noted that, while bearing in mind the legislative drafts which were being prepared on the subject by the Government, with the technical assistance of the ILO, in the context of a cooperation project with the UNDP, it was important to recall the need to allocate, at the same time, the necessary budgetary means to enforce such legislation. He was of the view that no time should be wasted and that, with a measure of goodwill, it was possible to resolve expeditiously these problems by allocating the necessary budgetary requirements to ensure independence, and the sound operation of labour inspection services. He added that the Government should, with the help of international organizations and the ILO, give priority to labour inspection in order to ensure the protection of workers, in conformity with the social public order, and with Convention No. 81. He concluded that the matter related to a fundamental Convention whose observance was absolutely essential to workers.

The Government representative thanked the speakers who took the floor for their observations, especially with respect to the epidemic of HIV infection. While the incidence of HIV infection had moved downwards, there was a need to maintain this downward trend, if possible with continued international assistance. With regard to the weakness of labour administration, his Government would take steps to review decentralization measures. However, the speaker pointed out that Uganda was one of the poorest countries in the world.

The Worker members insisted on the necessity of the political will to provide the labour inspection services with the necessary and financial requirements. The Government recognized the importance of labour inspection in a society suffering from the repercussions of the AIDS epidemic in the workplace. The Government had already received assistance from various international bodies, including the ILO, and confirmed its will to improve the situation. They insisted that the Government continue to intensify its efforts to align its legislation and national practices with the Convention and allow labour inspection services the necessary means to function.

The Committee took note of the oral information provided by the Government representative and the subsequent discussion. The Committee noted with concern that for some 40 years, the Committee of Experts had been commenting on the serious violations of the principles contained in the Convention, and the failure to apply its fundamental provisions. It noted that the recent measures to decentralize labour inspection powers to district authorities had resulted in a further deterioration in the conditions of service and status of labour inspectors. The labour inspection services lacked the necessary means to fulfil their functions. Furthermore, and contrary to the provisions of the Convention, labour inspectors did not enjoy any security of employment, so that they did not have the authority necessary to carry out their functions. Conscious as it was of the serious socio-economic and health problems facing the country for many past years, in particular due to the HIV/AIDS epidemic, the Committee could but hope that solutions might be found through the necessary efforts of the Government supported by technical cooperation. The Committee recalled the importance of labour inspection and of respect for the Convention. The Committee urged the Government rapidly to take the necessary measures to return the labour inspection system to the control of a central authority. The Committee recalled that the powers of the central authority should extend not only to defining the conditions of recruitment and career development of labour inspectors but also the provision of the human and material resources (including transport) essential to the exercise of the functions of the inspectorate, as defined by the Convention, in order to monitor the application of legislation on working conditions and worker protection. It trusted that measures would be taken to ensure that the proportion of the national budget allocated to labour inspection would be determined as a function of the priority nature of the objectives which should be assigned in accordance with the Convention. It also recalled the conclusions adopted by the Meeting of Experts on Labour Inspection and Child Labour held in September-October 1999.

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

Belarus (ratification 1956). The Government supplied the following information: the right to organize, including the right to establish trade unions, is guaranteed by the basic law of the country — the Constitution of the Republic of Belarus. The trade unions' rights are provided for in detail in the Law of the Republic of Belarus "on Trade Unions". The following principles of ILO Conventions Nos. 87 and 98 are reflected in this Law: right to freely establish and join trade unions, subject to the rules of the organizations concerned; right to freely draw up and adopt their constitutions and rules, to define their structure, to elect their administrative bodies, to cease their activities.

The Law grants the trade unions wide powers to defend the rights and economic interests of workers of Belarus, secures their active participation in the life of the country and in the formulation of the Government's socio-economic policy.

According to the Constitution of the Republic of Belarus, relations between the state administrative bodies and employers' and workers' organizations are based on the principles of social partnership and cooperation.

There are various forms of the social partners' cooperation in the country, the most important among them being joint elaboration, adoption and implementation of the general tariff agreement, branch tariff agreements and local agreements, as well as collective agreements.

The General Agreement between the Government of the Republic of Belarus and republic associations of employers and workers for 2001-03 was signed and entered into force on 25 May 2001.

Although the current collective agreement campaign has not yet been terminated, at present there are more than 600 agreements of all kinds already concluded, including 27 at the republic level and about 100 at the local level; there are also more than 20,000 collective agreements.

There is a National Labour and Social Council in the Republic, as well as branch and territorial councils, all of them are tripartite bodies in which the Government, employers' and workers' representatives are appointed in equal numbers.

The Belarus society's transition to market-economy realities is accompanied by radical transformation of social and economic conditions. The nature and content of relations between the trade unions and the Government and employers are also changing. Certain trade union rights and privileges can no longer be automatically secured, as in the past based on the former socialist legality or the Party directives. At present, the most important guarantee to ensure their implementation is collective agreements.

Realizing the need to create, in fact, new socio-economic legislation, as well as the difficulties of this task, the Belarus Government is open to dialogue with the social partners and the ILO for the joint search of optimal solutions.

In the course of improving the national legislation, and following the recommendations of the ILO supervisory bodies, the Government has prepared amendments to the legislation concerning registration — Presidential Decree No. 2.

It is proposed to repeal provisions requiring the confirmation of legal address in the course of registration of unions' branches which have no legal personality.

It is also proposed to enlarge the possibilities of acquiring legal address by organizations which have legal personality. Thus, if necessary, the organizational units of one trade union situated in the same city, for example, could all share the same premises and have the same legal address. An organizational unit in the same city could also have the same legal address as its mother organization or trade union.

In drafting the modifications to Decree No. 2, the Government took account of the Committee of Experts' comments on provisions concerning creation of independent trade unions in undertakings. In particular, it is proposed to delete the provision requiring a minimum number of trade union members to reach at least 10 per cent of all employees of the undertaking. Consequently, these modifications would allow the creation of trade unions in undertakings already where there are ten members.

The general rules governing collective labour relations in Belarus, including the settlement of collective labour disputes, are laid down by the Labour Code of the Republic of Belarus which entered into force on 1 January 2000.

The Code provides for the creation at the initial stage of the conflict of a conciliation commission composed of the representatives of the parties concerned; the attainment of a quorum and the secret vote on declaring a strike; the advanced strike notification of the employer; the guarantee of minimum service during the strike; the prohibition to compel persons to take part in the strike or to abstain from it. The parties are free to make use of mediators or to take the case to the labour arbitration. The legislation of Belarus does not provide for a compulsory arbitration of disputes or for compulsory mobilization. The decision to declare a strike illegal is taken by the court.

In preparing the Labour Code the Government has taken into account the comments formulated by the Committee of Experts and the Committee on Freedom of Association concerning the list of enterprises where strikes were prohibited, approved by the decision of the Cabinet of Ministers, No. 158 of 28 March 1995, which, in the opinion of the supervisory bodies, was not in line with the strict definition of the vital services.

With the technical and advisory assistance of the International Labour Office new approaches were elaborated in the Labour Code of the Republic of Belarus.

The Labour Code now limits the right to strike only to the extent that it is necessary in the interests of national security, public order, the health of the population, and the rights and liberties of other people.

In relation to the request of the Committee of Experts, the Government confirms its understanding that the provisions of the Labour Code to limit the right to strike (sections 388 and 393) should be used only in cases where the situations covered actually arise.

In the Government's opinion, the fact that the Labour Code contains certain provisions which have given rise to the comments by the Committee of Experts, could be explained in that the definition of the vital services is insufficiently developed in the Republic. This definition is open to different interpretations and has to be studied further with the technical assistance of the ILO.

The Government understands the need for constant improvement of the national legislation in the area of freedom of association and trade union rights.

The basis for the solution of the existing problems should be found in the enlargement of the dialogue with the social partners and the activation of the technical cooperation with the ILO.

Technical assistance of the ILO can become an additional factor to help effectively realize the recommendations of the Committee of Experts and other supervisory bodies.

In addition, before the Conference Committee, **a Government representative**, the Deputy Minister of Labour, stated that the Government of the Republic of Belarus considered matters of observance of the rights of workers, and the creation of necessary conditions for the free protection by workers of their rights as one of the priorities of its policy. The right to association, including association into trade unions, was guaranteed by the Constitution. The rights of trade unions were set out in greater detail in the law of the Republic of Belarus "on trade unions". This law directly reflected the principles of Conventions Nos. 87 and 98 concerning voluntary creation of trade unions and their membership, the right to draft and approve their constitutions, to determine their structure, to elect executive committees, and to terminate their activities. The law gave broad authority to the trade unions in defending the rights and economic interests of the workers of Belarus, ensured their active participation in the life of the country and in the formation of socio-economic policy of the Government. In accordance with the Constitution of the Republic of Belarus, the relations in the social-labour sphere between the bodies of state administration, associations of employers and trade unions were conducted on the basis of principles of social partnership and cooperation of the parties. The example of such cooperation in the Republic was the work of the National Council for Labour and Social Matters, a tripartite body, where the Government, associations of employers and trade unions participated on an equal footing. The National Council considered the most important matters of socio-economic policy, the improvement of cooperation of social partners, and adopted decisions which afterwards were reflected in the collective agreements and other normative acts. During the meeting of the National Council on 24 May 2001, the disagreements concerning the Draft General Agreement between the Government of Belarus, all-republic associations of employers and trade unions for 2001-03 were resolved and, as a result, the Agreement was signed and had entered into force. The question concerning the proposed steps of the Government for complying with the recommendations of the Freedom of Association Committee, adopted by the Governing Body on 28 March 2001, were also considered at this meeting. Alongside other matters, the question of non-interference of state bodies in the activities of trade unions were discussed. The Minister of Justice had pointed out that the instruction referred to by the supervisory bodies of the ILO was not a normative act, did not have legal force and did not have any practical influence on the results of the trade union elections. The matters of independence of trade unions were covered in the current legislation (section 3 of the law on trade unions). The interaction of governing bodies, employers and trade

unions in Belarus also occurred at the sectoral and territorial levels. In 2000 in Belarus there were more than 600 agreements of all types, including 27 all-republic and around 100 local ones, as well as 22,500 collective agreements, which covered more than 90 per cent of subjects of economic activity where trade union organizations existed. By now, even though the current collective agreements campaign had not been ended, there were more than 600 agreements of all types, including 27 all-republic and around 100 local ones, as well as more than 20,000 collective agreements. There were sectoral and territorial councils for labour and social matters, contributing to the development and improvement of the social partnership. The transition of the society of Belarus to the realities of the market economy was accompanied by the radical change in social and economic conditions that, in its turn, changed the forms of cooperation between social partners. The trade unions of Belarus ceased to be a part of the state machinery, as they were during the Soviet times. Trade union pluralism was strengthening. The workers were deciding for themselves in respect of their membership in the trade unions. New independent trade unions were emerging. Guided by the well-established principle of international practice, according to which the workers should by themselves freely choose the trade union which, in their opinion, better represented their professional interests, the Government of the Republic of Belarus neither supported nor prevented the efforts to change the trade union membership, undertaken within the framework of the law. In Belarus the nature and content of relationship between the trade unions and the Government and entrepreneurs was changing. A number of trade union privileges and benefits no longer could be automatically ensured on the basis of former socialist legality and directives of the Party. One of the most important foundations of ensuring them were the collective agreements and contracts, the conditions of which to a large extent depended on the aspirations and abilities of the parties to conduct constructive social dialogue, the mutual recognition of respect of interests of each other, the positive resolution of existing problems, and the ability to make mutual concessions and compromises in the name of this goal. In the opinion of the Government, the improvement of legislation on trade unions should go in this direction, taking into account that the legislative additions and changes should consider the spirit of the time, international experience and perspectives, and they should be well thought out and coordinated among all interested parties. It should be also taken into account that certain provisions of the existing legislation were borrowed from the previous system, because the respective matters had not previously been considered so important and did not cause special concern to the Government and social partners. This related, for example, to the very term "trade union", in which the term "citizens" was used, as well as to the matter of participants in strikes receiving material assistance from foreign legal entities and private individuals. He stated that in view of the complexity of creating local labour legislation based on the principles of a social-oriented market economy, the Government of the Republic of Belarus was open for dialogue with the social partners and the ILO in the joint search for optimum approaches. This matter required further consideration for the purpose of harmonization of the provisions of various legislative acts of the Republic of Belarus.

The speaker further stated that she wished to provide necessary clarifications concerning certain aspects of the legislation and to provide information on the measures which the Government intended to undertake in order to observe the existing comments by the Committee of Experts. A detailed report would be submitted to the Office within the time limits set forth for the submission of annual reports under article 22 of the ILO Constitution. The law on trade unions provided for the registration of trade unions, and the allocation to them of the rights of the legal entity. In connection with the adoption in the Republic of Belarus of new Civil Code and Housing Code the necessity had emerged to put in order the activities of all legal entities, including trade unions. This resulted in the adoption of Presidential Decree No. 2 of 26 January 1999 "On certain measures for putting in order the activities of political parties, trade unions, and other social associations". The Decree had approved the regulations on the state registration (re-registration) of political parties, trade unions and other social associations. These instruments prescribed precise requirements to be fulfilled by trade unions in order to obtain the rights for registration. The cases were specified when the registration of trade unions could be denied. Therefore, the bodies in charge of registration were deprived of the so-called "freedom of discretion" in the process of deciding whether to register or to deny the registration. The denial of registration could be challenged in the court proceedings. In respect of the comments by the Committee of Experts concerning the length and difficulty of the procedure of registration, the Government representative indicated that all trade unions had been registered in Belarus. The fact of non-registration related to first-level trade union organizations in enterprises, which were subordinated organizational structures (branches) of the all-republic trade unions. The major reason for non-registration was the question of the legal address. The compliance with other provisions of the prescribed registration procedure did not cause any practical difficulties. Decree No. 2 confirmed the necessity of mandatory state registration of the social associations, which were legal entities, including trade unions. The provisions of the Decree concerning the prohibition of the activities of non-registered social associations and those which had not been re-registered established an administrative liability for conducting activity on behalf of such associations. The dissolution of trade unions could be conducted only according to the procedure prescribed by the law, which provided for dissolution by court decision. The decision on dissolution could be also appealed. The Government representative stressed that these provisions of the Decree were not applied in practice, because they related to trade unions which, as was already indicated, were fully registered. The rules for registration prescribed by Decree No. 2 specified, as one of the required conditions, the confirmation by the trade union in the process of registration of information concerning the location of its executive committee, i.e. the possession of a legal address. The Government representative believed that this requirement did not contradict the provisions of Convention No. 87. It was known that this condition was normal for the legislation of many countries. It also corresponded to the provisions of the civil legislation of the Republic of Belarus. Referring to the facts of denial of registration of organizational structures of trade unions because of non-confirmation of the possession of a legal address, the Government representative stated that the organizational structures constituting the trade union, as a rule, were legal entities. The trade union independently adopted the decision whether its organizational structures, including the first-level trade union organizations, would be provided with the rights of the legal entity and be subject to registration as all legal entities in the Republic of Belarus, or whether they would not be provided with the rights of the legal entity. For organizational structures which were not legal entities, the legislation provided not for state registration, but for a more simplified procedure: inclusion into the registry. The absence of the status of legal entity did not limit the organizational structures of the trade unions in their basic trade union rights and rights in the area of collective labour relations, including the rights to conduct collective negotiations and conclude collective agreements. At the same time, the existing procedure provided for the confirmation of possession of the legal address both in the case of state registration and in the case of inclusion into the registry. As a rule, the first-level trade union organizations indicated their legal address to be the address of the premises given to them by the employer. However, the legislation of Belarus authorized the employer, but did not require him, to provide such premises. The question of allocating premises was negotiated between the employer and the trade unions on a voluntary basis. There were more than 28,000 organizational structures of trade unions in Belarus. With a few exceptions, all sought offices for their executive bodies exclusively in the premises of an enterprise. At the same time, it had to be taken into account that an employer could be short of such facilities, especially in small enterprises. The situation was aggravated by the fact that there were different organizational structures of trade unions at the same enterprise which claimed the premises. In order to resolve the problems related to the registration and inclusion into the registry of organizational structures of trade unions and taking into account the recommendations of the supervisory bodies of the ILO, the Government had prepared amendments to the existing legislation on registration to Presidential Decree No. 2. These amendments provided for the removal of the need to confirm the possession of the legal address in the process of inclusion in the registry of the organizational structures which were not legal entities. It was also proposed to broaden significantly the possibilities of obtaining the legal address by the organizational structures which were legal entities. In case of necessity the organizational structures of the same trade union, for example, located in one city, could be located in the same premises at the same legal address, and, in case of location of the organizational structure in the same city as its superior organization, the address of the superior organization could also be used as the legal address for the lower-level organization. The Government believed that the insertion of these changes into the legislation on the registration essentially resolved the problem of the legal address. When drawing up amendments to Decree No. 2, the Government also had taken into account the recommendations of the Committee of Experts related to the provisions regulating the creation of independent trade unions at enterprises. In accordance with the draft amendments, the provision on the requirement that an organization have at least 10 per cent of the workers in the enterprise in order to be

created was abolished. The Government representative referred to the comments by the Committee of Experts concerning certain aspects of the legislation governing the issues of organization and conduct of strikes. The general rules of the regulation of collective labour relations in the Republic of Belarus, including the resolution of labour disputes, were defined by the Labour Code of the Republic of Belarus which entered into force on 1 January 2000. In the opinion of the Government, the provisions of the Code governing the conduct of strikes took into account the interests of the parties of the labour relations as well as of the society as a whole. The Code provided for the creation at the initial stage of the collective labour dispute of a conciliatory commission consisting of the representatives of the parties to the dispute; the presence of a determined quorum of interested workers and secret voting on the issue of declaration of strike; advanced notification to the employer on the conduct of the strike; the provision in the course of the strike of a minimum service; the prohibition on the use of force to participate in the strike or not to participate in the strike. The parties by their agreement could use the intermediaries or go for arbitration and forced mobilization. The legislation of Belarus did not provide for compulsory arbitration. The decision to declare the strike as illegal was rendered by the court. In the process of drafting the Labour Code, the Government of the Republic of Belarus took into account the comments by the Committee of Experts and the Committee on Freedom of Association in respect of the list of enterprises where the strikes were prohibited, approved by resolution No. 158 of the Cabinet of Ministers of 28 March 1995. In the opinion of the supervisory bodies of the ILO, this list did not correspond to the concept of essential services in the strict sense of this term. With the technical and consultative assistance of the ILO, new approaches had been elaborated which have been reflected in the Labour Code of the Republic of Belarus. In respect of the comments by the Committee of Experts concerning specific provisions of the Code, the Government representative indicated that paragraph 3 of section 388 of the Labour Code provided for the possibility of limiting the right to strike to the extent that it was necessary for the interests of national security, public order, health of the population, rights and freedoms of other parties. In accordance with section 393 of the Code, in case of a real threat to the national security, public order, health of the population, rights and freedoms of other persons, the President of the Republic had the right to postpone the conduct of the strike or suspend it, but not for more than three months. In the opinion of the Government, these provisions corresponded to the opinion of the Committee of Experts expressed in the 1994 General Survey on freedom of association and collective bargaining, according to which the measures prohibiting strikes "can be justified only in case of acute national crisis and for a limited period of time and to the extent that this corresponds to the circumstances of the situation". The Government representative underlined that up to the present time the provisions of sections 388 and 393 of the Labour Code had not been applied. In connection with the request of the Committee of Experts, the Government confirmed that the provisions of sections 388 and 393 concerning the limitation of the right to strike would be applied to those cases when the situations referred to in these provisions in fact occurred. Concerning the comments by the Committee of Experts in respect of the provisions of part 2 of section 388 that the strike may be conducted no later than three months after it was decided, the Government representative pointed out that this provision did not limit the length of the strike, but rather determined the time period when it should be started. The Government did not believe that the right of the President of the Republic to postpone the conduct of the strike for the period up to three months "could potentially convert into illegal any strike in connection with the existence of the limitation on time of its conduct". As was already indicated, the President could exercise his powers stipulated in article 393 of the Labour Code and postpone or suspend the strike in cases when its conduct created a real threat to the national security, public order, health of the population, rights and freedoms of other persons. The Government representative stated that in that case no strike was considered, but those having the capacity of inducing a real threat to society might be the subject of justified restrictions or even prohibition. Section 392 of the Labour Code, establishing the duties of the parties during the strike, provided for the necessity of ensuring a minimum service during the strike. The Committee of Experts recommended that this provision be applied only to the enterprises in essential services. At the same time, in its General Survey, the Committee of Experts expressed the opinion that "it is undesirable or even impossible to try to compile the full and permanent list of such services". The legislation of Belarus does not establish a precise list of essential services. That is why the necessary minimum service was determined in the collective agreement in each enterprise. Depending on the importance of the enterprise, the level of necessary minimum services could be reduced to a minimum, or could be increased to a maximum, if the enterprise was indeed vitally important for society. Requirements to indicate the denotation of a strike while notifying an employer on the date of launching the strike, provided by section 390, was also related to the issues of determining the necessary minimum of services. The Government representative indicated also that in its General Survey of 1994, the Committee of Experts noted "… a non-essential service in the strict sense of the term may become essential if the strike affecting it exceeds a certain duration or extent …". At the same time, the Government recognized that in the Republic the matters of determination of vitally important services was not sufficiently defined. This was evidenced by the comments of the Committee of Experts in respect of certain provisions of the Labour Code. The issue of vitally important services, as a rule, involved various interpretations and required further study. The question would be considered concerning the determination of the body adopting a final decision in case of non-agreement by the parties concerning the necessary minimum service.

In conclusion, the Government representative underlined that the Government recognized the necessity of permanent improvement of national legislation in the area of freedom of association and the rights of trade unions. The Government attached great significance to the programme of cooperation of the Republic with the ILO. It believed that an important place in this programme should be allocated to the matters related to the improvement of legislation in the area of freedom of association on the basis of international labour standards. The programme of cooperation could become, in the opinion of the Government, an additional factor contributing to the effective realization of the recommendations of the Committee of Experts and other supervisory bodies of the ILO.

The Worker members recalled the reasons why Belarus was on the list of individual cases. These related to the content of the case; the nature of the observations of the Committee of Experts; the extent to which the Government had answered; the conclusions of this Committee in 1997; observations from the Belarusian social partners; observations from the other supervisory bodies; and recent developments. This case concerned violations of basic trade union rights in a country which still had a long way to go on the road to democracy. The lack of respect of democratic values and basic human rights had given rise to deep concern in other international bodies. The Worker members shared the views expressed in the report of the Committee of Experts and supported the recommendations made. These pertained to: registration policies which were tantamount to previous authorization; the restriction on the right of workers to join organizations of their own choosing; the right to elect representatives in full freedom; and the right of trade unions to receive assistance, including material assistance, from international organizations of workers. In addition, a number of provisions of national legislation pertaining to the right to strike, including sections 388, 390 and 392 of the Labour Code, were incompatible with Convention No. 87. Moreover, section 393 of the Code permitted the President of the Republic to postpone, or to stop, a strike for up to three months; yet section 388 provided that a strike could not be carried out later than three months from the date upon which it had been declared. This was a real tragedy for workers. In this regard the Worker members wished to make a more general statement on the right to strike, as the Employer members had done during the discussion of the individual case concerning Ethiopia. They pointed out that in the days of the cold war, i.e. before 1989, the trade union leaders of the former USSR would more or less repeat what the Government delegates of the same regime had stated with regard to the ILO supervisory machinery. Today, however, there were union representatives from this part of the world who struggled to defend an independent position in union matters, who had great difficulties with their dictatorial governments at home and who spoke their mind in that regard before this Committee. So there was some progress after all and this was a most welcome and pleasant change. There were other changes also. The Employer members, for instance, embodied change. During the days of the cold war, the Worker members recalled that the spokesperson for the Employers' group had always stood with the Workers' group in that they had supported the Committee of Experts in its criticism on the violations of basic trade union rights in the former USSR. They had done so on the basis of careful analysis, conviction and trust in the ILO supervisory system in which the Committee of Experts played such a pivotal role. In those days, the Employer members did not have any serious problems with the right of trade union organizations to organize their own activities in full freedom, neither in countries belonging to the former USSR nor in other countries in the world. In fact, the Employer members were even more vehement than the Worker members on the enforcement of such worker rights. At that time, the Soviet Government delegate had often questioned the right of the Committee of Experts to interpret

Conventions Nos. 87 and 98 as it had done and, more so, to apply these Conventions to countries where the workers and the farmers were in command. The Employer spokesperson stood very firm in those days in defending the Committee of Experts on the same points for which they were attacking it today. The Worker members pointed out that the legal and historical arguments raised by the Employer members today to negate the right to strike could have been used by them in the pre-1989 period. They did not. The argument the Employer members used today were the same arguments put forward by the Soviet regime to undermine the ILO supervisory system. Hence, the Worker members had no choice but to believe that the attack by the Employer members on the Committee of Experts was based on political rather than legal grounds. This stand smacked of opportunism, as politics often did.

The Committee was dealing with a case today where, once again, Article 3(a) of Convention No. 87 was at stake. Now, the Employer members were asserting that the Committee of Experts did not have the right to interpret Article 3(a) the way they had done during the cold war period. However, the Committee of Experts would continue to interpret Article 3(a) in this manner in the years to come. The position chosen by the Employer members undermined the supervisory system and it was opportunistic if one compared their pre-1989 and post-1989 attitudes. Hence, the Worker members could only conclude that the Employer members were ready to use double standards and that, if times changed again, the Employer members might change their position on this issue yet again. This attitude by the Employer members offered governments, which violated such an essential right of workers, a chance to continue to violate these rights backed by such an attitude. The Worker members were sure, however, that the Employer members and most governments did not want to reach a situation where the supervisory system was seriously undermined. Members of this Committee desired a supervisory system which was fair, had a sound legal basis and in the hands of experts who were not only intelligent but also independent, objective and impartial. The dialogue between this Committee and the Committee of Experts, as well as the Committee on Freedom of Association, should be continued. What was more curious was that the Employer members of the latter body had always supported the Committee of Experts' view on the right to strike. Hence, this dialogue and the ILO supervisory machinery which were creative, delicate and immensely precious should be preserved. The Worker members would not allow the Employer members to play games with it. The Worker members wished it to be placed on the record that they fully supported what the Committee of Experts had to say on Article 3(a) of Convention No. 87. Returning to the case before the Committee, the Worker members indicated that the violations of the Convention occurred in a country whose Government had not a great deal of sympathy for trade union and human rights. What was lacking in the report of the Committee of Experts, however, was information on the application in practice of the Convention. However, this information would soon be provided by other Worker members as well as by the Committee on Freedom of Association. The Worker members indicated that they wished for such facts to be reflected in the report of the Committee of Experts so as to allow this Committee to obtain an overall view of the real situation. The report of the Committee of Experts and the written information provided by the Government might give the impression that the situation was improving. It was not. The Worker members would return to these specific violations later on in the discussion of the case. Findings of missions sent by the ILO in the last half year support this assessment of the Worker members.

The Employer members noted that this case had been the subject of discussion by this Committee in 1997 and the subject of comments by the Committee of Experts for a number of years. With regard to the discussion in 1997, the scope had been extended. The Committee of Experts had raised more issues than it had done before. The new legislation and Presidential Decree were a clear violation of Article 2 of the Convention. The Presidential Decree required trade unions and employers' organizations to re-register. This was not tantamount to a prohibition if the criteria for re-registration did not amount to the requirement for "previous authorization". Serious consequences could follow in the event that the legal address of an organization was not given. This was tantamount to the right of organizations to establish themselves only with prior authorization. However, in practice, there was little information concerning this. Moreover, the minimum membership requirement to the effect that an organization must have at least 10 per cent of the workers at the enterprise as members in order to be registered, could constitute a serious obstacle to the establishment of organizations. Since this Presidential Decree conferred excessive powers to the administrative authorities, the Employer members agreed with the Committee of Experts that the Decree needed to be amended. Although the Government representative had defended the trade union situation in her country and indicated that there were no violations of trade union rights, the Employer members nevertheless understood that she was prepared to consider possible amendments to current legislation. Furthermore, the law of 2000 which limited the right to organize to the citizens of the country was in violation of Convention No. 87 which guaranteed freedom of association to all workers without distinction whatsoever. Regarding the right of workers to elect their representatives in full freedom, this issue clearly was an internal union matter and any state interference therein was a clear violation of the Convention. Regarding the prohibition on financial assistance from foreign legal persons, this was a violation of Article 5 of the Convention. With regard to the comments of the Committee of Experts on the various restrictions on the right to strike, the Employer members recalled their clear position on this issue. Turning to the statement of the Worker members regarding the right to strike, the Employer members pointed out that this issue had never been raised by them during the cold war period. Rather, the Employer members had tried to ensure that the supervisory system was not undermined by ensuring that there were free and independent trade unions. The right to strike practically played no role in the discussions back then. They emphasized that they had not made a single statement during those days supporting the right to strike; in fact, they had never changed their position. In 1953, the Employer spokesperson expressed the group's opposition to this interpretation during the Governing Body. The Employer members recalled that they had asked for this issue to be put on the agenda of the Conference on several occasions but nothing had ever happened. This was probably because of the fears of the possible results of such a discussion. With regard to the views of the Committee on Freedom of Association on the right to strike, the Employer members recalled that this Committee had been set up as a conciliation, mediation and fact-finding body. It had no legal mandate but simply reported infringements in practice of freedom of association to the Governing Body. In this regard, the Employers pointed out that the Committee on Freedom of Association not only examined complaints from countries that had ratified Convention No. 87, but also from those countries that had not done so. In the latter case, the Committee on Freedom of Association received its mandate only from the general principles of the ILO's Constitution, not from Convention No. 87. Moreover, the Employer and Worker members in that body acted in their individual capacity and not as spokespersons for their groups.

The Worker member of France recalled that already in 1995, the Committee of Experts had recommended that the Government of Belarus instantly repeal the provisions which set excessive restrictions to the rights of workers to formulate a programme of action without the interference of the public authorities. This year, however, the Committee of Experts had noted with satisfaction that Order No. 158 of 1995, which was the basis of its comments, had been effectively repealed by the adoption of the new Labour Code. However, it would be worth questioning if matters had really changed in Belarus. On the occasion of the European Regional Meeting held in December 2000, the Workers' group had adopted a declaration in which it drew the attention of the Sixth European Regional Meeting on the serious violations of trade union rights in Belarus. That declaration was made in response to a complaint deposited by the trade unions of the country on the violation of Conventions Nos. 87 and 98. The documents attached to the complaint revealed the interference by the Government in the internal affairs of trade unions, and the restrictive procedures for their registration. The practices denounced by the trade unions did not seem to have stopped then. Thus, in March 2001, the Governing Body had approved the conclusions of the Committee on Freedom of Association relating to Belarus. At the same time, the President of Belarus had signed a decree banning international assistance and solidarity. He indicated that the Government seemed to play hide-and-seek with the Organization; a step forward was immediately followed by a measure that cancelled its effect. Rightly so, the Committee of Experts had scrupulously examined the legal provisions, whether it was the Presidential Decree of 1998, or the adopted texts in 2000. He highlighted that freedom of association should be universally recognized as a basic right of workers at work. It was important to endorse the conclusions of the Committee of Experts, especially those relating to restrictions on the right to strike, namely: the right to strike constituted a means of pressure used by workers and their organizations to promote and defend their economic and social interests. In respect of the latter, considerable progress was noted in numerous countries which were part of the Soviet Union. He indicated that in the past, Employer members who were part of the majority within the Committee of Experts, defended the right to strike in those countries. He added that no new legal provision could justify that the situation be different at the present time. He

was of the view that Belarus constituted an anachronistic, shocking, and unacceptable case.

The Worker member of the Russian Federation expressed his concern at the continuous violations in Belarus of Convention No. 87, including interference in the internal affairs of trade unions and measures to limit their rights. Russian trade unions fully agreed with the conclusions of the Committee of Experts in respect of the violations of Convention No. 87 because they maintained close connections with the trade unions of the neighbouring country and knew about the real situation. The trade unions of the Russian Federation, in cooperation with the trade unions of Belarus, conducted monitoring of the violations of trade union rights and cases of pressure on trade union officials in Belarus. Unfortunately, the violations of Conventions Nos. 87 and 98 occurred more and more frequently in other countries of the CIS, including the Russian Federation, and this situation was frequently developing in the same manner as in Belarus. This issue was discussed at the International Forum on the Freedom of Association which took place in Moscow on 26-27 May 2001, where the representatives of almost all trade unions of the countries of the CIS took part. These violations consisted of legislative efforts to significantly reduce the rights of trade unions, pressure by the authorities in the process of election of trade union leaders, attempts to seize trade union property, numerous attacks against trade unions and their leaders in the media, more frequent cases of intimidation and even assaults against trade union leaders and activists. These developments were considered by Russian trade unions as a campaign against trade union rights. Russian trade unions, on numerous occasions, brought their position to the attention of all first officials of the Republic of Belarus, including during personal meetings. Russian trade unions also drew the attention of the leaders of the Russian State to the situation of trade union rights in Belarus asking them, taking into account the signing between the Russian Federation and Belarus of the agreement on the creation of a union, to render assistance for the resolution of this problem. The Worker member wished to once again remind the Belarusian authorities that it was not permitted to violate Conventions Nos. 87 and 98 and asked them to urgently undertake necessary measures in order to rectify the situation. On their part, the Russian trade unions would continue to carefully watch over the development of the situation in the area of observance of trade union rights and freedom in Belarus and undertake necessary measures within their competence in order to give support to their fellow trade unionists in Belarus. Only the inclusion of a special paragraph in respect of Belarus could resolve the problem of trade union violations in this country.

The Worker member of Hungary, speaking on behalf of the Belarusian trade unions, asserted that, although the Government had declared that the situation, in respect of Convention No. 87, would improve very soon, in fact it had deteriorated. The President of the Republic of Belarus had signed two new decrees, Decree No. 8 in March 2001 and Decree No. 11 in May 2001. Decree No. 11 made it virtually impossible to hold any meetings or demonstrations. The smallest irregularity in conducting such meetings would lead to the imposition of high financial penalties on the organizers or the dissolution of the entire trade union organization. In addition, high payments for conducting such meetings or demonstrations were requested by the State. Decree No. 8 prohibited unions from receiving any form of international financial assistance without the agreement of the President's administration. Any violation of these provisions could lead to the dissolution of the trade union organization concerned. With these two additional decrees, the Government had enacted more legislation to allow for independent trade union organizations to be easily dissolved. The speaker then referred to a few examples of violations in practice of Convention No. 87. Until now, over 100 affiliates of the Congress of Independent Trade Unions had not been re-registered and newly founded trade union organizations could not be registered. The previous month, two trade union branches of independent organizations in Polodsk and Babruisk were prohibited from carrying out their activities. Membership fees were deducted from workers' salaries but not transferred to the trade unions in an attempt to put economic pressure on the latter. Last month, the authorities tried to install their representative as the head of the Minsk Trade Union Federation. By threatening workers with dismissal, employees of the Belarusian Metallurgical Plant and Integral Company were forced to leave their union and to join management-controlled company trade unions. Trade union leaders were refused access to enterprises where their members were working. The Belarusian trade unions did not trust the promise of the authorities that they wanted to normalize relations with the unions on the basis of social partnership and respect for ILO Conventions. The trade unions thought that Belarus deserved to be mentioned in a special paragraph. But, if this Committee took another decision, including the sending of a mission to the country, the unions would like the mission to demand that: Decrees Nos. 2, 8 and 11 would be repealed; legislation concerning labour disputes would be brought in line with Convention No. 87; state interference in trade union affairs would be stopped immediately and employees who had been dismissed because of trade union activities would be reinstated and compensated for lost wages.

The Worker member of Romania stressed that the situation in Belarus was serious and that the Committee of Experts had noted gross violations to freedom of association. In fact, Presidential Decree No. 2 was contrary to Article 2 of the Convention as it specified a long and complicated registration procedure for trade unions. Moreover, the relevant administrative authorities made bad usage of such a procedure. He added that the Labour Code authorized, in specific instances, legislative restrictions to the right to strike, and authorized the President of the Republic to delay, even to put an end to strikes, for a period of up to three months. Finally, he concluded that the instructions issued by the head of the presidential administration were contrary to the rights of workers' organizations to elect their representatives in full freedom.

The Worker member of Germany considered that the administrative regulations and practice in Belarus constituted systematic attempts by the Government to limit the freedom of trade unions. In fact, this had already been noted by the Worker members and other speakers, as well as by the Committee of Experts. In March 2001, the Government representative had informed the Governing Body that the Committee on Freedom of Association's conclusions and recommendations were constructive and would be implemented. However, subsequently, when the Belarus trade unions and the ICFTU held a meeting to discuss the conclusions and recommendations of the Committee on Freedom of Association, the Government authorities declined to allow the trade union to have any facilities for the meeting to take place. At the end of April, the Government instituted a new tactic in requiring the directors of state-owned enterprises to compel trade union members to leave their own unions and join those unions controlled by enterprise management. In sum, he had considerable doubts regarding the Government's intent to comply with the Convention, as he had seen no progress in this case to date and, during a visit of a German trade union to Belarus, discussions with the Government had been fruitless. Before further technical assistance would be provided, it would be necessary to see credible signals that the situation in Belarus was being brought into accordance with international law. Contrary to the position expressed by the Employer members regarding the right to strike, he considered this right to form an integral part of workers' fundamental rights. Otherwise, collective bargaining would become collective begging and it was necessary to equalize the balance and power between workers and employers. Referring to the written information submitted by the Government, it appeared that the Government was using the old Soviet Union concept of trade unions as its basis. It seemed that the Employer members were still attempting to use new arguments to support their position on the right to strike without following the comments made by the trade unions or the discussion in the Conference Committee. He recalled that, during the period of the cold war, the trade unions had played an essential part in restoring democracy and had not allowed themselves to be used as the tools of the employers. In the general discussion, the Employer members had stated that lip service was often paid to the market economy but, for the trade unions, the right to strike could not be separated from the market economy. He pointed out that, in Germany, while the right to strike was not expressly enshrined in the German Constitution, this right was nevertheless well established. He considered that attacks against the right to strike could serve as a pretext to compel workers to accept violations of international law.

The Government member of Norway, speaking on behalf of the Governments of **Denmark, Finland, Iceland, Sweden, the Netherlands and Norway,** drew the Conference Committee's attention to the serious violations of trade union rights in Belarus. He placed particular emphasis on the Government's interference in the internal affairs of trade unions and on the restrictive trade union registration provisions in the national legislation. In this regard, he stressed that none of the practices denounced by the Belarus trade unions had been stopped. They therefore asked the Government of Belarus to address this serious situation in a constructive manner to ensure full compliance with the provisions of Convention Nos. 87 and 98, both ratified by the Government of Belarus, and to fully respect freedom of association in law and practice. He called upon the Director-General to take, as soon as possible, all necessary measures to ensure the Government's compliance with the provisions of Convention Nos. 87 and 98 and to promote effective collective bargaining and social dialogue in the country.

The Government member of Germany noted that the comments of the Committee of Experts and the discussion in the Conference

Committee were clear that the restrictions placed on trade union activities in Belarus constituted a violation of the Convention. While the written information submitted by the Government indicated that it intended to make changes to the legislation, he considered that, reading between the lines, the Government representative remained unconvinced of the need to effect changes to the national legislation, although she had also acknowledged that this situation currently existed in the country. Referring to sections 388, 390 and 393 of the Labour Code, he noted that his own country, Germany, also had restrictions on the right to strike in essential public services, a situation which was contrary to the comments of the Committee of Experts. He considered that, contrary to the position taken by the Employer members, the right to strike was an essential component of freedom of association, despite the fact that it was not expressly covered under Convention No. 87. Accordingly, it was the right of the Committee of Experts and the Conference Committee to address this issue, and the Committee should urge the Government to conduct a comprehensive review of the national legislation that unacceptably limited trade union activities.

The Employer member of South Africa noted that, as the Committee's discussion demonstrated, there were many aspects in which Belarus failed to comply with the Convention. However, other issues had been raised in the discussion that were not undisputed. The Workers' spokesperson had questioned the authority of the Employers' spokesperson and in particular his stance on the Committee of Experts' view of the wide extent of the right to strike arising from Convention No. 87. He outlined the extensive and uncontested mandate for the Employers' spokesperson from the IOE members, the full employers' caucus and the Employer members of the Conference Committee on the Application of Standards. He also found it unfortunate that the inference was left in the air that the employers were somehow lesser custodians of core labour rights. This was not true. It was a matter of public record that in some countries, including his own, South Africa, the right to strike was enshrined in the Constitution. In others it was protected in national legislation. Employers did not contest this or try to overturn this. However, when Employers raised the issue as the Employers' spokesperson had done, then it was out of respect for the ILO's supervisory system which could be undermined if there was not a proper foundation for the wide interpretation and interpolations given by the Experts in this regard and which went beyond the scope of the Convention. Something that was wrong could not be said to be right merely because it happened to be convenient to some.

The Employer member of the United States hoped that the Worker members had not opened a Pandora's box in the Conference Committee. While the Worker members had accused the Employers of opportunism, he considered it opportunistic to level accusations at a group that, during the cold war, stood shoulder to shoulder with the Workers' group to support and defend the ILO supervisory machinery against attack. With regard to the Worker members' statements regarding the Employer members, he pointed out that, when Convention No. 87 was up for adoption, some members of the Workers' group had recommended that Convention No. 87 not be adopted because it did not mention the right to strike. With regard to the right to strike in Belarus, the Employers' position was accused of being a double standard, but he noted that the Worker members had on numerous occasions questioned interpretations of the Experts. He suggested that the Conference Committee should be seen in context as it existed, noting that it had the constitutional duty in the light of the Standing Orders of the Conference to examine the application of ratified Conventions. He pointed out that the Committee of Experts was a tool of the Conference Committee and it worked for the Conference Committee. In conclusion, he stressed that it should be clear that the Employers' group supported the position expressed by the Employer spokesperson.

A number of Employer members, including of France, Argentina and Panama, referred to the statement made by the Worker members in protest at the terms used and expressed their support for the Employer spokesperson, whose statements always represented the opinion of the Employer members as a whole.

The spokesperson for the Worker members said that in his initial statement he had not cast doubt on the fact that the statements of the spokesperson for the Employer members represented the group as a whole. He was glad that the Government of Russia had asked for the reproduction of the full text of his statement in the report. This would clarify the point beyond any doubt.

The Government representative of Belarus noted that she had listened carefully to the comments made by the members of the Conference Committee. With regard to the issue of union registration, she pointed out that all trade unions in Belarus passed through the registration process. In fact, less than 0.2 per cent of the organizational structures of trade unions in Belarus were non-registered. The Government believed that the requirement that trade unions confirm a legal address still posed an obstacle for this small number of the organizational structures of trade unions. She noted that a draft decree had been prepared in early 2001 to change the registration process. The Government representative recalled that, on 28 March 2001, the case of Belarus was examined by the Committee on Freedom of Association (CFA) and, at that time, the Government had expressed its willingness to comply with that Committee's recommendations and it had therefore decided to revise the draft decree. The draft, which would abolish the requirement that an organization have at least 10 per cent of the workers in the enterprise as members in order to be created, had already been submitted to the Presidential Administration when the Committee on Freedom of Association met in March. She also highlighted the fact that this was the first time that the Committee had discussed this case, although CFA Case No. 1849 had been brought against Belarus in 1995 relating to other aspects of legislation. Thanks to the technical assistance provided by the ILO, the Government had managed to comply with almost all of the recommendations made by the Committee on Freedom of Association in that case. She also stressed that the observations of the Committee of Experts had been received by the Government only in March 2001. Nevertheless, the Government had already begun preparing amendments to the legislation. She recalled that the new general agreement had been signed on 25 May 2001. In conclusion, in reply to the characterization of trade union rights in Belarus as a "choking situation", she cited the statement of the Vice-Chairman of the Federation of Trade Unions of Belarus, Mr. Vitco, that his opinion regarding the situation in Belarus had changed in light of the general status of trade union rights in the Commonwealth of Independent States since violations of trade union rights existed in all of these countries.

Another Government representative of Belarus expressed his gratitude to the Conference Committee for its patience and kindness. He nevertheless regretted that some of the workers, without having concrete information, had created confusion in the meeting. He stressed that the right to work was the most important right of all workers' rights. In Belarus, only 2.5 per cent of workers temporarily had no jobs. He therefore considered that, instead of levelling groundless accusations against Belarus, those Worker members would do better to pay attention to the plight of workers in their own countries. Moreover, 90 per cent of workers in Belarus were members of trade unions and he therefore did not understand what "grave" violations of the right to freedom of association those Worker members were referring to. He considered that trade unions in Belarus, especially trade union leaders, were not restricted in their trade union activities and enjoyed the fruits of international solidarity. While he welcomed the participation of workers in the discussion, he nevertheless wished that this participation be more constructive and not so openly confrontational and politicized, as he considered that such an approach was alien to trade union activity.

The Worker members stated that this was not a political debate but that it should follow the points raised by the Committee of Experts. Responding to the concluding remarks of the Government representative, they indicated that they would have preferred it if Mr. Vitco could have made the statement cited by the Government himself, as he was in fact present at the Conference Committee. Other members of the Federal Trade Union of Belarus were also present. Although the Government had declined to pay their fares, these had been paid by the ICFTU. However, regrettably, and for reasons he did not understand, the Worker delegate of Belarus had not been allowed to speak before the Committee. Regarding the statements made concerning the so-called empty accusations made by the Workers' group, the Worker members stated once again that the facts they had mentioned were based upon the reports of the Committee of Experts and the Committee on Freedom of Association as well as on the statements of their Worker colleagues, who had come to the Conference with relevant information. They therefore refused to accept that empty accusations had been made by the Workers' bench. While they respected the ingenuity of the arguments against the Experts' interpretations of the Convention made by the Employer members, they noted that Employer members had been repeating the same arguments for years, occasionally including some new elements. Therefore, the Worker members considered that they also could repeat their statements concerning their position on the right to strike, not because they were desiring to be original, but since they were concerned that an unfruitful opposition to the Experts' interpretations of Article 3(a) of the Convention as to the right to strike in the Employers' group was blocking the discussion of important issues in the case of Belarus, as well as many other cases. The Worker members considered that the argu-

ment made by the Employer members was similar to that made by former representatives of the Soviet Union in that the basic position taken by the Soviets prior to 1989 was that they refused to accept any interpretations by the Experts of Conventions Nos. 87 and 98 and to apply them to communist as well as developing countries, and therefore the Committee of Experts could not address this issue. They recalled that the challenges which had been made by the Soviets to the legal basis for the Committee of Experts constituted a clever legal argument because, strictly speaking, there was in fact no mentioning of the Committee in the Constitution and no legal basis for the Committee of Experts' functions. With regard to the right to strike, they recalled that strikes in Poland had led to the restoration of democracy in that country and that the Employer members had supported several special paragraphs in cases where the right to strike had been limited, particularly in the case of developing countries during the cold war. Whatever the legal position taken as regards the Committee on Freedom of Association, it was clear that no one in the supervisory system, including in the Committee on Freedom of Association, was there in their personal capacity. Finally, they clarified that they had never expressed doubt that the Employer spokesman spoke for all members of the Employers' group. The Worker members considered that the crux of the problem in this case was to protect the rights of workers in Belarus and they recalled that the Hungarian Worker member had kindly read the statements prepared by the Belarus workers' organizations. The Worker members therefore asked the Committee to appeal to the Government to end the violations of the right to organize, to end government interference in trade union activities and to urge the Government to prevent employer interference in these activities, as well as asking the Government to end the harassment of trade unions, to reinstate workers fired for engaging in trade union activities, and to repeal Decrees Nos. 8 and 11. They suggested that the Committee might consider sending a mission to Belarus but expressed their doubts whether such a mission would make a difference at this point, as three missions had been sent to the country in the last six months and nothing had come of it. One possibility was to send a modest mission composed of members from ACT/EMP and ACTRAV on an extended basis to pave the way for genuine tripartism and to promote social dialogue.

The Employer members, commenting on the case of Belarus' application of Convention No. 87, noted that no new points had been raised in the Conference Committee's discussions. They therefore recalled that numerous points had been raised in the report of the Committee of Experts regarding the incompatibility of Belarus' law and practice with the Convention. Accordingly, the Employer members demanded that the necessary changes be made. The Employer members disagreed with the Worker members' proposal that an extended mission be sent to Belarus since a mission had already been sent to Belarus half a year ago without any success. With regard to the statements made by the Worker member of Germany that the Employer members had introduced new arguments regarding the issue on the right to strike, the Employer members pointed out that they had been making the same arguments for many years. In fact, the minutes of the plenary session of 1994 contained all the important arguments and the Employer members had reiterated the most important of those arguments two days ago. Commenting on the mandate of the Committee of Experts, the Employer members noted that this had been addressed at the 8th International Labour Conference held in 1926, where the mandate of the Committee of Experts was set forth in detail. This mandate and the terms of reference of the Committee of Experts remained unchanged and absolutely clear. According to this mandate, the Committee of Experts had no judicial competence and no capacity to interpret the provisions of ILO Conventions. Responding to the statements made by the Government member of Germany that the right to strike could be addressed by the Committee of Experts despite the fact that it was not mentioned in the Convention, the Employer members recalled that the problem was not only that the Convention was silent on this issue but that it was purposely excluded from the scope of the Convention. On this point, the Employer members had made a proposal in the plenary session of the Conference on two occasions to request that this matter be placed on the agenda of the Conference, which was the only body empowered to adopt standards. Were this matter to be placed on the Conference agenda, the Workers might be surprised to discover how liberal the Employers could be on the issue of the right to strike and lockouts. They regretted that this would probably never take place.

The Worker members and the Employer members requested a special paragraph.

The Committee took note of the written and oral information provided by the Government representative and the discussion which took place thereafter. It noted that the comments of the Committee of Experts referred to a number of discrepancies between recently adopted legislation, various decrees and instructions and the provisions of the Convention, in particular as concerns the right of workers and employers to establish organizations of their own choosing and the interference by the public authorities in trade union activities and the election of trade union representatives. The Committee expressed its grave concern at the issuance of instructions by the head of the presidential administration which called upon the ministers and chairs of government committees to interfere in the elections of branch trade unions and noted with regret the statements made before it that government interference in the internal affairs of trade unions continued. In this respect, the Committee urged the Government to take all necessary measures to put an end to such interference so as to ensure that the provisions of the Convention are fully applied both in law and in practice. Noting the Government's statement that measures were being considered to amend Presidential deree No. 2 on some measures on the regulation of the activity of, among others, trade unions, the Committee expressed the firm hope that the necessary steps would be taken in the very near future so as to ensure fully the right of workers and employers to establish organizations of their own choosing without previous authorization. The Committee also requested the Government to ensure fully the right of these organizations to function without interference by the public authorities, including the right to receive foreign financial assistance for their activities. The Committee urged the Government to supply detailed information in the report requested by the Committee of Experts for its coming session and expressed the firm hope that it would be able to note next year that concrete progress had been made in this case. The Committee decided that its conclusions would be placed in a special paragraph of its report.

The Government representative of Belarus addressed the issue of the adoption of a special paragraph in the case of Belarus, noting that, in contrast to the majority of cases that had been discussed, the case of Belarus was being examined by the Committee for the first time. She asked the Conference Committee to take this fact into consideration as well as to consider the positive action taken by the Government of Belarus in cooperating with missions to the country and in establishing a constructive dialogue with the ILO supervisory bodies regarding the draft amendments to the national legislation. She also drew the Conference Committee's attention to the statement made by the Government at the 280th Session of the Governing Body in March 2001, which expressed its willingness to comply with the recommendations approved by the Governing Body. In addition, she asked the Conference Committee to take into account the work carried out by the Government over the past two months to improve the relevant legislation, a task which the Government had begun even before receiving the recommendations of the supervisory bodies of the ILO. The Government had been in constant dialogue with the Committee on Freedom of Association and had sent comments to that body on five occasions this year. She noted the existence of a positive trend in the development of social dialogue, indicating that a general agreement between the Government and the national employers' and workers' associations for 2001-03 had been signed on 25 May 2001. She therefore considered that it was not appropriate for the Committee to place its statement regarding Belarus in a special paragraph, in light of the short amount of time Belarus had had to respond to the comments of the ILO supervisory bodies and the positive trends she had described.

The Government member of the Russian Federation concurred with the statements of the Government representative of Belarus to the effect that it was not appropriate to place the Committee's conclusions in a special paragraph.

Colombia (ratification: 1976). **A Government representative**, the Minister of Labour and Social Security, welcomed the constant concern of the international community for the situation in Colombia and the peace process in his country. He recalled the efforts that were being made by the Government to achieve peace, but said that nevertheless the conflict had become very much worse. He emphasized that the policy of the Government was to support the peace process, negotiate, enter into dialogue and seek agreements with the guerrilla organizations in the country, but never with the paramilitary groups, which were the major enemies of peace. The Government was taking legal and military action against the paramilitary groups. In Colombia, action was being taken to prevent any progress being made in the peace process, as illustrated by the attack on the trade union leader Dr. Wilson Borja. That attack had been condemned by the Government and repudiated by Colombian society, in the same way as the other acts against peace, such as the murder of trade union leaders, political leaders, entrepreneurs, media workers and priests, as well as kidnappings, massacres and disappearances. He stated that during the course of 2001 over 40 trade unionists had been murdered and that, according to the

Government, 95 per cent of these murders had been committed by paramilitary groups which were opposed to trade unionism. The Government had engaged in dialogue with the guerrillas and was taking military action against the paramilitary forces, as well as combating arrangements between public officials and these groups. Hundreds of members of paramilitary groups had been detained and their goods and arms confiscated. A commission of eminent persons had been set up and would produce a report on possible relations between members of the armed forces and paramilitary groups. Within three months, the commission would make proposals for the dismantling of these groups. The Government had taken initiatives to provide protection to trade unionists, for which there was currently a protection fund of 2.5 million US dollars. He added that the support of the ILO in maintaining the fund had been of great importance and that support had been sought from other countries to collaborate in the protection of trade unionists.

He indicated that a fundamental aspect of decreasing the level of violence was for the international community to collaborate in reaching an agreement between the State and the guerrillas concerning the civil population within the context of international humanitarian law. The development of a better environment for the defence of human rights would also make it possible to create a better environment for the peace process. Ten days ago, the Government had signed the first agreement with the main guerrilla organization in the country (FARC) on a humanitarian exchange, as a result of which the group would free 100 soldiers and police officers and the Government would free 15 guerrillas on humanitarian and health grounds. This could mark the beginning of new agreements. At the present time, efforts were also being made to reach an agreement with the insurgent group ELN. He emphasized the fact that there was no state policy against trade unionism, but said that he was aware of the existence of a situation of violence which had to be eradicated with the help of the international community. The situation of violence also affected the exercise of trade union rights, as set out in the Convention, and particularly endangered the life of trade unionists. He said that he was aware that the subject would once again be addressed in a few days in the Governing Body when it examined the third report of the Special Representative of the Director-General for Cooperation with Colombia, Dr. Alburquerque. He emphasized that the Government was open to collaboration with the international community, as illustrated by the presence over the past five years in the country of the Special Representative of the High Commissioner for Human Rights, whose reports recalled the need to respect human rights. The Government valued the presence of Dr. Alburquerque and the door was open to any trade union, employers' or government organization which wished to collaborate in the peace process. He added that any cooperation with the ILO would be welcome and if the Governing Body decided to extend the mandate of the Special Representative, such a proposal would be supported. If it were to be decided to set up a commission of inquiry, Colombia would also be prepared to examine this possibility, since its people were tired of so many deaths and, if it continued down the path of violence, it would be heading towards self-destruction. He emphasized that the Government was prepared to discuss joint solutions within the framework of the ILO. With reference to the observation of the Committee of Experts, he noted that the progress made in the legislation by Act No. 584 had been welcomed. However, he noted that other matters had not been addressed. He referred in this respect to the right to strike of federations and confederations and noted that under the provisions of the political Constitution these organizations could call strikes, and indeed last year had called three general strikes. He emphasized that the current Government fully respected the right of social protest and that measures were not taken by the Ministry of Labour to restrict this right. With regard to the regulation of the right to strike in essential services, the Concertation Commission was addressing this matter, but had not reached agreement. He nevertheless emphasized that in practice the right to strike was respected in essential services, as illustrated by the strike which had been going on for 30 days by teachers and health sector workers. In Colombia, the legal personality and registration of workers' organizations were no longer denied. He recalled that his Government promoted social dialogue as a means, not only of diffusing conflicts, but also as a channel for denunciations of violations of trade union rights, without ever undermining the autonomy of parties which wished to submit complaints. He repeated that the Government was open to all initiatives and all cooperation and technical assistance from the ILO. He urged the representatives of workers and employers to reach agreements to improve freedom of association and mechanisms to protect the life of trade unionists, while at the same time resolving issues relating to sectoral bargaining, the regulation of strikes in the public or general services and the labour charter. Finally, he said that the assistance of the ILO would contribute to trade union rights becoming a reality and to Colombia going further down the path of reconciliation.

The Worker members recalled that the gross violations of freedom of association in Colombia were placed as a recurrent item on the agenda of the current committee for more than a decade. They indicated that the ILO, in its entirety, was profoundly concerned at the repeated and permanent violations. The Governing Body was going to examine the measures to be taken on the occasion of the report of the Special Representative of the Director-General whose mandate was going to end soon. Last March, the Worker members within the Governing Body had expressed again their concern in a document that summed up the observations in the second report of the Special Representative of the Director-General at the continued anti-trade union violations and the lack of concrete commitments made by the Government. The document mentioned, among other matters, the continuous impunity of the perpetrators of crimes committed against trade unions, the lack of protection measures for trade unionists, the dismissal of trade unionists by some enterprises, and other acts contrary to Convention No. 87.

In their observations of last year, the Committee of Experts confirmed many of the points mentioned above. In the first instance, the Committee had expressed its deep concern at the climate of violence existing in the country, while taking due note of the report of the direct contacts mission of February 2000 as well as of the report of the Committee on Freedom of Association on the different cases relating to Colombia. They quoted the conclusions of the Committee on Freedom of Association which stated that "the scale of murders, kidnappings, death threats and other violent acts against trade union officials and members is unprecedented in history".

They indicated that they had the occasion lately to obtain detailed information from their Colombian colleagues on the most recent violations. They gave some statistics: since 1996, 1,557 trade unionists had been murdered; 60 had disappeared; 72 had been kidnapped; and 1,670 had received direct death threats. While in 2000, 136 trade unionists had been assassinated, representing an increase of 59 per cent in comparison to 1999. Since the beginning of 2001, during the period from 1 January to 30 March, 46 trade unionists had been assassinated. The Committee of Experts recalled that even if that violence were an endemic phenomenon, the fact of trade union leaders constituted a fundamental factor in such assassinations. The same was true for the kidnappings which were aimed, in particular, at the social and economic partners.

In its observation, the Committee of Experts confirmed, while referring to the 1994 General Survey on freedom of association and collective bargaining, that "the guarantees set out in international labour Conventions, in particular those relating to freedom of association, can only be effective if the civil and political rights enshrined in the Universal Declaration of Human Rights and other international instruments are generally recognized and protected". It was only natural for the Worker members to express their deep concern at the deteriorating situation, on the one hand, and at the Government's incapacity to find a solution, on the other hand. They were of the view that the ILO and the Committee of Experts should endeavour to find new solutions to this appalling situation witnessed by the Colombian trade unionists.

They stated that the problem of freedom of association, which was in itself a serious problem, did not limit itself to the attacks against the physical integrity of trade unions. As it was stated by one of our fellow Colombian trade unionists: "While we are mourning our fellow dead trade unionists, others are busy causing the deaths of trade unions." In light of the above remarks, the Committee of Experts made the following comments in the case of the Union of Maritime Transport Industry Workers (UNIMAR) referring to the refusal by some employers' organizations to pay the trade union dues which have been checked off: the dismissal of trade union leaders and withholding of their wages; the dismissal of workers attending trade union meetings; and the blocking of trade union funds. They further indicated that the phenomenon described above was not isolated, according to the information made available to the Committee. The Worker members were of the view that the practices aimed at directly threatening trade unionists, and rendering impossible the exercise of freedom of association constituted the second aspect of the case.

The third aspect related to legal reforms. In their comments, the Committee noted with satisfaction the adoption of Act No. 584 of 13 June 2000. In that regard, the Worker members indicated that they could associate themselves with the abovementioned evaluation because the new law responded effectively to a large number of points contained in the comments made by the Committee for a number of years. However, there were pending elements, or elements that were not in compliance with the Convention, such as the conditions set on nationality, the restrictions imposed on the freedom of trade union activities, and expressed their wish that some of

the above points would be mentioned in the conclusions. They noted that the Government was committed to remedying the situation in a tripartite framework.

They confirmed that the Worker members could be satisfied if the provisions specified in the Labour Code could be the only ones to be referred to. Unfortunately, the other coin of Colombian reality was painful and serious, and required an absolute prioritization by the Committee. The continued impunity vis-à-vis the assassinations and other acts of violence perpetrated against trade unionists and the anti-trade union practices had obliged once again the Committee to adopt a firm attitude towards the Government to ensure the application in practice of Convention No. 87, and above all, to guarantee the most fundamental rights, such as the right to life.

In view of the ILO's multiple efforts deployed in the past, the Worker members expressed the wish that the ILO strengthen its position on the matter. They expressed the hope that the conclusions of the Committee regarding the case be set aside in a specific paragraph. To ensure efficiency vis-à-vis the aborted attempts of the past, the Worker members had submitted the following requests to the Government: (a) the guarantee of freedom of action and the right to opposition by trade union organizations; (b) the initiation of a real process of social dialogue with a view to promoting a climate of social peace and observance of the rights of each and every person, and thereby seek a consensus on the measures to be taken to bring the Labour Code in full conformity with the provisions of the Convention; and (c) ensure an effective protection against the acts of violence, relating to the death threats and the assassination of trade unionists as well as the kidnapping of the social and economic partners. In that regard, they indicated the necessity of taking the appropriate measures to put an end to the impunity of the perpetrators of such crimes. In conclusion, the Worker members had expressed the wish that the Committee endorse in its conclusions the request submitted to the Governing Body in respect of sending a Commission of Inquiry to Colombia, or seek another appropriate mechanism to achieve the same purposes; in other words, to ensure concrete and tangible progress in the fight against the appalling spiral of violence witnessed by the country and, in particular, by the trade unionists.

The Employer members recalled that the case of Colombia was an extremely serious case which had been discussed by the Conference Committee on various occasions. In its comments, the Committee of Experts had rightly stated that the existing context in the country, namely the climate of violence, constituted a serious obstacle to the exercise of the right to freedom of association. The Committee of Experts had noted with deep concern the climate of violence which existed in the country. It had also referred to the conclusions of the Committee on Freedom of Association and the report of the direct contacts mission which visited the country in February 2000, as well as to the allegations made by various trade unions. The Government representative had openly acknowledged the current situation in the country and had welcomed any proposal that might be made in that respect. The Employer members agreed that it was of crucial importance to find solutions to remedy the situation, and they therefore welcomed the fact that the Government representative had not shown a similar attitude to that demonstrated on previous occasions when the case had been discussed by the Committee, when an attempt had been made to deny the gravity of the situation. This already constituted a positive signal. Moreover, they agreed with the statement made by the Government representative that it was not only trade unions which suffered from the climate of violence, but also employers, politicians and, in the final analysis, society as a whole. They added that the situation was also unprecedented in that the Government had concluded agreements with the guerrillas and paramilitary forces indicating which group exercised power in certain areas of the country.

Nevertheless, the Employer members observed that the Committee of Experts had noted some progress over the previous year with the adoption of Act No. 584 on 13 June 2000. The Act had repealed or amended a number of the provisions on which the Committee of Experts and the Conference Committee had been commenting for many years. The Committee of Experts had therefore cited Colombia in the general part of its report as a case of progress in relation to the application of the Convention. The amendments concerned provisions such as the former requirement that, for the registration of a trade union, the labour inspector needed to certify the absence of other unions; the requirement to have Colombian nationality in order to hold executive office in a trade union; and the need to be of Colombian nationality to be a member of a delegation submitting a list of claims to an employer.

With reference to the fact that the new Act had not addressed other legislative provisions on which the Committee of Experts had commented, and particularly on the right to strike, the Employer members recalled their position that the right to strike was not derived from the Convention and that no legislative action was therefore necessary on that point. Noting the information that draft legislation on the right to strike had been prepared during the direct contacts mission in February 2000, they pointed out that it was for the Government to decide whether or not it would adopt legislation respecting the right to strike. In the view of the Employer members, the adoption of such legislation was not indispensable for the application of the Convention.

In conclusion, the Employer members emphasized that, in view of the overall situation in the country, it was important for consultations to be held between the Government and the social partners so that they could endeavour to find solutions to remedy the situation in so far as possible.

The Worker member of Colombia had listened attentively to the statement made by the Minister of Labour of Colombia. It was obvious that the situation of workers in the country had not worsened, since the Minister had sided with the most vulnerable sector, namely the workers. Today, more than ever, it was necessary to duly recognize positive factors because in the climate of violence surrounding the people of Colombia, democratic gestures and conduct facilitated the difficult task of national reconstruction. However, he considered his duty to inform the Committee of several facts that could help to better understand the situation in Colombia. He pointed out that Mr. Wilson Borja, president of the National Federation of State Employees, who had miraculously survived an attack on his life on 15 December 2000 in Bogotá, was present at the Conference Committee. His colleague, Wilson, was a prime example, or unfortunately a poor example of how certain factions of the extreme right settled political, social and labour disputes by resorting to murder and violence. He emphasized that during the first five-and-a-half months of 2001, 46 unionists had been murdered and that there was no light at the end of the tunnel. He wished to be sincere and fair, stating that workers were also concerned by the current policy leading not only to the murder of trade unionists, but also to the extermination of trade unions that continued to be the target of a variety of attacks to eliminate them and thereby destroying all possibilities for collective organization, collective bargaining and the exercise of the right to strike. It was very important to make people aware that the situation with regard to freedom of association was serious. The following facts spoke for themselves:

- In 1997, 23 workers were fired by the enterprise Telecom of Bogotá for exercising their right to strike. Three of those fired were union leaders who were present in the room today. They had not yet been reinstated despite the Ministry of Labour's repeal of the resolution declaring the strike to be illegal, and on which the enterprise had relied to justify the firings and the denial of reinstatement. He hoped that the court justices present would take due note of this fact and would act accordingly.
- In the last two years, over 120 trade union leaders at the national and regional levels of the National Penitentiary Institute had been fired for exercising their right to protest, in an environment of the most absurd impunity. The situation was so severe that this trade union, which once had 7,000 members, now had less than 1,000. He cited additional problems, including the application of Law No. 617, thousands of firings in the public sector, as well as the closing of enterprises, as a result of the accord between the Government and the IMF.
- The situation with regard to freedom of association, collective bargaining and the right to strike was presently so serious that currently it was not the workers but the employers who were presenting petitions to the trade unions creating an absurd and unacceptable policy of managerial counter-demands which gave rise to the strikes called by of the workers of Bavaria and the Red Cross. He noted that yesterday the national Congress in a significant gesture, had approved, through the initiative of the Government, a security statute which would make the situation even more critical.
- During the course of the week, an agreement was reached in the Bavarian strike. The Red Cross dispute was still ongoing.

He added that it would be practically impossible to achieve peace in his country if mechanisms that fully guaranteed the right to life, human rights, freedom of association, the right to bargain collectively and employment stability, among other things, were not urgently implemented.

He concluded by asking the Government to indicate: (a) the reasons for not having implemented the labour statute, which constituted a constitutional mandate; (b) the reason why essential public services had not yet been defined; (c) why Colombian employers were so vehemently opposed to the development of collective bargaining by sector of economic activity; and (d) what was the objective of promoting counter-demands. He considered that, while it

should take a positive view point, the Committee should nevertheless place its conclusions in a special paragraph.

The Employer member of Colombia said that the Colombian employers condemned the violent acts which affected social harmony in his country and undermined economic development and the stability of the democratic institutions essential to a State governed by the rule of law. In particular, he deplored the attack on Wilson Borja, the prominent trade union leader, just as he deeply regretted the deaths of trade union members and social leaders, victims of decades of internal armed conflict to which a solution was being sought through political negotiation. He acknowledged the Government's efforts to move forward in the peace process with the FARC and to find solutions to the differences with the ELN. International cooperation in recent years had been a valuable support in continuing down that road. At the time of the humanitarian exchange of kidnapped soldiers and police officers for imprisoned and sick FARC guerrillas, the Employers believed all should agree to respect international humanitarian law and end attacks on the civilian population. The cost of the internal conflict was very high. In Colombia 27,000 people a year were murdered, most of them young people. Approximately 15 per cent were victims of the conflict. The country invested some 2.5 per cent of GDP annually in fighting insurgency and civil defence. Economic growth would have been 2.5 per cent a year higher than actually recorded historically if security conditions had been comparable to those of neighbouring countries. The Employers found signs of confidence in current economic indicators: single-digit inflation; a high real exchange rate; a substantial fall in interest rates; control of smuggling; an increase in international reserves; and reduction in the fiscal deficit and export growth. GDP growth in the previous year was 2.8 per cent, after negative growth of 4 per cent in 1999.

As for the support given by the ILO to the work and consultations of employers, workers and governments, he expressed the view that the support given by the multidisciplinary technical team in the Regional Office left no room for dissension on subjects such as employment, social security, vocational training, quasi-fiscal incentives related to employment, modifications to labour law and the definition of essential public services. The process of consultation and conclusions must continue and the Employers were keen to continue the process with the presence and support of the ILO. It was clear from the reports on the activity of the Special Representative of the Director-General of the ILO in Colombia that the Government and other state institutions needed to implement more effective programmes to protect trade union members under threat, quickly identify those responsible for crimes against workers and employers, and intensify the fight against all forms of violence which threatened the country's democracy and social institutions. He expressed his conviction that a stronger presence of ILO officials in Colombia and permanent contact with the representatives of the different social sectors would make a positive contribution to the peace process. He therefore saw the political and technical support of the Organization as beneficial. The Employers welcomed the regional tripartite negotiating tables that had been set up in the country, and the creation of the Special Commission to process complaints to the ILO, such that they were not dealt with outside the country and consensus solutions could be found. In that respect, he considered it essential that the national Government should regulate the mechanism for the employers' organization to provide information in its defence in the complaint proceedings.

In summary, the country was surmounting its economic structural problems and the social indicators showed progress, but there remained an enormous collective challenge to overcome the internal conflict that destroyed lives and properties, held back growth and affected democracy and its ethical viability. He declared that the duty of his generation was to explain and resolve the factors that linked it to a violent past and open the door to a pluralist, sharing, inclusive and prosperous society.

Finally, he wished to convey the words of the President of the Colombian Employers' Association, ANDI, when his daughter, who had been kidnapped by the FARC was released: "Having Juliana back home gives us hope that peace in the country is possible if society strives for it by setting aside any differences, and uniting around the Government and the negotiating table. As ever, I shall continue to serve this cause, which is the cause of Colombia."

The Worker member of the United States reaffirmed that there was no question that the focus of the case under review was the fundamental, violent and tragic failure to comply with the Convention by Colombia. However, all the governments in the international community, and particularly his own, needed to assume appropriate responsibility for the human reality, tragedy and literally, flesh and blood, which provided the foundation for the comments of the Committee of Experts. Nevertheless, such international collective responsibility did not excuse Colombia. Indeed, it morally compelled the international community represented in the Conference Committee to accord the case the extraordinary attention which it deserved. All those governments which were funding Plan Colombia, and particularly his own Government, had to acknowledge and assume responsibility for the impact of the Plan on the application of the Convention. Moreover, he called upon his Government to take the real situation with regard to labour and human rights in Colombia into account in the formulation of the Andean Trade Preferences Act for the current year.

While acknowledging the points raised in the report of the Committee of Experts concerning the reforms made in the country pursuant to the adoption of Act No. 584, he emphasized that these changes in themselves did not go to the root of the extremely serious violations of freedom of association in the country. The improvements in the Labour Code were totally eclipsed by the following instances of fundamental non-compliance with the Convention. Firstly, the amendment to section 486 concerning the obligation for trade union leaders or representatives to produce records and evidence was still unreasonable, and was not remedied by the provision that a superior individual or organization in the trade union structure should give the green light to the authorities. Secondly, the current legislation was a major obstacle to the establishment of collective bargaining by sector as it continued to demand that trade unions attain the absolute majority in each and every company in an industry to have the right to conclude a sectoral agreement. Thirdly, the country lacked the inspection and enforcement capacity to prevent and remedy anti-union discrimination. There were only some 270 labour inspectors to cover over 300,000 enterprises. Moreover, labour inspectors often lacked the basic vehicles and equipment needed to perform their duties and were often deterred by being declared military targets. Fourthly, collective pacts, or in other words agreements between individual workers and their employers, were not subject to collective bargaining by unions and were often used to obstruct the organization of labour. The Ministry of Labour exercised little or no oversight over these practices, with severe implications for the application of Conventions Nos. 87 and 98. Finally, he emphasized that the central issue of non-compliance continued to be the assault on the physical integrity of Colombian trade unionists. In that respect, he said that the reference by the Committee of Experts to the finding by the direct contacts mission that "in general the status of trade union leader is a fundamental factor in these assassinations" should once and for all disprove the assertion made by the Government in the past that the assassination of trade unionists was not systematic, but the result of the endemic violence in the country. Paramilitary forces in Colombia had very recently made the chilling announcement that trade unionists were targets simply because of what they did. He noted that since the decision of the Governing Body last year which established an ILO office in Bogotá headed by the Director-General's special representative, the impunity had only continued. Over 136 trade unionists were assassinated in 2000, and well over 46 in the first six months of this year, with the perpetrators still not yet brought to justice.

He therefore appealed to the humanity and conscience of the members of the Committee, and especially the Employer members, in the name of the most basic labour and human rights, to consider doing nothing less than citing the case in a special paragraph of its report and recommending that the ILO do everything within its power to help resolve the situation, which might include the appointment of a commission of inquiry.

The Worker member of Côte d'Ivoire indicated that it was clear from the statement of Colombia's Minister of Labour that the Government had no responsibility for the murders, death threats and kidnappings of trade unionists. Moreover, the Minister of Labour had appealed to the International Labour Office and international community to help Colombia emerge from the cycle of violence in which it was immersed. After listening to the Minister's statement, the Worker member questioned why the Committee of Experts and the Committee on Freedom of Association had made such comments and such a report when the Government was beyond reproach. He nevertheless mentioned that the statement of the Worker member of Colombia had quickly reminded him of the gravity of the situation in Colombia.

Assassinations had become an institution. Not a month passed by without the murder of yet another trade unionist. The Government was the guarantor of public and individual freedoms, and therefore must take all measures possible so that trade unionists might carry out their activities in freedom. While it was true that Convention No. 87 provided for the right of freedom of association, even so, it was necessary to be alive to exercise that right. Union activism was carried out by and for the living, not the dead. The Government must therefore protect civil and political rights. The report of the Committee of Experts had been clear on this point. He

emphasized that, each Conference that passed saw the numbers of murdered grow larger, without the Government ever being able to say concretely who murdered them and why. In June 2001, 40 deaths had already occurred —how many would be dead by the end of the year? It was high time for the international community to make greater efforts in helping to find a definitive solution to the Colombian problem and end the killings in Colombia. He fully supported the recommendations made by the Worker member of Colombia.

The Worker member of Argentina regretted that once again the Committee had to deal with the serious situation faced by workers in Colombia. He noted with consternation and deep anguish that the office of trade union executive was grounds for murder. Life and personal freedom were under permanent threat in that country, indeed, there had been 46 trade union murders in the current year. In addition, against that dramatic background, the Government was implementing labour laws which were not in conformity with the ILO Conventions, restricting the right to strike and the full exercise of trade union freedom. There was no doubt that the prohibition of the right to strike in a long list of services, which were not strictly essential and covering a very wide range of activities, was a direct and clear way of preventing the workers involved from striking, aggravated by the lack of alternative ways of resolving collective disputes and the imposition by the Ministry of Labour of arbitration as the only channel for resolving conflicting interests.

He further indicated, as reported in the Committee, that employers used those negative government labour policies to make working conditions even more insecure, by terminating existing collective agreements in order to depress wages and achieve working conditions which better served their economic interests. He underlined that the gravity of the situation in Colombia brooked no further delay. The Committee's decision should be firm and fair. It could not be accepted that situations such as that reported in Colombia should persist. The life, health and freedom of the workers was a high price demanded of peoples.

The Worker member of the United Kingdom listed 47 reasons why the case of Colombia should be noted in a special paragraph of the Committee's report. All of the following 47 murders had been committed this year:

- 10 January 2001, Edgar Orlando Marulanda Ríos (SINTRAOFAN), murdered
- 17 January 2001, Miguel Antonio Medina Bohórquez (SINTRENAL), murdered
- 17 January 2001, Tello Barragán Aldona (vice-president of Sindicato de Loteros del Magdalena — SINDTRALOPE), murdered
- 18 January 2001, Arturo Alarcón (ASOINCA, affiliate of FECODE), murdered
- 21 January 2001, Jair Cubides (Sindicato de Trabajadores del Departamento del Valle — SINTRADEPARTAMENTO), murdered
- 24 January 2001, José Luis Guette (president of SINTRAINAGRO), murdered
- 26 January 2001, Walter Dione Perea Díaz (ADIDA, affiliate of FECODE), murdered
- 26 January 2001, Carlos Humberto Trujillo (ASONAL JUDICIAL, Buga chapter), murdered
- 28 January 2001, Elsa Clarena Guerrero (ASINORT, affiliate of FECODE), murdered
- 28 January 2001, Carolina Santiago Navarro (ASINORT, affiliate of FECODE), murdered
- 8 February 2001, Alfonso Alejandro Naar Hernández (Asociación de Educadores del Arauca — ASEDAR, affiliate of FECODE), murdered
- 11 February 2001, Alfredo Flórez (Sindicato Nacional de Trabajadores de la Industria del Cultivo y Procesamiento de Aceites y Vegetales — SINTRAPOACEITES), murdered
- 12 February 2001, Nilson Martínez Peña (Sindicato de Trabajadores de la Palma de Aceite y Oleaginosas — SINTRAPALMA), murdered
- 12 February 2001, Raúl Gil Ariza (Sindicato de Trabajadores de la Palma de Aceite y Oleaginosas — SINTRAPALMA), murdered
- 16 February 2001, Pablo Padilla (vice-president of SINTRAPROACEITES, San Alberto chapter), murdered
- 16 February 2001, Julio Cesar Quintero (SINTRAISS, Barrancabermeja chapter), murdered
- 20 February 2001, Cándido Méndez (Sindicato de Trabajadores de la Industria Minera y Energética — SINTRAMIENERGETICA, Loma chapter), murdered
- 22 February 2001, Edgar Manuel Ramírez Gutiérrez (vice-president of SINTRAELECOL, Norte de Santander chapter), murdered
- 23 February 2001, Lisandro Vargas Zapata (ASPU, Atlantic chapter), murdered
- 1 March 2001, Víctor Carrillo (SINTRAELECOL, Málaga chapter), murdered
- 3 March 2001, Darío Hoyos Franco, murdered
- 12 March 2001, Valmore Locarno (president of SINTRAMIENERGETICA), murdered
- 12 March 2001, Victor Hugo Orcasita (vice-president of SINTRAMIENERGETICA), murdered
- 13 March 2001, Rodion Peláez Cortés (ADIDA), murdered
- 18 March 2001, Rafael Atencia Miranda (Unión Sindical Obrera de la Industria del Petróleo — USO, Casabe chapter), murdered
- 20 March 2001, Jaime Sánchez (SINTRAELECOL, Santander chapter), murdered
- 20 March 2001, Andrés Granados (SINTRAELECOL, Santander chapter), murdered
- 21 March 2001, Juan Rodrigo Suárez Mira (ADIDA, affiliate of FECODE), murdered
- 24 March 2001, Luis Pedraza (USO, Arauca branch), murdered
- 24 March 2001, Ciro Arias (president of Sindicato Nacional de Trabajadores de la Industria Colombiana de Tabacos — SINTRAINTABACO, Capitanejo chapter), murdered
- 26 March 2001, Robinson Badillo (Sindicato de Trabajadores y Empleados de Servicios Públicos, Autónomos e Institutos Descentralizados de Colombia — SINTRAEMSDES, Barrancabermeja chapter), murdered
- 27 March 2001, Mario Ospina (ADIDA, affiliate of FECODE), murdered
- 27 March 2001, Jésus Antonio Ruano (Asociación de Empleados del Instituto Nacional Penitenciario — ASEINPEC), murdered
- 2 April 2001, Ricardo Luis Orozco Serrano (first vice-president of ANTHOC Nacional), murdered
- 4 April 2001, Aldo Mejía Martínez (president of Sindicato Nacional de Trabajadores de Acueducto, Alcantarillado y Obras Públicas — SINTRACUEMPONAL, Codazzi chapter), murdered
- 11 April 2001, Saulo Guzmán Cruz (president of Sindicato de Trabajadores de la Salud de Aguachica), murdered
- 26 April 2001, Francisco Isaías Cifuentes (ASIOINCA, affiliate of FECODE), murdered

  and his wife, L. María Fernandez Cuellar, murdered. Their five year-old son was gravely injured in the attack.
- 27 April 2001, Frank Elías Pérez Martínez (ADIDA, affiliate of FECODE), murdered
- 2 May 2001, Darío de Jésus Silva (ADIDA, affiliate of FECODE), murdered
- 9 May 2001, Juan Carlos Castro Zapata (ADIDA, affiliate of FECODE), murdered
- 10 May 2001, Engeniano Sánchez Díaz (SINTRACUEMPONAL, Codazzi chapter), murdered
- 14 May 2001, Julio Alberto Otero (ASPU, Caqueta chapter), murdered
- 16 May 2001, Miguel Antonio Zapata (president of ASPU, Caqueta chapter), murdered
- 21 May 2001, Carlos Eliécer Prado (SINTRAEMCALI), murdered
- 25 May 2001, Henry Jiménez Rodríguez (SINTRAEMCALI), murdered
- 29 May 2001, Nelson Narváez (SINTRAUNICOL), murdered

He added that he had refrained from citing the names of the more than 50 colleagues murdered between the opening of the last Conference and the end of 2000. Nor had he been able to submit the names of all the children who had lost their fathers or mothers or both in these attacks. Nor had he given the names of the 69 teachers who had received death threats this year. Finally, he regretted that the Government representative had failed to address the issue of the impunity with which these murders had been carried out. There could be no rule of law while such impunity persisted in the context of what appeared to be a systematic attempt to eliminate the trade union leadership in Colombia, aggravated by an increasing level of

attacks against ordinary trade union members. However, thankfully, Wilson Borja was present in the Committee, as were other Colombian trade union colleagues who had survived repeated assassination attempts. The names of the colleagues he had cited bore silent witness to a situation which needed to be reflected in a special paragraph of the Committee's report.

The Worker member of France observed that the climate of violence prevailing in Colombia against trade union leaders was unprecedented in history according to the Committee on Freedom of Association. The Government and the Employer members pleading in favour of peace civil liberties and human rights — and quite rightfully so — seemed, however, to use a different discourse when it came to trade unions. In practice, many employers impeded through various means (including the confiscation or the retention of trade union contributions) the free exercise of trade union activities. On the Government side, although one should take note of the improvements made to the Labour Code regarding the abusively restrictive provisions denounced by the Committee for years, other problems remained, like the absolute prohibition of strikes called by federations and confederations despite the fact that the right to strike had been recognized in this country. The fact that the right to strike was nevertheless undermined with exaggerated limitations and exceptions in particular in the non-essential public services, constituted an intervention in the right of workers to organize their activities and an excessive legal hindrance on trade union rights. The strike was the ultimate means at the hands of workers to enable them to promote their demands when all other means had been exhausted. Although the exercise of this right could eventually become subject to certain legal rules, its prohibition constituted a fundamental hindrance on freedom of association by virtue of Article 3 of the Convention and also Article 8 of the International Covenant on Economic, Social and Cultural Rights. The right to strike was one of the legitimate activities of trade unions and fell within the field of application of the Convention on an equal footing with the other trade union activities.

Although the Employers' group had unanimously decided to wage a premeditated escalation and a systematic confrontation against the constant case law of the various supervisory organs of the ILO in a more subtle way since 1998, this should not oblige this Committee to admit this unjustified turnaround. Without the right to strike, freedom of association would be mutilated and weakened and the workers would be left without an effective means of defence against employers. To admit this revisionist proposition to exclude the right to strike from the field of application of freedom of association would also contravene national practices in the area of legal interpretation, which consisted in interpreting texts in light of their fundamental objectives. Moreover, common state practice (based on the criteria contained in the Vienna Convention on the Law of Treaties (1969), often cited by the Employer members) was, but for a few exceptions, not to exclude the right to strike from trade union legislation, but to recognize it and regulate it sometimes excessively.

The Convention did not exist in a legal void and was a component of international law and more specifically, human rights. In this respect, he regretted the fact that the Employer members of his country had supported a restricted interpretation of freedom of association and thanked the Government member of Germany for his analysis which was perfectly honest from an intellectual point of view and should have been supported at least by all the other Member States of the European Union. He underlined that the Government of Colombia had the obligation to promote freedom of association and to do everything in its power to protect trade union members and human rights activists and, more generally, all citizens, from the violations committed by the paramilitary troops and the various armed groups which committed these assassinations, torture and kidnappings and had forced hundreds of thousands of people to become refugees in their own country.

He concluded by inviting the Government to accept the Commission of Inquiry which had been examined by the Governing Body for three years now in order to help the Government meet the requirements of the Convention. He also invited the Government to have recourse to the technical assistance of the Office in order to receive help in the implementation of the conclusions and recommendations of the Committee. Finally, the speaker reaffirmed the strong support of the French trade unions towards the Colombian people and trade unionists in the courageous and permanent action for the respect of fundamental rights and liberties, like the right to life, in the framework of the rule of law and through peace and reconciliation. The seriousness of this case justified its inclusion in a special paragraph of the Committee's report.

The Worker member of Mexico noted that, as illustrated by their statements, the workers of the world were deeply concerned by the murders of Colombian workers. The climate of violence existing in the country formed part of a broad campaign by the extreme right to silence leaders who raised their voices against the status quo.

He added that in their condemnation of these acts, the Worker members wished to recall that in the year 2000 there had been an increase of 63 per cent in the number of murders in comparison with 1999, even without taking into account death threats and disappearances of trade unionists. He added that, during the course of the year, 46 trade unionists had been murdered, which demonstrated once again the total impunity existing in the country. Despite national and international pressure, the Government had made no real effort to resolve the situation and guarantee the full exercise of the fundamental right of freedom of association. He believed that it was important to draw attention to the constant violations of freedom of association, the right to collective bargaining and the right to strike, in addition to the other matters raised by the Committee of Experts in its report. Finally, he emphasized that the situation as described justified the inclusion of the case in a special paragraph of the report and the establishment of a commission of inquiry, or any other measure which could resolve the problems of Colombian workers.

The Worker member of Sweden welcomed the very clear description provided by the Committee of Experts in its report of the climate of violence in which Colombia lived, and particularly all of its trade unionists, social activists and defenders of human rights. She added that the Government had committed itself on several occasions in the Committee to achieving full compliance with the provisions of the Convention. However, in reality, violence grew with every passing day and the situation continued to deteriorate rapidly. There was no freedom of association in Colombia. The alarming number of murders, kidnappings, death threats and other acts of violence against trade union leaders and members had reached an unprecedented level in the history of the country. The Committee of Experts had noted that the group most affected by this violence was that of trade union leaders. Since the beginning of the year, a total of 47 trade unionists have lost their lives as a result of this brutal and almost incomprehensible violence.

The Government tended to portray itself as a victim. But the real victims were the 2,500 or more trade unionists who had died between 1987 and 2001. She urged the Government to assume its responsibilities and take measures to bring an end to impunity. Political will, determination and greater comprehension of the contribution that the ILO was offering were all necessary. She acknowledged the prudence of the current Minister of Labour in view of the present situation, particularly since other ministers were bitterly criticizing the trade unions and their calls for the social, economic and political reform of the country.

The Committee of Experts continued to call for the Government to recognize and protect the civil and political rights enshrined in the Universal Declaration of Human Rights and the Convention, and especially those related to freedom of association. In conclusion, she expressed the firm hope that the Committee's conclusions on the case of Colombia would be included in a special paragraph of its report.

The Worker member of Cuba said that the sheer volume of information on this tragic situation and the statements made by the members of the Committee were so eloquent that there was no need to repeat them. Nevertheless, he felt the need to emphasize that pressure needed to be exerted on the Government through all possible channels to encourage it to take the decisions which would ensure that the impunity that prevailed in the country was brought to an end. The Government needed to guarantee that impunity ceased whatever the situation in the country. Employers and their organizations needed to take on a large part of the responsibility for eliminating violations of trade union rights. Finally, on behalf of the Central Organization of Workers of Cuba, he expressed his solidarity with the members of the Colombian trade union movement, which was honoured by the dignity with which it was combating these extremely difficult conditions.

The Worker member of Uruguay acknowledged the sincerity with which the Minister of Labour of Colombia had made his declaration and he indicated that he sensed the Minister's sensitivity for the subject. He emphasized the observations made by the Committee of Experts regarding the prohibition of the federations and confederations from calling strikes; the prohibition to call a strike for sectors providing essential services and those providing a wide range of services not necessarily essential; the possibility to dismiss the trade union leaders who had intervened or participated in an illegal strike and the power of the Minister of Labour to refer disputes to arbitration when a strike lasted more than a specific period of time.

He pointed out that, despite the direct contacts mission that took place in February 2000, draft legislative texts had been prepared to

amend the abovementioned provisions. These amendments had not been made. He asserted that, even though the Minister had informed that these provisions had never been used during his term in office, they were still applicable in the legal system of Colombia. He considered that a special paragraph incorporating the conclusions resulting from the discussion be added, and that any other measures that could contribute towards the resolution of the conflict be taken. He pointed out that on 12 December 2000 12 hired assassins tried to kill the Worker member Mr. Wilson Borja and two of his bodyguards. The investigation led the investigators to link the case to individuals such as active military personnel, retired military personnel, active police personnel and five persons belonging to the paramilitary, including the chief of the latter, in the city of Bogotá. These elements proved that a relationship between the members of the public forces and the paramilitary groups continued to exist. This contradicted the argument forwarded by the Government that these cases were isolated in an attempt to hide the murders of trade unionists and social leaders planned at the headquarters of the Colombian public forces. He confirmed that, since the month of September, the Minister of the Interior had known about the situation and, despite this, had denied to provide increased protection for workers. He emphasized that, during the year 2000, 129 trade union leaders had been murdered and that, in the course of the present year, 46 trade union leaders had already been murdered. He further stated that a trade union leader, Jorge Ortega, in exile in Uruguay, decided to return to his country, and as Vice-President of the CUT was murdered. To this day nothing had come out of the investigation. For this reason, it was important that in this process everyone genuinely participated in the fight against impunity.

He also noted that the agreements between the IMF and the Government had contributed to the restriction of trade union activities. He pointed out that the Colombia Plan tended to foster war rather than peace. He emphasized that changes needed to be made by the people and for the people. Change was necessary for peace, just as peace was necessary for change. Everyone should participate in this process. In conclusion, he hoped that the Governing Body would in the next days appoint a Commission of Inquiry.

Another Worker member of Colombia said that it was true that the Colombian Government was currently pursuing a peace policy and that in the past, the trade union movement had supported and committed itself to such policy. At the same time, however, it should be noted that the Colombian Government, while pursuing a peace process with the guerrillas, allowed and promoted policies which took away with one hand and what they gave with the other. He remarked that on 14 June 2000, the Congress of the Republic had passed a national security bill, introduced by the Government itself, which gave the military forces judicial police powers and allowed them to make arrests without trials and revived the inaptly named "cohabitation" which had been declared unconstitutional in the past, leaving the way open to the paramilitary. He said that the passing of that law had been a backward step to times which they believed that they had left behind when, on evidence cleverly concocted by military intelligence, many trade union members and social militants were tried and arrested arbitrarily. Moreover, that very week, the head of the paramilitary in Colombia had said that he would kill trade unionists because they obstructed work through their many protests. And that assertion had become reality for many trade unionists, including the speaker. Compounded, the Worker member declared in his case and many others, that members of the armed forces, both active and reserve, and members of the paramilitary were involved.

He indicated that the Government had allocated resources of US$2.5 million, but not only for trade unionists but for a number of people under threat in human rights organizations and non-traditional political sectors. He claimed that although murder in Colombia was indiscriminate, that could not be an argument for allowing those responsible to escape punishment. Killing was bad enough but it was worse when the State did not investigate, let alone punish. The Government acted as a victim of the war and not as one of the parties responsible for the war. The level of impunity for violation of human rights was 97 per cent. Certainly stoppages had not been made illegal in recent times, and that was important. He warned that fulfilling an international and constitutional obligation could not compensate for facts such as the 47 trade unionists murdered that year, over 500 others forced into exile abroad and the large number of trade union members and social activists made to move within the country.

He also said that there was no real protection for trade unions. Many had disappeared as a result of the action of employers who considered that organized labour threatened their interests. There were frequent public statements by public officials blaming trade unions for crises in public bodies, thus creating a public opinion hostile to the trade unions. Workers were stigmatized for exercising their rights, and workers' organizations, both members and officials, were pilloried. He wondered how anyone could expect murderers to cease their criminal action when some leading figures, such as the Minister of Finance, stigmatized and singled out trade unionism and workers in general, through the media, as being responsible for the crisis in Colombia.

In the last two years a new phenomenon had been emerging. In many cases where the courts had ordered the reinstatement of trade union members who had been illegally dismissed from their posts, the orders had been ignored. Such, for example, was the case of Caja Agraria and the Banco Agrario, which had been jointly ordered in the final decision to reinstate a number of workers protected by law, and those orders had been disregarded. The same situation had arisen with the Empresa de Telefonos de Bogotá telephone company. He added that the situation was compounded by an economic policy which, in order to fulfil the extended agreement with the International Monetary Fund, the Government had sought to impose without prior consultation using it to bring about the dismissal of a large number of state workers without providing them with any re-employment scheme, cutting their social benefits, adversely reforming their pension scheme and reducing health and education benefits, also by the creation, through a reform of the law, of a frontier labour scheme to encourage the presence of export processing zone companies. Many workers that had been dismissed from public entities were re-employed by subcontractors without any employment contract, outside the social security system and, of course, without any opportunity to organize. He warned that despite reforms introduced in the previous year, the prohibition of strikes in non-essential public services remained, social protest continued to be repressed by the police, federations and confederations were prohibited from calling strikes, it was still possible to dismiss trade union members and trade union officials who had joined a strike that had been declared illegal, the Ministry of Labour was empowered to declare a strike illegal, the power of the Minister of Labour to refer a dispute to arbitration when the strike had continued for over 60 days, as well as other provisions which were contrary to the Conventions to which Colombia was a party.

In the view of the Colombian trade union movement, all the foregoing justified putting the conclusions of the discussion in a special paragraph and, furthermore, urging the Committee on the Application of Standards to urge the Governing Body to establish a commission of inquiry on the complaints that had been submitted to it, or seek other mechanisms to resolve the grave situation of freedom of association in Colombia.

The Government member of Sweden, speaking on behalf of the Member States of the European Union and of Norway and Iceland, emphasized that the European Union was deeply concerned about the persistent grave situation of attacks and threats against trade union members in Colombia, with nearly 50 union members assassinated already in 2001. The alarming development of the previous year, when the number of murdered union members increased by 100 per cent compared with 1999, was therefore continuing. The Committee on Freedom of Association had stated that "the scale of murders, kidnappings, death threats and other violent acts against trade union officials and members is unprecedented in history" and that "in general the status of trade union leaders is a fundamental factor in these assassinations".

It was clear that, to a large extent, the paramilitary groups were responsible for the violence against trade unions. However, the European Union also emphasized the responsibility of the Colombian Government to protect its citizens from any kind of violence and to bring any perpetrators of violations against human rights and workers' rights to justice. The European Union urged the Government of Colombia to take urgent and effective steps to ensure the legal and physical protection of those affected. It also called upon the Government to continue its effort to effectively combat the paramilitary groups and to take concrete action to dismantle these groups by arresting, prosecuting and punishing those involved in such activities. The European Union also strongly deplored the persistence of impunity in Columbia, especially in regard to human rights and workers' rights violations, which was a fundamental obstacle to the observance and implementation of human rights in the country.

The violence had now reached such a level that every effort possible had to be made by all the parties concerned to mitigate the escalation of the violence. She urged the Colombian Government and the social partners to cooperate constructively in trying to find every possible measure to address effectively the violence affecting trade union members. She also believed that the ILO could and should play a more proactive and supportive role, assisting the Colombian Government and the social partners in their efforts to develop protection mechanisms, find solutions and at the same time monitor the situation. Since the case of Colombia was on the agen-

da of the Governing Body following the Conference, and the report of the Special Representative of the Director-General for cooperation with Colombia would be discussed there, the European Union would address the operational aspects of the case in that context. Finally, she emphasized that the only long-term sustainable solution to the situation in Colombia was peace. The European Union therefore welcomed and supported every positive step taken in support of the peace process.

The Employer member of Panama said that the daily violence in Colombia, which was seemingly meaningless, was repugnant and of great concern to everyone. This human shame lay behind the action taken to bring it to an end. Its victims were in their great majority of humble extraction and were not therefore accorded space in the international press. But the blood that had been spilled in the countryside, streets, homes and public places of Colombia cried out for justice. Such deep-rooted violence had its origins in Colombian history. Civil wars had flourished and spread their seeds throughout the nation for over a century and a half. However, he expressed a certain scepticism that a special paragraph in the report of the Conference Committee, a commission of inquiry or the unanimous condemnation of the Conference would really have any effect in putting an end to the abominable spiral of crime. There was as yet no solution and the walls of the Conference room would probably hear many new versions of the human atrocities committed in Colombia. New avenues needed to be explored to find an end to this Latin American nightmare.

He proposed that assistance should be provided for the reconstruction of the judicial system as the only manner of cementing brotherhood and peace. By way of practical action, he emphasized measures to strengthen the links between the social partners and dialogue to achieve peaceful co-existence. The various forms of social protest action should be acknowledged and respected, without prejudice to third parties. Progress in the peace process should be promoted, with emphasis on the observance of human rights and a political solution to the armed conflict. And initiatives should be promoted in the fields of labour legislation, collective bargaining, the definition of essential public services and human resources development. Action in these areas would contribute to giving hope back to Colombians and to developing and having faith in a new judicial system which would provide a secure and trustworthy channel through which levels of conflict could be reduced. He added that the denunciation of a collective labour agreement did not constitute a violation of freedom of association, but was an expression of the desire to renegotiate the agreement reached, which had proven to be inadequate. This formed part of the right to negotiate the working conditions that the partners considered to be most appropriate for their collaboration.

The Government member of Mexico expressed her grave concern at the level of violence in Colombia, which had affected the lives of numerous trade unionists as well as other sectors of the population, including state civil servants, religious leaders and employers. She noted that the Colombian Government had been making enormous efforts to guarantee the safety of union members, despite the difficulties it had faced in this regard. She urged the ILO to maintain and strengthen its cooperative relationship with the Colombian Government so that this climate of violence in the world of work could be overcome.

Another Government representative of Colombia stated that she felt it was her duty to take the floor because, as a Colombian citizen, she deplored the painful situation in her country. It was difficult for others to comprehend the conditions in which Colombians were living and for them to truly grasp the gravity of the situation other than those living in these conditions. Those fighting for human rights, trade unionists, employers, judges and any other persons participating in the process of rebuilding the country, as well as their families, were constantly threatened with loss of life and limb. Only those who faced this reality on a daily basis were in a position to characterize it as a true “hell” . She reiterated that not everyone in Colombia lacked positive and constructive qualities, and that the country was relying on young people who hoped for peace in the future. She called for a genuine and efficient support to help rebuild her country.

The Government representative of Colombia had taken due note of the statements of the workers, employers and government representatives. He indicated that the delegation representing the Government of Colombia included, in addition to him, three Justices of the Colombian High Court, as well as six members of the Seventh Committee on Labour Issues of the House of Representatives of the Colombian Congress. He considered that each of the statements made in the Committee had the objective of finding a solution to the conflict in Colombia, as well as putting an end to the climate of impunity in the country. He indicated that the Colombian Constitution established the principle of separation of powers and expressed the hope that the presence of the Justices would permit a more in-depth examination of the issues before the Committee.

He did not wish to rebut any of the statements made, and he invited the Colombian workers and employers to sit down with the Government to analyse each of the statements and observations made in the Conference Committee. He indicated that each of the sectors involved should undertake to resolve the conflict to the extent possible in order to strengthen social dialogue and cooperation. He confirmed once again that he would continue to act within the framework of the Colombian Constitution and the ILO Conventions. However, there were issues that depended upon other state agencies, as well as upon political will for the establishment of a dialogue between employers and workers. He considered that Colombian judges and legislators should also attend the meeting mentioned.

He indicated his willingness to accept any proposals by the Committee that could help to resolve the different problems in the country, and put an end to acts of violence against union members as well as to impunity. It was not the Government’s policy to persecute union members or those fighting for the protection of human rights. This, however, did not mean that the State was denying the possibility that public officials had participated in criminal acts connected with paramilitary activity, drug trafficking and corruption, nor did he deny that other sectors had been involved in this type of criminal activity. In this regard, he noted that the investigation into the attempted assassination of Mr. Wilson Borja had proven that those responsible were members of the armed forces, and indicated that these individuals had been removed from their positions. He added that it was in the interest of the President of Colombia to remove all persons involved in the criminal acts mentioned from public service and that similar measures be applied in all sectors of Colombian society. He reiterated his Government’s complete willingness to examine the different initiatives taken on the path to achieving peace in the country.

With regard to the law enacted by Congress, which had been characterized as a law that would promote repressive measures and which implied a return to security policies adopted in the past, he pointed out that this legislation was not the result of a Government initiative, but had its origins in the legislature. Moreover, he questioned the constitutionality of the law in question. He considered that the road to peace lay not with the path taken by the military nor with exercising options directed towards war. Rather, the road to peace lay through the exercise of options directed towards peace. He expressed the hope that the Colombian Constitutional Court would hold that this law was contrary to the fundamental principles contained in the national Constitution.

He regretted having to appear before the Committee in his capacity as Minister of Labour to examine such a painful issue, noting that many government officials had also been the targets of violent acts by those paramilitary groups that considered the President as well as the High Commissioner for Peace to be allies of the guerrillas in light of the negotiations currently being conducted in the ongoing search for peace. He would have preferred to appear before the Committee to address the same issues that affect other developed countries, issues which also affected Colombia. However, he would not attempt to evade his responsibility and he intended to find some way, some solution to put an end to this situation. He believed that all sectors in Colombia should unite to rebuild the country. He recalled that an example of this unity had taken place in 1991 in the Colombian Constitutional Assembly, when all sectors set aside the differences dividing them and successfully established a new constitution for the country.

He requested the cooperation and presence of the ILO and the international community, particularly political assistance, to assist Colombia in achieving peace. He recalled that, in 1980, in his former capacity as union member, he had spoken against the persecution carried out in the country against workers that defended their rights. He considered that, often, for ideological reasons, his warnings had not been heeded. Consequently, the current situation could lead to the destruction of the State if an agreement between the parties were not achieved. He stated once again that all measures were possible to establish democracy and to prevent this situation from continuing in the future. These crimes were a source of shame for humanity, and he reiterated that the unions had always had his support, and even employers knew he would take care to protect the rights of workers.

The Worker members considered that their preliminary statements and the comments made by different speakers had stated their objectives clearly. In light of the tragic situation in Colombia, the Worker members requested that the Conference Committee observe a minute of silence in honour of their murdered brethrens.

The Committee kept one minute of silence in honour of all victims of violence in Colombia.

The Worker members thanked the Committee and requested that the conclusions of this case be included in a special paragraph of the report of this Committee.

The Employer members noted that the discussions had been quite emotional, which was justified in view of the gravity of the situation in the country. Priority had not therefore been given to discussing issues of labour law, since the reasons for the situation in the country were not to be found in the state of the national legislation, but in the climate of violence, as illustrated by the number of victims who were mourned by the country. They therefore concluded that the ILO's contribution could only be small and that the problems had to be solved by Colombians themselves, particularly since it was not within the ILO's competence to intervene in the problems that had been described. However, the Committee should express its deep concern in its conclusions and the demands of the Worker members should be taken into consideration. Although the contribution that the Conference Committee and the ILO could make to resolving the situation was naturally only minor, it nevertheless constituted an important signal. Finally, they supported the proposal of the Worker members to include the conclusions of this Committee on this case in a special paragraph.

The Committee took note of the oral information provided by the Government representative and the subsequent debate. In its previous conclusions the Committee had observed with great concern the significant and persistent discrepancies between the legislation and practice, and the provisions of the Convention had given rise to several complaints to the Committee on Freedom of Association, and a complaint submitted by a number of Worker members to the International Labour Conference in June 1998, under article 26 of the Constitution of the ILO relating to non-observance of Convention No. 87.

The Committee noted that the Committee of Experts had expressed its deep concern at the climate of violence which existed in the country and the scale of murders, kidnappings, death threats and other violent acts against trade union members which was unprecedented in history. The Committee strongly condemned the murders and acts of violence against trade union officials and kidnappings of employers, despite the Government's efforts to protect them. The Committee took note of the information on the development of the peace plan and hoped that there would be progress as a result, in particular with regard to compliance with international humanitarian law and the pursuit of negotiated political solutions to the internal conflict. The Committee, which had discussed that case on many occasions in the past, observed that the Committee of Experts had noted significant progress in the application of the Convention with respect to the majority of the legislative provisions that had been referred to the Committee of Experts. The Committee further observed that the Government was committed to promoting measures relating to the other provisions on which the Committee of Experts had commented. The Committee considered that strengthened social dialogue between the social partners would be the best way of conducting that activity.

The Committee noted with concern that many complaints concerning violent acts and discrimination against trade unionists continued to be submitted to the ILO. The Committee recalled that full respect for civil liberties was essential for the application of the Convention. The Committee emphasized that the climate of impunity in the country represented a serious threat to the exercise of trade union freedom. The Committee urged the Government to take further steps to bring legislation and practice into full conformity with the Convention in the near future. It expressed the firm hope that the Government would provide a detailed report to the next meeting of the Committee of Experts with news of greater progress in legislation and practice to ensure the application of that Convention and recalled that it could call on the technical assistance of the Office in the context of that process. The Commission expressed the firm hope that at its next meeting it would be in a position to take note of real progress in the country's trade union situation. In that respect, the Committee noted that the complaint submitted under article 26 of the Constitution of the ILO was pending before the Governing Body. The Committee expressed the hope that the Governing Body at its next meeting would take appropriate, effective and necessary measures to deal with that complaint.

The Committee decided that its conclusions would appear in a special paragraph in its report.

Djibouti (ratification: 1978). **A Government representative** informed the Committee that, since its last session in June 2000, his country had obtained the technical assistance of the international labour standards specialist from the Addis Ababa MDT. As regards the observation of the Committee of Experts, he indicated that his Government planned to consider very soon the measures necessary to examine the compatibility of its legislation with Convention No. 87. His Government had taken note of the concerns expressed by the Committee of Experts as regards the compatibility of section 5 of the Act on Associations, as amended in 1977, with Convention No. 87, and particularly Article 2. He stated that his Government was ready to introduce the necessary amendments during the revision of the Labour Code, which should start soon. In addition, the technical assistance of the ILO had been requested for the revision of the labour legislation.

He stated that it was planned to repeal section 6 of the Labour Code, which provided that trade union functions may only be exercised by nationals, when revising the Labour Code in consultation with the relevant technical unit of the ILO, which had already been approached in this respect. As proof of its good faith, the Government of Djibouti had invited regional trade union organizations (such as the ALO) and international ones (such as ICFTU) to visit the country to examine the situation.

The Government was totally in favour of holding free and transparent elections, and wished to establish dialogue with truly representative trade union partners. He emphasized, however, that the organization of such elections was a matter for trade unions only. As appeared clearly from all reports submitted by Djibouti, the trade union situation had come to a complete standstill, due to a handful of leaders who had held their positions for over 20 years as though they owned their trade union mandate for life. As regards the trade union congress of 15 July 1999, termed as phoney by some speakers, he asserted that his Government was willing to talk to all workers' representatives, whoever they were. Until new elections were held, however, the Government was bound to recognize the leaders elected during that disputed congress. In view of all these difficulties, he requested the Office to help his Government break the deadlock. He considered that this help should not only cover the organization and holding of new trade union elections, but also the provision of training to trade union leaders elected on that occasion.

As regards the power of requisition, he emphasized that this applied only to public services considered to be essential for the life and health of the population. Nevertheless, if the Committee deemed it necessary, the Government was ready to circumscribe this power. While there existed provisions prohibiting foreign workers from joining or becoming leaders of trade unions, no such restrictions were applied in practice.

The speaker informed the Committee that 15 requests for reinstatement by dismissed workers had been received by the authorities, in line with the recommendations of the Committee on Freedom of Association. He acknowledged that the settlement of these cases had been delayed, but explained that this was due to the fact that the Government was concurrently facing a political priority, i.e. re-establishing peace. This had been achieved now, since the Government had just signed a final peace agreement with an armed faction (the FRUD). The Government was now politically able to address the problem of dismissed workers with renewed serenity. However, he wished to draw the Committee's attention to the fact that some of those who pursued political purposes under trade union pretexts had participated actively in the peace negotiations. The reinstatement process of trade unionists dismissed in the aftermath of the 1995 events was following its course, in accordance with the commitments made by the Government to this Committee. Three of the 15 dismissed trade unionists had already been reinstated in their jobs, and the other requests were being examined on an individual basis. He indicated in this respect that some of these workers had been living abroad since the 1995 events.

The Worker members thanked the Government representative for the information he had provided to the Conference Committee. They noted that, after a hiatus of some years, last year the Government had once again begun a dialogue with the Committee on the difficulties linked to the application of Convention No. 87 in the country. Recalling the firm conclusion reached in last year's Committee, which had "stressed with great concern the lack of cooperation by the Government", the Worker members noted that the Government had once again sent a report to the Committee of Experts expressing its willingness to amend legislation and modify practices which were not in conformity with Convention No. 87. However, the Worker members stressed that neither the law nor the practice in the country had been changed and that the serious violations described in the report were still in place.

The Worker members noted that the Committee of Experts had correctly taken into consideration the interim conclusions of the Committee on Freedom of Association. They addressed the five points made by the Committee of Experts in the order presented by the Committee of Experts in its report. The first point raised by the Committee of Experts was that national legislation required organizations to obtain prior authorization before establishing them-

selves as trade unions. In this regard, the Worker members cited the statement made by the Government representative last year that "the Government fully agreed that changes in the provision should be studied with a view to submitting the necessary amendments to the National Assembly as soon as possible". However, even after these renewed assurances, the promised changes had yet to be effected.

This observation applied equally to the second point raised in the report regarding section 6 of the Labour Code, which limited the holding of trade union office to Djibouti nationals. This provision was clearly in violation of Article 3 of Convention No. 87, which established the right of workers to elect their representatives in full freedom.

The third point made by the Committee of Experts concerned the broad powers of the President to requisition public servants. While it was indeed possible to set limits in the area of essential public services, particularly with regard to the right to strike, the Worker members agreed fully with the Committee of Experts' comments that such limits could be imposed only in the strict sense of the term "essential services". They considered that the national legislation contained exceptions that went far beyond this threshold and which were not in conformity with the Convention. Noting that the Government had once again stated its willingness to redefine the limits of this broad power, the Worker members called for a change in the legislation and for its strict enforcement.

With regard to the fourth point raised in the report, concerning the reinstatement of trade union leaders, they considered the firing of these leaders to constitute a grave violation of the principle of freedom of association. The Worker members disagreed with the Government's statement to the Committee of Experts that the matter had been resolved. They pointed out that the September 1995 strike which had resulted in the dismissal of the UDT/UGDT leaders had been recognized by the Committee on Freedom of Association as being of a "legitimate nature … and as a means of defending the economic and professional interests of the workers". The Worker members stated that the trade union leaders and union members dismissed, particularly the senior union leaders of the UDT/UGDT, should be reinstated in their former employment, and paid back-pay. Moreover, no conditions should be imposed upon their reinstatement.

The fifth point addressed in the report involved the right of workers to elect their trade union leaders freely and democratically. In this regard, the Committee of Experts had noted the Government's statement that it considered "this issue to be an internal matter for the trade union movement". The Worker members requested clarification on this point, since to date they had observed interference by the Government itself. Unfortunately, in contrast to the Government's statements, the legitimate trade union representatives in the country had presented the Worker members with a completely different picture of the situation. According to these sources, trade union freedom existed in Djibouti only on paper and interference in trade union affairs had gone as far as the creation of so-called "yellow trade unions". The Worker members also cited the specific example of over 5,000 shipbuilders who allegedly had no right to organize and bargain collectively and no social security benefits.

The Worker members stressed that this case involved one of the ILO fundamental rights. While they had listened once again to the Government representative express his Government's willingness to address the problems described, they noted that in practice a number of serious violations of the Convention were still common in Djibouti. The Worker members insisted that both law and practice needed to undergo radical change in the country in order to guarantee the independence of the trade union movement. They recalled that an ILO multidisciplinary advisory team had visited the country four times since November 1999. If the Government were serious and had political will, assistance in this regard could be provided yet again. There was no excuse but to take steps without delay to bring its national legislation and practice into conformity with Convention No. 87.

The Employer members noted that this case had been examined by the Committee of Experts on several occasions since 1997 and the Conference Committee had discussed the case in 1998 and 2000. In fact, they recalled that the views expressed by the Employer members in 2000 had been quite critical.

This case concerned five points, some of which the Employer members assessed differently from the Committee of Experts. The first point concerned the right to establish organizations without previous authorization. As Djibouti legislation required such authorization, there was therefore a clear violation of Convention No. 87. The Government had indicated previously its willingness to amend the legislation in question and the Committee of Experts had requested the Government to provide it with information on the proposed amendments. However, the Government representative had now indicated that the necessary amendments would be made in the new draft Labour Code. In the view of the Employer members, this was too late. It was therefore necessary to establish a concrete timetable within which these amendments must be made.

In respect of the legal restrictions limiting the holding of trade union office to Djibouti nationals, the Employer members considered this to constitute a typical internal trade union affair in which the Government had no right to interfere. However, it was acceptable to link the holding of trade union office to a minimum period of residence in the country.

Turning to the 1983 Decree, which conferred broad powers on the President to requisition public servants who were indispensable to the life of the nation and to the proper operation of essential public services, the Employer members noted the familiar argument that the national legislation should limit the power of requisitioning to public servants who exercised authority in the name of the State or essential services in a strict sense of the term. In this respect, the Employer members recalled that strikes were not internal trade union affairs, but always affected third parties. They once again stated that, in their view, the right to strike was not covered by Convention No. 87, for the reasons which had been set forth in detail in connection with the case of Ethiopia's application of Convention No. 87.

Addressing the Government's reinstatement of trade union leaders who had been dismissed for exercising legitimate trade union activities five years ago, the reasons for this dismissal were not clear to the Employer members since, in the view of the Committee of Experts, strikes were also a legitimate trade union activity. The Employer members pointed out that the Government had reinstated the trade union leaders in their jobs, not in their trade union functions, as this would have constituted government interference in the internal affairs of trade unions. Finally, the Employer members stated that workers' election of trade union representatives was of course an internal trade union affair which should be resolved without outside interference, noting that in any event the Government representative had indicated progress on this point. The Employer members also noted the reference in the report of the Committee of Experts indicating the Government's acceptance of ILO technical assistance, as well as the Government's intent to organize national tripartite consultations as soon as conditions were met. The Employer members noted that the Government's statement regarding tripartite consultation could be seen as a delaying tactic. However, the Employer members preferred to see this as a positive sign which they always looked for in such cases. In conclusion, the Employer members stated that the Government had shown its willingness to carry out the requested legislative amendments. However, these amendments should be finalized in the near future and this should be reflected in the Committee's conclusions.

The Worker member of France emphasized that unfortunately Djibouti was at the head of the list of countries which persisted in considering that they were not obliged to respect and apply the international Conventions which they had nevertheless ratified. To make matters worse, the Convention in question was one of the ILO's fundamental instruments. Convention No. 87 was essential for the development of independent trade union organizations and, as a consequence, of the sincere social dialogue that was a prerequisite for any hope of social progress. However, since the last session of the Conference, it appeared that there had been no progress in the Government's attitude. Indeed, with regard to Article 2 of the Convention, the Government had been taking evasive action for too long with a view to avoiding the submission of the necessary legislative amendment to Parliament. The same applied to the right of workers to elect their leaders freely and democratically. She emphasized that the Government had interfered in the activities of trade unions by endeavouring to create at any price fake trade unions and by organizing a congress for the establishment of a national confederation, whose leaders it would designate in place of the currently existing confederations. With reference to the report of the Committee of Experts, which emphasized the need to guarantee the right of workers to elect their representatives freely and democratically, she said that the Government, which through the ratification of the Convention was under the responsibility to guarantee this essential right to workers, considered that this matter was an internal affair of the trade union movement which must be resolved without any external interference, even by the Government.

She recalled that, according to the report of the Committee of Experts, the Government had called upon "international trade unions to come and observe the proper functioning of these trade union elections". In fact, a delegation composed of the ILO's MDT for East Africa and an official from AFRO-ICFTU had visited Djibouti from 9 to 13 March 2001. Its report merely confirmed the statements made by trade unionists from Djibouti who had fled into

exile to safeguard their freedom and had become refugees in France. Following the visit, the official of the AFRO-ICFTU had referred to the terrible situation, in which matters were getting worse. None of the recommendations of the Committee on Freedom of Association had been taken into account. The trade union leaders had still not been reinstated in their jobs and lived in an increasingly unbearable situation, subject to daily harassment by the regime. Even the very idea of free and transparent trade union elections seemed to embarrass the authorities, whose interference in trade union affairs was worsening. The authorities disregarded international Conventions to which they were signatories. With reference to the report of the Committee of Experts, she therefore concluded that no progress had been made in terms of the Government's attitude. Not only did the Government engage in subterfuge, but it treated the legitimate concerns of the ILO with flippancy and disdain, if not cynicism. The Convention, which had been ratified in 1976, was still not applied in Djibouti. This was shown by the Committee of Experts in its report and confirmed by the information available to the speaker. The Government therefore needed to be reminded of its obligations.

The Worker member of Senegal recalled that Convention No. 87 was the best guarantee in the defence of the right of workers to organize and their right of freedom of association. He said that, because of the stubborn attitude adopted by the Government, the case of Djibouti had become a recurrent problem and was once again being examined by the Conference Committee. Indeed, he had the feeling that the Committee had not been heeded the previous year. This seemed to illustrate that the authorities were stubbornly maintaining a situation which placed them in violation of the provisions of the Convention by refusing to comply with the commitments that they had undertaken on ratifying the instrument. It was evident that the issue of the reinstatement of the trade union leaders was being addressed in an uneven manner, which should be forcibly condemned. He raised the question of the precise criteria on which the Government based its action in imposing such differentiated treatment. Certain leaders considered by the authorities to be the most hard-line had not been given the possibility of reinstatement because they had been considered to be elements which prevented the Government from turning in small circles. Were the authorities endeavouring in this way to set aside trade union leaders? Not content with his refusal to reinstate them, in a letter on 30 May 2001, the Minister of Employment and National Solidarity had qualified them as "apparatchiks", or individuals who regarded their positions as their own "private property". On the subject of the so-called free and democratic trade union elections which had been held in 1995, the Government representative should be reminded that the votes for the renewal of the executive board of the UDT and the UGDT had been cast by police officers. He took the occasion to recall that the authorities were obliged to recognize the trade union leaders elected at the 1995 congress. Interference by the Government in the internal affairs of trade unions was inadmissible. This interference was shown, for example, by the systematic and generalized harassment of trade union leaders, the prohibition of meeting regularly and freely and the closure of the headquarters of trade union organizations. He said that the trade union leaders elected at the famous congress in 1999 were in the service of the Government. He also questioned the relevance of the Government representative's statement concerning the political activism of certain trade union leaders. He urged the Government to reinstate the workers who had been dismissed, without exception. Finally, he recalled that there were other violations of freedom of association in Djibouti which he did not have the time to describe. Nevertheless, he said that the intention to subjugate the workers had never been so manifest.

Another Worker member of Senegal expressed the belief that the Government did not take the Committee's work seriously. Not only had none of the commitments undertaken last year been implemented, but the Committee still had good grounds for wondering whether the Government had ever made the effort to read the Convention that it had ratified over 20 years ago. The reasons put forward by the Government to justify violations of freedom of association in Djibouti were unacceptable. The facts showed that the authorities clearly interfered in the activities of workers' organizations and had the political intention of muzzling the trade unions. He therefore considered that it was no longer the time for diplomatic phrases and stated that such a situation required strong condemnation by the Committee. Indeed, the case of Djibouti was a sad illustration of the situations that the ILO was endeavouring to avoid, namely the total absence of dialogue. He concluded by stating that the Government, by snubbing the obligations that it had taken on when ratifying the Convention, was mocking the Conference Committee and therefore the ILO.

The Worker member of Côte d'Ivoire stated his concern about the statements of the Government representative of Djibouti regarding trade unionists located overseas and explained that sometimes when governments said that certain trade unionists were exiled abroad, these persons had later been found either imprisoned or murdered. For this reason, he requested the Government representative to provide more details on what had happened to the Djibouti trade unionists who had been dismissed in 1995.

The Government representative challenged some statements made during the discussion of this case and denied the accusations of trade union harassment. As regards the assertion of one Worker member that the Government had made a judgement about the trade union elections, he pointed out that it was not the Government, but indeed the trade union organizations, which had accused the Government of interference in their internal affairs. He emphasized once again that the Government needed to have a representative counterpart. For that purpose it was necessary to organize free and independent elections, under the control of regional and international trade union organizations if necessary, in order not to be accused of interference. He noted in this respect that, despite the invitation extended to these organizations last year, none of them had deemed it appropriate to check the situation on the spot. As regards the dismissals in 1995, he recalled that they had intervened following the strike launched to protest against an Act adopted by the National Assembly under IMF pressure. The Government considered that this strike was unlawful, while the workers felt it was legitimate, given the consequences of the Act on their working conditions. He reiterated that three out of 15 reinstatement requests had been accepted and that the other ones would be considered on a case-by-case basis. Regarding the legal provisions which violated Convention No. 87, he undertook that these would be amended when drafting the new Labour Code. Emphasizing that Djibouti was a young country which needed to train its workers, he reiterated his request for ILO assistance in trade union training. He concluded by reassuring the Worker member of Côte d'Ivoire about the physical well-being of dismissed workers living abroad since 1995; according to the information available to the Government, it appeared that these persons were alive and well in France, as implicitly confirmed by the French Worker member.

The Worker members considered that the situation in Djibouti was clearly critical for trade union activists. It was equally clear that government interference was at work. This interference should cease and the requested changes should be made to the national legislation. However, the Worker members recommended that the Conference Committee provide the Government with a timetable since, to date, no progress had been made in this case whatsoever. The Worker members noted that the Government had made promises and then returned to make more promises. As the Worker member of Senegal had stated, it was apparent that the Government did not take the Committee seriously. Therefore, the Worker members requested that the Committee ask the Government to report at the next sitting on any progress achieved. They stressed that, at a minimum, the Government must cease interfering with trade union activities, reinstate all trade union leaders and members dismissed and report to the Committee in detail on all changes made in law and practice.

The Employer members noted that in his concluding statements, the Government representative had announced his Government's willingness to amend various legislative provisions in violation of Convention No. 87. The Government had, however, already given these assurances to the Committee of Experts and this was reflected in the report. The Employer members reiterated that the Government needed to amend its legislation as it was in clear violation of the Convention, particularly with regard to the Government's interference in internal trade union affairs. They also urged the Government to provide the Committee of Experts with a report as soon as possible so that the Committee of Experts could evaluate the measures the Government had taken.

The Committee noted the information provided orally by the Government representative and the subsequent discussion. The Committee shared the deep concern of the Committee of Experts and the Committee on Freedom of Association at the grave violations of the Convention, particularly with regard to interference by the Government in the internal affairs of trade unions, and regretted to note that no significant progress had been found in the application of the Convention.

While noting the intention expressed by the Government to reinstate the trade unionists who had been dismissed, the Committee once again urged the Government to reinstate without delay in their jobs all trade union leaders and members of the UGTD/UDT who had been dismissed over six years ago for their trade union activities. It firmly requested the Government to allow the democratic election of trade union leaders at the level of federations and confederations.

The Committee noted the Government's announcement of an amendment to the relevant provisions when the new Labour Code

was adopted. It also urged the Government to remove the serious discrepancies between the Convention and the legislation with regard to the establishment of trade unions without previous authorization, the freedom to elect trade union leaders and the rights of organization of public officials. The Committee requested the Government to refrain from interfering in the internal affairs of trade unions. It requested the Government to take the necessary measures on an urgent basis to ensure the full application of the Convention in both law and practice. Finally, the Committee requested the Government to supply full information in its next report so that developments in the situation could be examined exhaustively.

Ethiopia (ratification: 1963). **A Government representative** of Ethiopia enumerated his Government's views on the status of issues pending before this Committee relating to Ethiopia. With regard to the trial and conviction of Dr. Taye Woldesmiate, he was charged and convicted under sections 32(1) and 252(1)(a) of the Penal Code of Ethiopia for conspiracy to commit a criminal act with the view to overthrowing the Ethiopian Government by force. This Committee and the Committee on Freedom of Association were informed by his Government regarding the developments in the case starting from its inception. The decision of the Federal High Court on this case was also forwarded to the Office. Moreover, in its previous submissions, his Government had clearly established that the previous membership of Dr. Taye in the Executive Committee of the Ethiopian Teachers' Association and activities he undertook in that capacity had no bearing on the case.

As to the concerns that had been expressed by the Committee of Experts with respect to the fairness of the judicial procedures, he wished to assure this Committee that Dr. Taye and the other defendants in the case were represented by lawyers of their own choice and all guarantees of due process of law were observed throughout the trial. The latest development with regard to this case was that the appeal lodged by Dr. Taye against his conviction was received by the Federal Supreme Court and his case was currently being reviewed by the highest court of appeal in the country. Moreover, he was serving his prison term in satisfactory and humane conditions that were accorded to any convicted person in the country with full respect for his person and his well-being. On more than one occasion he had been visited by persons from outside the country to whom he expressed his views freely.

With regard to the outstanding issues before the Committee of Experts, such as the question of defining essential services in a stricter sense for the exercise of the right to strike, ensuring trade union diversity at the enterprise level, ending administrative dissolution of trade unions, and the rights of civil service personnel to form trade unions, due attention had been given to incorporate these issues into law reform proposals of the country. Some of these law reforms were already before the Council of Ministers.

As indicated in previous government reports, two consecutive tripartite workshops had been conducted, which thoroughly discussed independent position papers presented by the social partners in order to arrive at agreed recommendations with a view to amending the labour proclamation. However, at the workshop that was held in November 2000, the participants were unable to reach consensus on all draft provisions presented to them. Agreement was reached only on around ten of the draft provisions. Hence, the draft amendments were placed before the Tripartite Labour Advisory Board with the different positions of the participants. Presently, the Board was going through the proposals in detail. After the Board completed its work, the final draft would be submitted to the Government for consideration and approval. In this regard, the speaker thanked the ILO Office in Addis Ababa for providing financial support for the holding of the tripartite workshops.

In connection with the issue of civil service reform, the draft law, including the proposal for the rights of civil servants to form unions, was already prepared and brought to the attention of different stakeholders with a view to incorporating their suggestions and recommendations for further enrichment of the instrument. After passing through this process the draft law would be submitted to the relevant body for consideration and approval. In this regard, his Government had committed itself the previous year to finalize the law reform process in the shortest time possible. However, despite good faith efforts, it could not complete the task due to the need for completing the tripartite discussions of the law reform process and the heavy legislative agenda of Parliament. The speaker wished to assure this Committee that his Government would intensify its efforts to finalize the law reform as quickly as possible. Moreover, his Government would endeavour to ascertain the consistency of the draft laws with the relevant ILO standards. In this connection, his Government would solicit comments on the draft text from the ILO.

In conclusion, the Ethiopian Government was firmly supporting the vital institutions of democracy and market economy. In this endeavour it was attempting to instil the principle of tripartite consultations and social dialogue in order to enable people who were directly affected by decisions taken by the public authorities to have a say in the shaping of these decisions. Bearing this in mind, the long process being undertaken in the country to amend the existing legislation or promulgate a new law was, in the final analysis, about respecting this underlying principle. Hence, the Government member sought the understanding of this Committee that his country be allowed to develop and enrich its laws in accordance with the practice and the pace of its legislative process as it continued with its national endeavour to consolidate peace and democracy following years of dictatorship.

The Worker members indicated that this case was on the list of individual cases because it met at least six of the criteria set out by the Workers' group. These criteria related to the content of the case, the replies given by the Government in earlier debates, the discussion and conclusions of the previous year, the observations by workers/employers, the report of the Committee on Freedom of Association as well as recent developments. They recalled that Convention No. 87 was one of the key ILO Conventions. Moreover, this case had been discussed by this Committee for the ten years that the present regime had been in power. Last year this Committee had heard repeated promises by the Government to bring the first three legislative issues mentioned in the report of the Committee of Experts in line with the Convention. The Government had also promised that a comparative study of law and practice in neighbouring countries which would form the basis for the draft civil service law would be completed by the end of last year. In addition to these legal shortcomings, there was an appalling practice in respect of freedom of association. There was, for example, the case of Dr. Taye, mentioned in the report of the Committee of Experts. Other cases concerning more recent developments included interference in the internal affairs of trade unions, the murder, arrest, imprisonment without trial of unionists, as well as mistreatment in jail allegedly leading to the death of unionists. The Worker members noted that one of the arguments raised by the Government was that tripartite consultations were needed in order to adopt the legislation in question. In their view, whether or not the social partners agreed on the shortcomings in current legislation was completely irrelevant; what was required was that the legislation be brought in line with the requirements of the Convention. In addition to the continued serious concerns expressed by the Committee of Experts, there was the deep concern expressed by the Committee on Freedom of Association whose appeals had been completely disregarded by the Government. There was no progress in respect of moves to amend legislation concerning the issues raised by the Committee of Experts in respect of Articles 2, 3, 4 and 10 of the Convention. These issues included the right of workers without distinction whatsoever to establish organizations of their own choosing, the right of unions to organize their own administration, the administrative dissolution of trade unions and the right of workers' organizations to organize their programme of action without interference by the public authorities. The Worker members considered that if draft legislation had been sent to Parliament, then it should have also been sent to the ILO. There was no new information provided by the Government in this regard. The Government had, however, promised that it would provide a follow-up report on measures taken by the end of 2000 as required by the Committee of Experts as well as this Committee. The Government had also promised detailed answers to all of the comments raised by the Committee of Experts. With regard to the application in practice, the Worker members pointed out that an ICFTU mission visited Ethiopia in November 2000. According to the trade union leaders it met with, this mission noted that the interference by the Government in internal trade union affairs was ongoing. The mission concluded that, since labour legislation had not been amended, the environment was not conducive for the functioning of an independent and democratic trade union movement. The same mission concluded that the Government would not fulfil its commitments made during the International Labour Conference the previous year. The mission also talked to former leaders of the Confederation of Ethiopian Trade Unions (CETU) affiliates who had been dismissed and who were facing trials. In early 2001, the secretary-general of the Awassa branch office of CETU, who had been jailed without any charges or trial, died in jail allegedly due to harsh treatment. Two Ethiopian Teachers' Association (ETA) leaders, Mr. Kebede Desta and Mr. Shimelis, faced the same fate in 1999. During the end of 2000, the Government arbitrarily detained and jailed the President of the Akaki Textile Factory Union, Mr. Legesse Bejeba, who was allegedly participating in "Red Terror". Mr. Bejeba was a well-known trade union leader for some 20 years and he was one of the founding fathers of the Ethiopian trade union movement. In early 2001, the authorities interfered in the election of the enterprise union of the National Bank of

Ethiopia. Registration was refused and elections had to be held three times. Last year, this Committee had indicated that if no progress had been made in this case, then a special paragraph would be unavoidable. Since no progress had been made at all, the Worker members wished for the main conclusions and recommendations contained in the reports of the Committee of Experts and the Committee on Freedom of Association to be reflected in a special paragraph. They also wished for an urgent appeal to the Government to be reflected in such a paragraph in order to put an end to the violations in law and in practice. The special paragraph should also contain an offer of technical assistance from the Office to solve the legislative problems. Finally, the ILO Office in Addis Ababa should keep a close watch on the situation of Dr. Taye, Mr. Bejeba and other trade union leaders.

The Employer members recalled that this case had been the subject of comments by the Committee of Experts for the past 20 years, and that the Conference Committee had discussed the case for some time. They noted that the Government representative of Ethiopia had already indicated in 1994 and again in 1999 that they would prepare new legislation to remedy the situation. With regard to the 15-year prison sentence imposed on the President of the Ethiopian Teachers' Association, the Employer members stated that the authorities should respect the rights of detained or accused persons, including guarantees of due process, the right to be informed of charges, the right to have adequate time for the preparation of a defence and to communicate freely with counsel of their own choosing. The Government should also provide to the Committee the text of the judgement regarding this case. With regard to the call of the Committee of Experts to amend the minimum number of workers needed in an enterprise in order to establish a trade union, the Government should provide draft legislation which it had announced regarding this matter. The Government should also submit draft legislation which it had announced to redress the fact that teachers were restricted from unionizing under Labour Proclamation No. 42-93. Similarly, the Government's announcement of draft legislation which would vest the power to cancel registration of trade unions solely with Ethiopian courts instead of the Ministry of Labour and Social Affairs was only a vague indication, and the lack of any solid evidence of such legislation could be viewed as a delay tactic.

Concerning the right to strike and the definition of essential services, the Employer members stressed that their view was completely different from the position of the Committee of Experts on this issue. In that respect, they wished to clarify their general position on the right to strike which, according to the observations of the Committee of Experts, was implied in Convention No. 87. Although the Employer members did not deny the right to strike as such, they maintained that the right to strike was not provided for by the Convention, as the text of the instrument did not contain any reference to "strike" or "right to strike". The preparatory work to the Convention excluded such references as well. Report VII, 31st Session of the ILC, 1948, Conclusions, page 87, read as follows: "Several Governments, while giving their approval to the formula, have nevertheless emphasized, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association." A similar conclusion had been reached in the discussions at the Conference leading up to Convention No. 98. At that time, two proposals to address the right to strike in the Convention were rejected. Convention No. 87 was not intended to be a code of regulations on the right to organize, but rather a concise statement of fundamental principles. It was worth noting in this regard that the term "strike" was only mentioned in Paragraph 4 of the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), which also mentioned "lockouts". This Recommendation, however, did not regulate the conditions of a strike or lockout, but established rules on the legal consequences which could arise from them. Finally, the International Covenant on Economic, Social and Cultural Rights, in article 8, paragraph 1(d), provided for a right to strike in the framework of national law. It was therefore the State's competence to determine the framework within which the right to strike could be exercised.

With regard to the Committee of Experts' call for a stricter definition of essential services, the Employer members believed that the definition of essential services was a device to limit as much as possible the number of workers who did not enjoy the right to strike. The definition of essential services should not be restricted to only those whose interruption would endanger human life, but should include other important services, including teaching. The Employer members pointed out that both issues were important to them and the disagreement of the Employer members with other members of the Committee on this issue, especially with Worker members, should not be covered up in the conclusions through elegant formulations.

As concerned the case of Ethiopia, they pointed out that the Government had provided no new information in this case, and that they therefore supported the Worker members' proposal to present the conclusions of the case in a special paragraph.

The Worker member of Zimbabwe indicated that as far back as 1992 this Committee was advised that the Government of Ethiopia was preparing a draft labour law that would be in conformity with Convention No. 87. The Government was told at that time that "the legislation could not impose a single trade union system. Trade union pluralism must remain". Since then, this Committee had examined the situation facing Ethiopian trade unionists on a number of occasions. This Committee had seen the cancellation of the registration of the CETU when it opposed government policy; the closing of CETU's offices and the freezing of its bank account; the recognition of new leadership by the Government when the elected leadership sought asylum in fear of their lives; continued harassment and intimidation of the Ethiopian Teachers' Association (ETA) leadership; the seizure of ETA offices; the freezing of ETA bank accounts; the arrest, detention, harassment, intimidation and killing of elected union leaders; and the recognition by the Government of new leaders supportive of government policies. The pattern was clear. In 2001, the Committee was still dealing with a situation where the labour laws did not permit freedom of association. One trade union per enterprise was still the rule. The Government had made it clear that it did not intend to change its legislation in this regard. The Government got rid of elected leaders of unions when they contested government policy; then it actively supported groups favouring the Government to reorganize and recognize them. Then it denied others the right to organize if they wished to organize other unions. It was not an original strategy to control unions but it was clear that this was exactly what it was. The Ethiopian Government continued to promise change but failed to deliver. The exclusion of certain groups like teachers from the scope of the legislation allowing them to unionize was not acceptable. This case presented a very serious violation of many aspects of trade union rights guaranteed under Convention No. 87. Clear violations of fundamental rights were continuing; justice was obstructed by the refusal of the Government to order an independent investigation into the killing of Assefa Maru by the police; the rule of law appeared to be set aside when it was convenient to the Government; transfers, dismissals, political interference all continued. Moreover, students were subjected to brutality and the Ethiopian Human Rights Commission President had been charged with similar charges that had kept Dr. Taye Woldesmiate in prison. The Government of Ethiopia had had enough time to bring its legislation into line with Convention No. 87. It certainly should stop the persecution of trade unionists that disagreed with their policies. This Committee should adopt a special paragraph this year.

The Worker member of Austria expressed his support for the trade union activists from Ethiopia who were in exile, including those who had sought refuge in Austria. Their efforts had raised awareness about the situation in Ethiopia, including not only the logistical obstacles to freedom of association but also the unacceptable practice of restricting and repressing trade unions. Aside from the serious issue of the persecution of individual trade union leaders, he wished to address two other salient problems in this case. First, it was unacceptable that Proclamation No. 42-93 excluded all public servants from its scope of application, which de facto exempted significant groups of workers, including teachers and medical personnel, from legal protection. He urged the Ethiopian Government to take the necessary steps to include all workers under the scope of the law and thereby to provide for freedom of association. Secondly, it was also unacceptable that numerous industrial sectors had been denied the right to strike. He recalled that the Committee of Experts had noted that practically the entire transportation industry and parts of the public service sector, including postal workers, telecommunications workers and bank workers, had been denied the right to strike. These restrictions affected no less than 60 per cent of all workers. He called on the Government of Ethiopia to take steps to provide freedom of association to all workers in conformity with Convention No. 87 and to end the repression of Ethiopia's civil society.

The Worker member of Swaziland pointed out that since 1994 the Ethiopian Teachers' Association had managed to survive the constant pressures to which it had been subjected to try to silence it and make it impossible for it to represent its members. There was active support by the Government for the establishment of another Ethiopian Teachers' Association loyal to the Government. More-

over, the President of ETA had spent five years in prison and was convicted in 1999 to 15 years in prison on charges that he was subversive. An appeal was lodged after his conviction in 1999. Since then, the Supreme Court adjourned the case 12 times before making a decision on the receivability of the appeal. It was only recently that the Court had accepted that the appeal could be heard. This would take even more time. Amnesty International had declared Dr. Taye Woldesmiate to be a prisoner of conscience after reviewing the transcript of the trial. In addition, no inquiry had been ordered into the shooting by the police of the unarmed Assefa Maru. Other ETA leaders had been forced into exile. Furthermore, court action by the new ETA to strip assets from the original ETA had been obvious and they were now trying to obtain the former ETA office. Moreover, the dismissal of the ETA activists continued. Finally, members of the international organization to which ETA was affiliated were denied visas in 2000. In March of this year, a mission was allowed to enter Ethiopia. Dr. Taye, contrary to the information provided by the Government, was held in very difficult conditions in prison. He was confined in a small room with seven other prisoners. Outside access was to a small area ten metres by four metres which was walled. Dr. Taye was not allowed to work in the prison school or to use the library. He was ordered not to speak to any prisoners other than those in the same room. The mission had also met teachers who had asked that their union dues not be paid to the new ETA and, despite repeated requests to authorities that this should not be done, it continued. Some teachers believed that their transfers were due to such requests being made. Government officials had indicated that ETA should be free to organize provided they did so on the basis of a structure determined by the Government. ETA insisted on the right for its members to determine the union structure they wanted. The speaker insisted that there be an end to this treatment of the Ethiopian Teachers' Association. New labour legislation should be adopted allowing freedom of association and the scope of the legislation should include teachers and other sectors currently excluded. Government interference in trade union affairs should be ended. It was not acceptable that the Government had given its support to unions that had tried to stop other unions from existing. Freedom of association should allow registration of more than one union in a sector enterprise so that union members could freely choose their representatives. No real change had taken place since this Committee had begun to examine the violations of Convention No. 87. The Government was using unions for its own purposes.

The Worker member of Senegal emphasized the worrying number of attacks on trade union freedom and the age of those cases. Indeed, those cases were symptomatic. The case of Ethiopia illustrated all aspects of the violation of trade union freedom: arrests, imprisonment, impossibility for workers to belong to the trade union of their choice, dissolution by the Government of trade union organizations, etc. It was a very sad picture, even if the observations of the Committee of Experts were more circumspect. Indeed, how could a trade union official be accused of conspiring against the State? The use of expressions such as "acts or conduct such as to compromise public safety" or "public disturbances", were mendacious pretexts used by the State. It should be underlined in that respect that the judiciary, whose job was to state the law, was subject to considerable political pressure and was still seeking to establish its independence. The sentencing of Dr. Taye Woldesmiate to 15 years' imprisonment was such an example. The case put forward by the Government was not convincing and contradicted its actions in practice. By way of example, he pointed to the trade union monopoly established under section 114 of the Labour Proclamation No. 42-93 or the cancellation of the registration of the former Confederation of Ethiopian Trade Unions. As soon as a trade union fulfilled its mandate, its legitimacy and means of action were challenged. The Labour Proclamation replaced the law and, indeed, even the Constitution in many areas. They were thus trapped at the heart of a process, the goal of which was to tame workers and their representative organizations. The situation was deadlocked, whether in relation to teachers' organizations, civil servants or the numerous restrictions on the right to strike. The situation should again be denounced, and that was why the case should be given a special paragraph.

The Worker member of New Zealand cited information received from Education International (EI) which it had gathered on a mission to Ethiopia in March of this year. He recalled that EI representatives had been refused visas in July and again in December 2000, and an EI representative who was to take part in the EI-ICFTU mission in November 2000 was denied a visa as well. He appreciated, however, the fact that EI was able to visit Ethiopia this year and meet with government representatives, the Confederation of Ethiopian Trade Unions and Ethiopian Teachers' Association, and to visit with Dr. Taye Woldesmiate in prison. Dr. Taye's condition in prison was very severe and he required urgent dental care. He recalled that Dr. Taye had been declared a prisoner of conscience by Amnesty International last year. Furthermore, government officials had indicated that they doubted that the ETA had any members, despite the fact that the ETA held annual meetings and workshops. The ETA had asserted that the Government, through the Minister of Education, had instructed regional authorities not to deal with the ETA or allow them access to schools. Teachers had also alleged that they wished to pay dues to the ETA but that these dues were then sent to other government-supported associations. It was a measure of great urgency that the ETA be recognized, and the fact that it was not, was a clear violation of Convention No. 87. He called for the end of the harassment and intimidation of ETA members and activists, the reinstatement and compensation of teachers who had been arbitrarily transferred, the release of Dr. Taye and an independent inquiry into the death of Assefa Maru as called for by the Committee on Freedom of Association.

The Worker member of Ethiopia referred to the comment of the Committee of Experts regarding Article 2 of Convention No. 87 concerning trade union monopoly at the enterprise level. Although he did not object to the principle in the Convention regarding the need for union diversity, he stated that his organization, the Confederation of Ethiopian Trade Unions, was of the view that more than one union in an enterprise would undermine the unity of workers. He recalled that in discussions with the Labour Advisory Board, both the Government and employers had supported union diversity, but workers' representatives had strongly objected. He therefore did not support the observation of the Committee of Experts regarding this point. However, he agreed with the Committee of Experts that the minimum number set out in law of workers needed in an enterprise for the establishment of a trade union should be reduced from 20 to ten. With regard to the observations on Articles 2 and 10 of the Convention, he recalled that Proclamation No. 42-93 did not cover teachers and other civil servants, while the Federal Constitution of 1994 guaranteed workers the right to form trade unions and bargain collectively. Yet so far, there was no clear law providing these rights for teachers and civil servants. He urged the ILO to continue its support on this matter and called for greater participation by teachers in the preparation of draft legislation concerning teachers and civil servants. Concerning the administrative dissolution of trade unions (Articles 3 and 10 of the Convention), he supported the observation of the Committee of Experts which indicated that the power of the Ministry of Labour and Social Affairs under Proclamation No. 42-93 to cancel trade unions was in violation of the Convention. He also agreed with the Committee of Experts' observation which pointed out that Proclamation No. 42-93 excluded many important sectors from the right to strike through a definition of essential services which was too broad and ambiguous. This broad restriction should be lifted, although there should be some flexibility with regard to essential services whose interruption might endanger the lives of persons. Labour disputes could also be referred to the Ministry of Labour and Social Affairs for voluntary conciliation. In conclusion, he recalled that at last year's session of the Committee, the Government member of Ethiopia had announced that Proclamation No. 42-93 would be amended within six months. As this still had not been done, he urged the Government to amend the labour law as soon as possible.

The Government member of the United States recalled that the Committee's discussion in 2000 had laid out very specific terms, based on the observations of the Committee of Experts, regarding what the Ethiopian Government should do to bring law and practice into conformity with Convention No. 87. The Committee had urged the Government to take these steps as a matter of urgency and had reminded the Government that the ILO was at its disposal to provide necessary technical assistance. The Committee had noted the Government's statement that it was committed to bringing law and practice into line with the Convention. It was unfortunate to note that this year's Committee of Experts' observation regarding this case did not indicate any progress or apparent change from last year. Indeed, very little news had been added by the intervention of the representative of the Government of Ethiopia today. She urged the Government to move forward without further delay to implement the recommendations of the ILO supervisory bodies, with the technical assistance of the Office, if necessary, in order to bring law and practice into full conformity with the freely ratified Convention.

The Government representative of Ethiopia indicated that the allegations raised in this Committee were too many to respond to in detail. Any suggestion that this case could be solved by putting Ethiopia in a special paragraph was a mistake. Moreover, nowhere in the report of the Committee of Experts was it indicated that the Government had refused to comply with Convention No. 87. The speaker acknowledged the need to amend the legislation; however,

the new Constitution had been adopted only in 1994 and any changes in the civil service law could not be carried out quickly. Moreover, although the country had been freed from a military dictatorship it had still suffered the consequences of an international conflict, civil war and natural disasters. The Ministry of Labour could do so much by submitting the draft civil service law to Parliament, but it was up to Parliament to decide on its priorities and there was a large body of laws to be adopted. He stressed that it was very erroneous to state that this case had been pending for 20 years since the new Government had come into power only ten years ago. Moreover, the Labour Proclamation of 1993 guaranteed the basic rights enshrined in Convention No. 87. However, in order to amend the legislation there was a need to have the consensus of stakeholders. He was appalled to hear the statement of the Worker member of Ethiopia regarding the lack of consultation since during the last two meetings of the Labour Advisory Board, the workers' representatives were absent. He pointed out that his Government's representative was unduly optimistic in specifying a timeframe of six months for the completion of the legislative process during last year's meeting of this Committee. In effect, there was a process to be followed and the ultimate decision lay with Parliament. With regard to the alleged violations of human rights, the Worker members had mentioned new names of persons allegedly detained that the Government delegation had not even heard of. Also, he had not read the report of the ICFTU mission to Ethiopia last year. In any case the Government representative asserted that the individuals allegedly detained could have challenged their detainment in courts of the country. Regarding the allegation that the Supreme Court had adjourned Dr. Taye's appeal 12 times, the Government representative indicated that this was because Dr. Taye had appealed only after the expiry of the 60 days' deadline to appeal. Finally, the Supreme Court accepted the appeal and it was being actively heard. With regard to the alleged violations of freedom of association of ETA and its leaders and members, the Government had just received the report of Education International (EI) after its recent mission to Ethiopia. Accordingly, the Government would send a reply to the Committee on Freedom of Association. He reiterated that his Government would continue to cooperate with the Committee on the Application of Standards. Therefore, the proposal to include Ethiopia in a special paragraph was unwarranted and would not be conducive to the spirit of cooperation that should exist between the Government and the Committee.

The Worker members pointed out that in their statement as well as that of the Employer members, there were historical references made with a view to giving a certain context to the case under discussion. However, they emphasized that this case had been pending for ten years since this Government had taken over from the previous dictatorship. They repeated the names of the trade union leaders who were detained since the Government member indicated he had never heard of them before. They pointed out that goodwill was excellent but needed to be demonstrated which had not been the case for this Government for the past ten years. Although this Government had indicated that it wanted to correct the wrongs of the previous Government, it had not done so.

The Employer members stated that the intervention by the Government member of Ethiopia had, in their view, made no difference in this case. They recalled that under international law, member States were bound by ILO Conventions, not individual governments. They noted that in 1994, the present Ethiopian Government had already promised to make the necessary changes to its laws in order to comply with the Convention. Once again, in the year 2001, the Ethiopian Government was promising all sorts of measures yet cautioning that progress should not be made too quickly. In fact, the process of change in this case was all too slow. The inclusion of this case in a special paragraph of the Committee's report was justified.

The Committee noted the statement made by the Government representative and the discussions which took place thereafter. The Committee shared the serious concern of the Committee of Experts with regard to the trade union situation. The Committee was deeply concerned by the fact that no progress had been made in respect of the serious complaint pending before the Committee on Freedom of Association concerning government interference, in particular, with the functioning of the Ethiopian Teachers' Association and that its President had now been convicted, after three years of preventive detention, on charges of conspiracy against the State and sentenced to 15 years' imprisonment. It recalled that the Committee of Experts had requested the Government to indicate that the precise provisions permitting teachers' associations to promote the occupational interests of their members and to provide information on the progress made in adopting legislation to ensure the right to organize for employees of the state administration. It also recalled the concern raised by the Committee of Experts about the cancellation of the registration of a trade union confederation, as well as broad restrictions placed on the right of workers' organizations to organize their activities in full freedom. The Committee regretted to note that apparently no progress had been made in this respect since the last time this case was before it. The Committee strongly urged the Government to take all the necessary steps as a matter of urgency to ensure that the right of association was recognized for teachers to defend their occupational interests, that workers' organizations were able to elect their representatives and organize their administration and activities free from interference by the public authorities and that workers' organizations were not subject to administrative dissolution, in accordance with the requirements of the Convention. It urged the Government to respect fully the civil liberties essential for the implementation of the Convention. The Committee expressed the hope that the ILO Office in Addis Ababa could visit the detained trade unionists. While noting the statement of the Government representative concerning legislative changes under way, the Committee was obliged to note with concern that no progress had been made. The Committee made an urgent appeal to the Government to put an end to all violations to the Convention both in law and in practice. The Committee also requested the Government to provide any relevant draft legislation, as well as the court judgement concerning the appeal made by the President of the Ethiopian Teachers' Association. The Committee urged the Government to supply detailed and precise information on all the points raised in its report due this year on the concrete measures taken to ensure full conformity with the Convention, both in law and in practice. The Committee expressed the firm hope that it would be able to note concrete progress in this case next year. The Committee decided that its conclusions would be placed in a special paragraph of its report.

Guatemala (ratification: 1952). The Government supplied the following information:

On 25 April and 14 May 2001 the Congress of the Republic approved two legislative Decrees which implement the requests of the Committee of Experts concerning the application of Convention No. 87.

The Office prepared the following summary concerning these Decrees:

- ending of the supervision of trade union activities by the executive (former section 211 of the Code);
- ending the requirement that members of the trade union executive committee have no criminal record and are able to read and write (former section 220 and 223);
- ending the requirement of obtaining a two-thirds majority of the members of a trade union to be able to call a strike (former section 222); now the requirement is for more than half of the quorum of the assembly;
- ending the requirement of obtaining a two-thirds majority of the worker of the enterprise for a strike to be legal (former section 241); the requirement is now to obtain more than half of the workers of the enterprise;
- repealing the prohibition on strikes or suspension of work by agricultural workers during harvests (former section 243a) and by workers of enterprises or services whose interruption would, in the opinion of the Government, seriously affect the national economy (section 243). The President of the Republic can now only suspend a strike when it seriously affects essential public services and activities (new final paragraph of section 243);
- repealing the provision requiring detention and judgement of those who publicly incite an illegal strike or work stoppage (former section 257);
- ending the obligation for the courts to call on the national police to ensure continuity of work in the event of an unlawful strike (former section 255); henceforth, judges "could" order and carry out preventive measures in order to guarantee the continuity of activities and the right to work of persons who so wish;
- facilitating and strengthening the procedures and penalties for violation of labour standards (intervention of the labour inspection in the process; setting of fines on a sliding scale based on minimum wage scales and the seriousness of the violation).

In addition, before the Conference Committee, **a Government representative**, the Minister of Labour and Social Security, stated that his Government was present before the Committee today because of its conviction that it was necessary to respect the ILO supervisory bodies and because of the Government's desire to improve its labour laws and their application. In this regard, he noted that the Guatemalan Labour Code had been in force since 1947. As a result of the overthrow of the Second Revolutionary Government

in 1954, the Code's enforcement had been interrupted and the rights of workers had begun to be violated. Indeed, enforcement continued to be uncertain. In this context, the Government agreed with the ILO's position and stood ready to correct all incompatibilities with the international standards which Guatemala had voluntarily accepted, including Convention No. 87, ratified in 1952.

The speaker was happy to inform the Committee that his Government had fulfilled most of the commitments that it had undertaken during the 88th Session of the International Labour Conference in June 2000. He added that he would provide a detailed explanation to the Committee in this regard, but that he considered that it would have been desirable to wait for the Committee of Experts to analyse the legal amendments recently adopted as well as to await the report of the direct contacts mission that had visited the country in April 2001.

He noted that two amendments to the Labour Code had been adopted in order to bring the Code into conformity with Convention No. 87. The first was approved by the Legislative Congress on 25 April and the second was approved on 14 May. Both amendments would enter into force on 1 July 2001. These amendments took the ILO's observations into account, repealing and amending certain sections of the law. He assured the Committee that Guatemala's commitments had been fulfilled, with the exception of the issue of the right to strike for workers in the public sector, a pending question which would subsequently be considered in a comprehensive reform of the Civil Service Law, which established the labour rights of workers of the executive branch.

He also wished to provide clarifications with regard to the tripartite consultations conducted in the process of amending the Labour Code. He wished to inform the Committee that these consultations had been satisfactorily completed in that the Congress had permitted employers and workers to make a joint proposal on the amendments which they wished to introduce in the law and that the proposal agreed to by the workers and employers had been approved by Congress in its entirety. The Congress thereby demonstrated its respect for democracy and tripartism. Nevertheless, the agreement reached by workers and employers was not sufficient, as these groups had achieved agreement on only six of the 13 points raised by the ILO. As a result, the amendment was not satisfactory to either the Government or the ILO, as the ILO Office itself had indicated. It was therefore necessary to carry out a second amendment without the participation of workers and employers, as these two groups had publicly stated that they would not be able to reach a consensus on the subject matter. The legislative branch therefore took over responsibility for this issue and it adopted the second amendment in accordance with the recommendations of the ILO.

The speaker pointed out that the second amendment also included other changes in addition to those recommended by the ILO and to those deriving from the peace agreements. These additional changes provided better protection of workers' rights and improved the ability of the Ministry of Labour in preventing the violation of workers' rights and in ensuring that these rights could not be violated with impunity. In this manner, the Congress was carrying out its mandate to legislate for the benefit of the people.

In respect of this case, the speaker noted that his Government considered it necessary to carry out a broader revision of the labour laws, to regulate and update the recognized rights of workers and to bring the legislation into conformity with the ILO Conventions and the peace agreements. To that end, a draft code of labour procedure had been prepared, which sought to ensure the rapid processing of labour cases and the effective enforcement of sentences imposed in such cases, since otherwise workers' rights would continue to be violated with impunity. Copies of this new draft had been sent to workers' and employers' organizations, the Supreme Court and specialized bodies such as the National Lawyers' Association, the United Nations Mission in Guatemala (MINUGUA) and the ILO Office, with the aim of receiving their comments, corrections and suggestions.

In addition, on 8 June 2001, a meeting had been held with trade unions and organizations representing farm workers, disabled workers and women workers with a view to reviewing the substance of the Labour Code to incorporate the opinions of these groups. Employers' organizations had also been invited to attend.

With regard to the Committee of Experts' comments on the exercise of freedom of association rights and the murders of various trade union leaders, the speaker informed the Committee that, when the direct contacts mission arrived in Guatemala in April 2001, his Government had provided the team with the necessary facilities and cooperation to enable it to carry out its tasks without hindrance. This demonstrated the Government's willingness to cooperate with the ILO and its supervisory bodies because, even prior to receiving the official notice from the ILO Office regarding the sending of the direct contacts mission, the Government had taken the initiative of inviting the mission and asking it to address other issues in addition to the specific matters with which it had been charged. The Government took this action so that it could take advantage of the experience of the team members and their presence in Guatemala, and ascertain the opinion of the ILO regarding the labour law amendments which were then pending in Congress.

The direct contacts mission would submit its report to the Committee on Freedom of Association in November. However, he wished to inform the Committee that a special inspectorate under the Public Ministry had begun operations on Friday, 8 June, and that this special inspectorate would investigate crimes committed against trade union officials or members as a result of their trade union activities. This special inspectorate had been established in response to the recommendation made by member of the direct contacts mission. In other words, prior to receiving the mission's report, his Government was already taking measures to punish crimes committed against trade union members.

In conclusion, he was pleased to provide the Committee with this information so that it could highlight and note as a positive element that Guatemala had fulfilled its commitment to amend the Labour Code and that the direct contacts mission had been carried out with the Government's full cooperation, which indicated Guatemala's respect for the ILO, its procedures, and the work of its supervisory bodies. He also informed the Committee that, for the first time in the history of Guatemala, an individual accused of having murdered a trade union official had been sentenced to 25 years in prison. He also informed the Committee that, with regard to the case of the SITRABI trade union and the Bandegua company, criminal actions were brought against those persons implicated in the crimes committed against SITRABI trade union officials, and 24 of the 26 defendants were convicted and sentenced to two and a half years in prison. This case had been appealed by the Public Ministry on the grounds that the sentence imposed was insufficient, a fact which demonstrated the Government's determination to ensure that such crimes did not go unpunished. Other cases were being investigated and satisfactory results were expected which would permit justice to be served. The Government's message was clear. It would not permit violent acts against trade union members to be committed with impunity.

The speaker thanked the Committee, noting that its persistent efforts in the case of Guatemala had contributed to overcoming the problems noted by the Committee of Experts and stating that Guatemala had now brought its legislation into conformity with Convention No. 87, an instrument ratified almost 50 years ago. He respectfully requested that the Committee's conclusions take note with satisfaction of the progress achieved since, despite the fact that the Committee of Experts had not yet analysed the amendments adopted, the written communication submitted demonstrated that a number of provisions previously criticized had been completely repealed.

The Worker members recalled that the Conference Committee had been examining the case of Guatemala since the 1980s and that the ILO was constantly following developments relating to freedom of association in the country. They also recalled that a direct contacts mission had visited Guatemala since the last session of the Conference.

In its observation this year, the Committee of Experts once again recalled the various problems which arose concerning the violation of trade union rights, such as the multiple restrictions on the right to strike, the limitations on the right to strike and the sanctions imposed in this respect, as well as the surveillance of trade union activities. In the written communication submitted and in his statement, the Government representative had provided the Committee with a range of information concerning the adoption of legislative decrees by the Congress on 25 April and 14 May 2001. In that connection, the Worker members regretted that, despite the dialogue initiated with the social partners with a view to agreeing upon reforms, the consultation process had not been productive and the reforms proposed to Congress had not been reached by consensus or through any prior agreement with the social partners. On the substance of the case, they pointed out that the decrees adopted responded to many of the points which had been raised by the Committee of Experts over many years. However, before taking up a position, it would be necessary to let the Committee of Experts examine all the amended texts in detail.

Such prudence was particularly necessary since a number of important points had not been addressed satisfactorily, such as: confining the holding of trade union office to nationals of Guatemala; the imposition of quotas in relation to the decisions taken in certain areas by trade union activity, and particularly strike action; the possibility for the President of the Republic to suspend trade union activities, and particularly strikes; and the direct intervention of the judicial authorities in labour disputes. They emphasized that the

Committee of Experts in its observation had recalled that the imposition of compulsory arbitration in non-essential public services and the prohibition of solidarity strikes by unions were also violations of the Convention and had noted that the new decrees did not appear to address this particular point. They indicated that, while welcoming the progress achieved, they regretted the absence of any real tripartite dialogue and reserved their position on the merits until the Committee of Experts had commented on all the amended provisions of the Labour Code. In its introductory remarks, the Committee of Experts had noted with concern the conclusions of the Committee on Freedom of Association in case No. 1970 following a complaint made by the General Confederation of Workers of Guatemala, the Latin American Central of Workers, the World Confederation of Labour and the International Confederation of Free Trade Unions. The allegations in this complaint were multiple and included murders, physical assaults, death threats, raids on the homes and attempted kidnappings of trade union leaders and activists, anti-union dismissals, obstruction of collective bargaining and the non-certification of collective labour agreements. This sinister list illustrated the particularly serious situation with regard to the exercise in practice of the most elementary trade union rights. Furthermore, impunity was guaranteed too often in the identification and punishment of those guilty of such criminal acts. For this reason, the Worker members once again drew the Government's attention, as the Committee of Experts and the Governing Body had done, to the fact that "freedom of association can only be exercised in conditions in which fundamental human rights, and particularly those relating to human life and personal safety, are fully respected and guaranteed" with particular reference to the right to life and that "in the event of assaults on the physical or moral integrity of individuals (…) an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts".

The Employer members, referring to the statement made by the Worker members, recalled that the Committee of Experts had been making comments on this case since 1980 and that it had been examined by the Conference Committee on a number of occasions. In its comments, the Committee of Experts had raised a number of general issues, such as the need for a peaceful environment and the importance of the rule of law and order and respect for fundamental human rights. While these matters were of importance for every State and the well-being of its citizens, they did not constitute a requirement under the Convention, even though it was unlikely that freedom of association could be achieved in their absence. The Employer members pointed out that, however important they were, it was not within the ILO's competence to examine these issues.

The comments of the Committee of Experts could be divided into two categories. The first concerned the interference of the State in the internal affairs of trade unions, while the second related to the right to strike. In this respect, the Employer members recalled once again that the right to strike was not regulated by the Convention. Another issue covered by the Committee of Experts concerned arbitration. In the view of the Employer members, a clear distinction needed to be made between compulsory arbitration and the establishment of an arbitration procedure.

With reference to the information provided by the Committee of Experts that the President of the Republic had transmitted to Congress a Bill to amend or repeal some of the provisions on which the Committee of Experts had been commenting, the Government representative had indicated that the Bill had been adopted by the Congress in the meantime. The new Act contained amendments relating to a number of the points raised by the Committee of Experts. These amendments concerned not only interference by the State in the internal affairs of trade unions, but also on the right to strike. They agreed with the Worker members that the new Act would have to be examined by the Committee of Experts.

Turning to the attempt which had been made by the Government to establish a tripartite consultation mechanism, the Employer members noted that, as in the past, the outcome had not been satisfactory. Although the reasons for the failure were not clear, one reason might be the long-term civil-war like conditions in the country. Although peace had been re-established, its effects still needed to be felt in practice. Moreover, although tripartite consultation was always welcome, in the final analysis it was the responsibility of the Government to take the necessary measures to bring the national legislation into conformity with the Convention. Even though the situation had changed and new legislation had been adopted, past experience showed that it was unlikely that this would be the last time that the case of Guatemala was examined by the Conference Committee. The Government had taken a number of first steps which were in the right direction. The Employer members emphasized that it was within the Government's discretion as to whether all the issues raised by the Committee of Experts would require amendments to the national legislation. In their view, there was no need for legislative measures to be taken with regard to the right to strike, since the right to strike was not covered by the Convention.

The Worker member of Guatemala indicated that the issue of the criminalization of socio-economic disputes was particularly interesting in the context of the free exercise of trade union rights, since utilizing the threat of criminal prosecution to resolve labour disputes constituted a method of restricting workers' right to organize.

He pointed out two cases in Guatemala that exemplified the use of penal action in the field of labour, as well as the violation of the right to freedom of association. The criminalization of labour disputes constituted a violent anti-union practice, as was shown, for example, by the harassment suffered by the members of the Union of Banana Plantation Workers of Izabal (SITRABI), of the Bandegua Enterprise (a subsidiary of the Del Monte multinational corporation) which involved the use of firearms, theft, threats, illegal detention of trade union officials and members, raids and other crimes, with the tacit consent of the Ministry of the Interior and the Public Ministry. The same types of incidents had taken place in other cases. In the case of SITRABI, criminal activity was used with the clear objective of destroying an enterprise-based trade union and restricting through the use of threats the free exercise of rights to freedom of association guaranteed by the Guatemalan Constitution, the Labour Code, the peace agreements signed by the Government, the guerrilla leaders and the Guatemalan military, as well as international Conventions ratified by Guatemala. He said that the SITRABI case was to be deplored by all international and national trade unions and had been closely followed by the United Nations verification mission (MINUGUA), the Office of the High Commissioner for Human Rights and the ILO. In fact, MINUGUA had expressed its concern at the practice of bringing criminal complaints against trade union leaders for events occurring allegedly in the context of labour disputes, citing the SITRABI case as well as the cases of the Alabama and Arizona ranches. In the Arizona case, the trade union adviser for the Guatemalan Workers' Trade Union (UNSITRAGUA), Mr. Jorge Estrada, had been arrested on the grounds that he had made threats and caused damage.

The second case examined involved the Union of Workers in the Judiciary (STOJ) and the Supreme Court (CSJ). In that case, the management's refusal to negotiate a new collective agreement on working conditions had led to the filing of a complaint by the CSJ against the trade union officials for work stoppage. This problem was compounded by the bias of the body charged with imparting justice, before which the trade union officials had to appear. Some years later, this high-level body had handled a new case brought against the trade union members in which no just cause had been shown for their dismissal. In addition, the CSJ had failed to comply with the Constitutional Court's order to grant the workers protection.

The slow action of the administrative and judicial system could be seen in the context of the above disputes, as well as in other cases. The use of criminal prosecution as a means of resolving these disputes was only one of the ways in which the state agencies had failed to follow national law and it was clear that freedom of association was impaired by these criminal actions, despite the establishment of a legal framework which was relatively favourable to freedom of association.

With regard to the issue of freedom of association, in its report on labour rights, MINUGUA had recommended that the legislation should be amended to bring it into conformity with the principles established by Conventions Nos. 87 and 98, thereby broadening the protection of the right to freedom of association, particularly at times when the collective interest was more fragile. Similarly, MINUGUA had called for all components of the justice system to interpret in a broad, progressive and consistent manner the legal provisions providing for the effective protection of the right to freedom of association. He stressed that Guatemala was one of those countries that the Committee of Experts had asked to modify its domestic legislation with regard to the Convention, as the legislation posed an obstacle to the real exercise and protection of trade union rights. The recommendations of the Committee of Experts had been repeated year after year, including in their report for the year 2001.

He added that trade union representatives had met with various government representatives to ask them to draft legislation in accordance with the Committee of Experts' recommendations. However, the result had been the amendments to the provisions of the Labour Code that restricted the right to strike in harvest time, by granting the President the power to suspend the right to strike through the Council of Ministers if deemed appropriate. He

stressed that the right to strike of public employees had not even been taken into consideration, despite the recommendations made by the Committee of Experts, nor had Decree No. 35-96 been repealed.

He added that it was necessary to break the existing cycle of impunity, as demonstrated by the example of the SITRABI trade union, whose leaders had been forced to flee the country to protect their lives and those of their families. Speaking on behalf of the trade unions and farm workers' organizations, he called for amendments in conformity with the labour rights. He also stressed that these amendments should be in conformity with the right to freedom of association, the right to strike and the right to collective bargaining.

The Employer member of Guatemala stated that, as the Minister of Labour of Guatemala had indicated, two recent Decrees of the Congress of the Republic were published in the Official Gazette. These have been introduced into the Labour Code, changes which, among other things, appeared to bring the national legislation into conformity with Convention No. 87. Taking into account the extent and complexity of these changes as well as that they would not come into force until 1 July 2002, it appeared that it would be highly desirable that this Committee begin its examination after considering what the Experts might say in this respect in their next report. What the Committee should examine instead, in order to have direct relation to the promulgated legal reforms and in relation to what had been already indicated and duly noted in front of the Committee in its meeting in 2000, was the practice by the current Government of the Republic of Guatemala to ignore the Tripartite Committee of International Labour Matters, which on may occasions had expressed its desire that the Congress of the Republic consult with it prior to adopting labour laws, in the spirit of the fundamental principle of this Organization, of tripartism. Similarly to what happened last year, the draft sent by an Executive Body to the Congress of the Republic was not discussed and was not the result of consensus of the social partners. In the present case, as distinct from 2000, not even that of the workers. This was the reason why the workers and the employers jointly addressed to the Congress of the Republic in order to ask it to correct the mistake and to provide the employers an opportunity to express their opinion. Despite the obstinate resistance of an Executive Body, in the person of Deputy Minister of Labour, the Congress agreed to the request, submitting the proposed changes to the consideration of both parties of the productive sector. The aforementioned permitted to open the dialogue, the result of which was the first of the Legislative Decrees previously mentioned, which received a bilateral consensus of workers and employers. Without appreciating an important effort made by the productive sector and yielding to other types of pressure, the Executive Body insisted on its original proposal which was not duly consulted with the workers and employers. This resulted in the adoption of the second of the Decrees in question. The aforesaid indicated the absence of inclination towards dialogue which characterized the current Government of the Republic, which, instead of striving towards reconciliation, insisted on division and opposition. The documentary evidence of the above could be found in the archives of this Organization. It was sufficient to read the proceedings of the Tripartite Committee of International Labour Matters in order to establish the resistance of the Minister to the discussion of the new Labour Procedural Code. There were also the proceedings which reflected the healthy tripartite practice used by this Committee until the current authorities came to power. The return to the authoritarian power had already caused severe damage to the process of social dialogue which was implemented from the mid-1990s and which had already brought concrete and positive results, such as the changes to the Labour Code agreed within the Tripartite Committee with the aim of complying with the Peace Agreements. In summary, pretending to comply with what the Experts had indicated in respect of Convention No. 87, the Government of the Republic of Guatemala violated, once more, another Convention regarding this field, Convention No. 144 relating to tripartite consultations.

The Worker member of the United States noted that although there was a tendency in this Committee to argue that Guatemala had made serious advances due to labour law reform and the interruption of the continued review of the situation in Guatemala by the United States in the context of the generalized system of preferences, this country had taken too many steps backwards. The speaker commended the Committee of Experts for reporting on the violation of the physical integrity of Guatemalan trade unionists and demonstrating the direct relevance of this question to the Convention. The recent reforms of the Labour Code mentioned in the report of the Committee of Experts were totally contradicted by other provisions in the law. The granting of the right to strike during harvest in the rural sector could be undercut by another provision of section 243 of the Labour Code, which gave the executive the power to declare illegal any strike which could adversely affect fundamental economic activities. Moreover, section 243 continued to proscribe strikes in the transport, health and energy sectors. The Guatemalan nationality requirement for trade union leadership persisted in section 220. The abolition of the Labour Code provisions concerning detention and judgement for unlawful strikes was contradicted by section 390 of the Penal Code concerning strikes which could be interpreted as paralysing or disrupting the functioning of enterprises which contributed to the economic development of the country. Section 255 of the Labour Code still gave judges the power to allow the police to perform services as a "precautionary measure" pursuant to an ex officio decision or a petition by the employer. The new section 216 which required signed and written proof of the creation of a union by at least 20 workers required a written disclosure of the pro-union activists and imposed a new literacy requirement. The law maintained the threshold requirement of 50 per cent plus one of all workers in an entire industry to achieve industrial union recognition. This requirement was prohibitive for industries with thousands of workers such as the agricultural sector. The new section 233 increased the requirement from two to four unions necessary to form a federation and from two to four federations to form a confederation. Finally, the new section 379 imposing individual liability on workers for damages resulting from a strike or other collective action created a chilling effect. In conclusion, the facts contradicted conventional wisdom which called for a more lenient approach towards Guatemala.

The Worker member of Colombia said that the Committee was once again engaged in analysing the difficult situation faced by the workers and people of Guatemala due to the climate of intolerance surrounding the trade union movement and to labour legislation which was not into conformity with the ILO Conventions. He recalled that a direct contacts mission had recently visited Guatemala as a result of the violations of the Convention. He indicated that trade unionists had been murdered, largely with impunity. He therefore requested the Government of Guatemala to provide information on the status of the investigation into the murder of Mr. Osvaldo Monzón Lima and other murdered trade unionists so as to bring an end to the climate of impunity to which he had referred. He recalled that the Government member had undertaken the previous year that the reforms of the Labour Code would be achieved through consultation and consensus. However, according to information that had been received from the workers' confederations in Guatemala, that had not happened and the reforms had been imposed. That created a crisis of confidence concerning the commitments made. Although he recognized the progress that had been made, he nevertheless wondered when the reforms would be completed. Finally, while he respected the autonomy of Guatemala, he said that it was unjust that the problems of poverty and social exclusion should be compounded by violations of fundamental rights.

The Worker member of Norway stated that there were indications that some of the most unacceptable violations of Convention No. 87 in Guatemalan law had been eliminated in the recent revision of the Labour Code. However, many of the agreements negotiated between the trade unions, the Government and the employers' representatives after the ILO direct contacts mission in April 2001 had not been included in the Labour Code. Although Guatemala ratified Convention No. 87 as early as 1952, it was still not fully implemented. This explained why trade unionists had been killed and persecuted through the years for defending workers' rights. By not having brought their legal framework into conformity with Convention No. 87 and by not assuring the application of existing laws, the Guatemalan Government in fact tolerated and contributed to the violations of trade union rights. Assassinations of trade union leaders went unpunished. Death threats against union activists were so common that they received no attention in the judicial system. Recent examples included the following union leaders: Maria de Lourdes in the plantation sector; workers in the municipality of Tecun Uman; Juan Pacheco from the public sector and Mario Sepulveda from the railway union. The last had been forced into exile. National authorities seemed to be paralysed. There were, for instance, laws stipulating minimum benefits for maquila workers, but little was done when companies left the country and left workers without pay. On the few occasions when the courts demanded justice, their orders were simply ignored. In the case of the SITRABI union, the persons who forced union leaders to resign and threatened both the leaders and their families were actually brought to trial. However, the sentences they received were extremely light. The union leaders from SITRABI were forced to live in exile. The reforms of the Guatemalan Labour Code had brought about some positive changes, but they were far from enough to prevent severe violations of labour rights. Moreover, the laws already in force were

not being respected and applied. Until that happened workers would be persecuted and denied their basic human rights. This Committee, as well as trade unions in all parts of the world, would continue to support the workers of Guatemala until trade union rights were fully implemented.

The Worker member of Uruguay maintained that although there might have been an effort on the part of the Guatemalan Government, violations of Convention No. 87 still persisted. He said that he thought he had seen a mistake in the records of the previous year when they said that the Government was committed to developing trade unionism, instead of saying that it was going to develop the instruments and the means necessary to strengthen trade unionism. But there was no mistake since, indeed, disregarding the principle of tripartism, the Government had not consulted the workers when drawing up legislative reforms. He said that the power conferred on the President to suspend a strike was an interference in the exercise of that right. He asserted that regulating the right to strike was a restriction on the right to strike, that was to say the use by workers of that means of defence. The employers had other means of defence such as closing their company and moving to another country, but for workers the right to strike was a fundamental element of Convention No. 87.

The Worker member of Brazil recalled that when the Peace Agreement was concluded in Guatemala in 1996, it had given rise to expectations that Convention No. 87 would be applied in full. However, there had been an increase in anti-trade union acts, as noted by the Committee of Experts. From an analysis of the observations in the reports of the 1980s and 1990s, it could easily be concluded that the Peace Agreement did not extend to the world of work. The victims were the murdered and disappeared trade unionists who added to the long list of cases before the Committee on Freedom of Association. He recalled that the Committee of Experts had underlined the failure to respect trade union freedom and fundamental rights. He said that just before the start of the Conference, the Congress of the Republic of Guatemala had published a reform of the Labour Code which amended the articles repeatedly singled out by the Committee of Experts. Those reforms had still not been examined by the Committee of Experts. The reforms went further than the Labour Code. Nevertheless, it seemed that a number of the new provisions were not in conformity with Convention No. 87 and could be prejudicial to workers. The reforms maintained an advisory service for the creation of trade unions which could perpetuate the interest of the Government in influencing new trade unions. The restriction on participation by foreign workers on trade union executive committees was also retained. Furthermore, the provisions on compulsory arbitration remained in force without amendment. The judiciary, ex officio, or at the request of one of the parties to a dispute, had the power to ban "preventatively" an illegal strike. Strikes were subject to so many legal requirements that it was certainly highly likely that they would always be considered illegal. A minimum number of workers to create a trade union higher than the standard established by the Committee on Freedom of Association was required. The authority given to the Government relating to the registration of trade unions and the requirements for forming federations and confederations were also contrary to the principle of trade union freedom. Finally, he highlighted that, concerning strikes in the essential services, excessive and arbitrary interference by the judiciary and the Government was permitted, firstly, because it decided the minimum activities that must be maintained without setting out any criteria and, secondly, because it conferred on the President of the Republic the power to suspend a strike when he considered that it would seriously affect an essential service.

The Government member of Mexico indicated that she had listened with great interest to the information relative to the Labour Code amendments adopted by the Congress of Guatemala in order to bring the Labour Code into conformity with the provisions of Convention No. 87, and especially to meet the requests formulated by the Committee of Experts for a number of years. She acknowledged that progress had been made in adapting domestic legislation, and highlighted the engagement of the Government delegation of Guatemala to proceed with a more extensive revision of labour legislation. She indicated that those elements should be reflected in the conclusions of the Committee, and expressed her belief that the results of the direct contacts mission would confirm the progress made.

The Government member of the United States pointed out that her Government had a keen interest in workers' rights — particularly freedom of association in Guatemala. Her Government had urged the Guatemalan Government to seek ILO technical assistance and had provided financial support for certain activities with a view to bringing the Labour Code into full compliance with Convention No. 87, ensuring implementation of the Code in practice, and bringing about an end to the violence against Guatemalan workers and their representatives. The speaker welcomed the significant amendments to the Labour Code that were recently approved by the Guatemalan Congress. She appreciated the efforts and goodwill demonstrated by the Government throughout the process. Now she looked forward to full implementation of these amendments. Under the auspices of the US trade benefits programme, her Government would continue to follow developments closely. Therefore she urged the Government to continue its work in cooperation with the ILO in order to ensure that law and practice fully complied with Convention No. 87.

The Government member of Argentina indicated that she had read carefully the written information submitted by the Government, which contained a summary of recently adopted legislative decrees, in the light of the observations made by the Committee of Experts. She considered that those texts answered practically all the observations of the Committee of Experts. She said that only one subject would remain pending, concerning the right to strike in the public sector. She expressed the hope that the Committee's conclusions would reflect the view that those legislative measures answered and satisfied almost all the observations levelled against the Government. She recalled that the Committee's conclusions were one of the most important factors in encouraging cooperation and compliance by governments which had the political will to improve their situation and the honest desire to fulfil their commitments, as, in her view, was the case of Guatemala. That would no doubt encourage the Government to overcome any remaining difficulties.

The Government representative, replying to the interventions in the debate, reiterated that the two legislative decrees adopted by the Congress and summarized in the written information submitted to the Committee, clearly showed positive progress. Firstly, the decrees directly repealed a considerable number of provisions criticized by the experts and, secondly, amended other provisions. The latter were not subject to consideration at that time since it was up to the Committee of Experts to give its opinion on them. As for the cases of violence mentioned by the Committee of Experts, he said that those had mainly occurred during the 36 years of war and the 50 years of dictatorship under which the country had suffered. The subject had been investigated by the direct contacts mission and its report would have to be awaited in order to analyse it. In any case, the authorities had already begun to comply with the recommendations of the mission and a monitoring unit dealing specifically with acts of violence against trade unionists was already operational in the Public Prosecutor's Office. He emphasized that the discussion had shown up contradictions concerning the role of tripartism in legal reform. He pointed out that the first legislative decree of the Congress reproduced an agreement between the CACIF (an employers' organization) and the UGT-UASP (representing the CGTG and UNSITRAGUA) and that was incontrovertible evidence of tripartism. The second legislative decree of the Congress reflected the fact that, as stated by the Employer members, tripartism did not replace the responsibility of the State. The Congress had adopted that decree when the employers and workers could not agree on a solution to the remaining problems highlighted by the ILO and its organs concerning Conventions ratified by the State. The Congress therefore adopted the second decree in the context of the ILO's requirements and the Peace Agreements. One of the objectives of that decree was specifically to put an end to the impunity of the violations of workers' rights. Moreover, it was all very well for some Guatemalan speakers to talk of tripartism in the terms that they had when, at the same time, despite the fact that their organizations had been invited, they had not participated in the discussions on the draft Labour Procedures Code intended to end the delays in trials and sentences not carried out, nor had they attended meetings on the revision of the Substantive Labour Code. Those omissions were documented. Thus, in the draft first reform of the Labour Code (January 2000), which had the agreement of the workers' sector, the employers' sector had walked out. Faced with such a situation, the Government was under an obligation to fulfil its responsibilities to the worker population and to the ILO and could not accept that one party should tell it: "do what we tell you or do nothing." The speaker reiterated that in any legislative reform it would receive and examine the opinions of the ILO and all those who wished to assist because a combination of ideas and help was best. Furthermore, he considered that the discussion of the case should have taken place after the opinion of the Committee of Experts and the report of the direct contacts mission was known. Finally, he requested that the legal texts adopted and the efforts made by the Government concerning the application of the Convention should be mentioned in the conclusions.

The Worker members expressed their concern at the deterioration in the social climate and the criminalization of social conflict. They also expressed their disquiet at the violence exercised with

impunity against trade union officials. Whilst noting the changes in the legislation, the Worker members recalled that many provisions were still not in conformity with the Convention. Under those circumstances, the report of the direct contacts mission would be useful in evaluating the situation. The written information submitted by the Government did not answer all the questions raised by the Committee of Experts. The Committee should examine the information in the light of the actual situation, on the one hand, and the provisions of the Convention, on the other, before, if necessary, discussing the case again.

The Employer members stated that both Employer and Worker members were dissatisfied with the situation in Guatemala although it was not clear whether their dissatisfaction was based on the same grounds. A number of issues had not been clarified by the debate in this Committee. The undeniable facts were that for many years there had been considerable discrepancies between national legislation and the Convention. Many of the discrepancies appeared to have been removed by the new amendments. However, it was for the Committee of Experts to examine these amendments in detail to ascertain whether there was compliance with the Convention.

The Committee took note of the oral and written information supplied by the Government member and the subsequent discussion. At its previous meeting, the Committee had emphasized its concern that for many years the Committee of Experts and the present Committee had noted serious discrepancies between the legislation and national practice, on the one hand, and the Convention, on the other, in various ways involving interference by the public authorities in the activities and internal affairs of trade unions, and restrictions on their right to elect freely their officers. The Committee noted with interest that there had recently been a direct contacts mission which had addressed those legislative issues in particular. The Committee noted the statements of the Government to the effect that the Congress of the Republic had adopted two legislative decrees during and after the mission which repealed or amended the majority of the legal provisions which had been referred to the Committee of Experts. The Committee observed that it was up to the Committee of Experts to assess the exact extent of those reforms. However, the Committee noted with concern that the Committee on Freedom of Association had examined several serious cases of violation of trade union freedom, in particular involving threats and acts of violence. The Committee underlined in that respect the importance of fully observing the civil liberties essential for full application of the Convention. The Committee urged the Government to take steps to promote and conduct full and genuine tripartite discussions in the country so that the outstanding issues might be resolved in a manner satisfactory to all the parties. The Committee also requested the Government to take all measures necessary to bring national practice into full conformity with the provisions and requirements of the Convention and expressed the firm hope that in the very near future it would be in a position to note further improvements in the application of the Convention, both in the legislation and in practice. The Committee requested the Government to provide it with detailed information in its next report to allow a new evaluation of the situation by the Committee of Experts.

Japan (ratification: 1965). **A Government representative** explained his Government's position concerning the observation of the Committee of Experts on the Application of Convention No. 87. With regard to the issue of the right to organize of fire defence personnel, this issue was solved through the introduction of the fire defence personnel committees system, which was welcomed with satisfaction by this Committee at the 82nd International Labour Conference. Based on the system, the Bill to amend the Fire Defence Organization Law was unanimously approved by the Diet on 20 October 1995, and entered into effect on 1 October 1996.

The role of these fire defence personnel committees was to discuss opinions expressed by the fire defence personnel, concerning their working conditions or other subjects. The results of these discussions were then reported to the fire chief of the fire defence headquarters. The committees were established in all of the 923 fire defence headquarters as of 1 April 1997. So far, they had been operating smoothly in accordance with the aim of the Law. Half of the members of the fire defence personnel committees had to be appointed upon the recommendation of the fire defence personnel. At the end of March 2000, nearly 90 per cent of the committee member posts were filled by general personnel not in managerial positions. In the course of fiscal year 1998-99, the committees had discussed approximately 10,500 opinions concerning working conditions or other subjects. About 40 per cent of these opinions were considered appropriate for adoption, leading, for example, to the allocation of grants for acquiring qualifications, installation of resting rooms, introduction of non-combustible working clothes, etc. Taking this into consideration, the fire defence personnel committees were working well to improve their working conditions. He indicated that his Government continued its efforts for the smooth operation and firm establishment of the system, in cooperation with the parties concerned, such as workers' organizations, fire-defence headquarters, etc. Regarding the prohibition of the right to strike in the public service, his Government considered that this was an issue of imposing a sanction under a law that was considered to be in conformity with the Japanese Constitution by the Supreme Court. His Government was aware of the observations made by the Committee of Experts regarding the imposition of sanctions pursuant to strike action. His Government had been applying the Law accordingly. It intended to continue making this effort and would provide as much information as possible taking into consideration the latest observation of the Committee of Experts.

Finally, the Government representative commented briefly on a new movement in the Japanese public service system. The Government was currently considering a project of civil service reform on the basis of the "Outline of the administrative reform" decided by the Cabinet in December 2000. The purpose of this reform was to change some aspects of the attitude of public employees which had been subject to severe criticism from the public, such as sectionalism, dependence on the authorities, excessive reliance on precedents and a lack of sense of service. Hence, the reform aimed at making it possible for public employees to work with pride as a group of experts. The "Framework of the civil service reform", made public on 27 March 2001 by the Office in charge within the Government, indicated the main directions of the reform as follows: the establishment of a remuneration system which appropriately reflected the officials' capability and performance, placement based on personal capability, adjustment of a new evaluation system that was transparent and acknowledgeable, and so on. As nothing was definite yet concerning the substance of the reform, the Government was not in a position to present any substantial information to the ILO. However, the Government was ready to supply information to the ILO on any concrete progress made, if any.

The Employer members indicated that this Committee had dealt with the issue of the denial of the right to organize of fire-fighting personnel on several occasions from the 1980s up to the 1990s. The last time the Committee had dealt with this case in 1995, the Government had indicated that fire-defence personnel committees would be established at the fire defence headquarters. These measures had been welcomed by this Committee as a form of progress. However, the Committee had also indicated at that time that full freedom of association had not been achieved, but rather steps had been taken with a view to gradually achieving it. Now the workers' organizations concerned were indicating that the system was not functioning satisfactorily. Since the Government representative had indicated that other measures were being taken, the Employer members encouraged it to do so actively. The current situation was not ideal and it would be necessary for the Government to provide more information on steps taken to change this to the Committee of Experts. Regarding the limitation of the right to strike for public servants, including for public school teachers, the Employer members pointed out that the Government had made a distinction between two categories of employees. It had indicated that the right to strike was prohibited for national public employees, whereas the right to strike was granted for those who were not national public employees. However, the Employer members considered that the Committee of Experts should not be making any comments on this issue since they were of the view that the Convention did not deal with the right to strike. Moreover, they felt that prohibition of the right to strike for teachers was entirely justified since the teaching sector was an essential service. Concerning compensatory guarantees for hospital workers, the Employer members did not consider that there was a need to provide such guarantees: in effect, the Employer members could not accept the fact that these compensatory guarantees were a requirement for workers whose right to strike was restricted.

The Worker members said that they would also have liked to have seen the application of Convention No. 29 by Japan discussed that year. It had unfortunately not been possible to reach a consensus with the Employer members on that subject, but if there were no improvement, that case should be re-examined. Nevertheless, Japan's violations of Convention No. 87 were very serious and a dialogue with the Government was necessary. Indeed, despite the observations formulated by the Committee of Experts for a number of years, the Government had not taken any real measures to ensure trade union freedom for all workers, in whatever sector of activity. Moreover, the case had already been discussed by the Committee in 1995. With respect to the denial of the right to organize of fire-fighting personnel, the establishment of personnel committees

in that sector should be welcomed. It represented progress in improving the dialogue between fire-fighting personnel and the authorities, as shown by the survey of the All-Japan Prefectoral and Municipal Workers' Unions (JICHIRO) and the National Firefighters Council (ZENSAYOKYO). But further improvements were necessary, especially due to the fact that those committees were not active everywhere. The objective was to create the conditions to guarantee fire-fighting personnel the right to organize. As for the prohibition of the right to strike of public servants, the Committee of Experts had recalled that: "the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State". In that respect, the Japanese Government's interpretation of the notion of essential services went much further than the Organization's, in particular because it included teaching. It was clear that the Government was restricting the trade union freedom of a large number of workers, especially in the public services. The Worker members considered that the failure to comply with that Convention and the Committee of Experts' interpretation of it was unacceptable. A similar problem also arose in the hospital sector, where the Committee of Experts had recalled the need to provide compensatory guarantees to workers whose right to strike had been restricted. Moreover, it should be recalled that reform of the public services was being carried out without involving the public service unions, despite the fact that the reform would have significant consequences for their salaries and conditions of work. In conclusion, it should be emphasized that the Government apparently had no intention of applying Convention No. 87, particularly in the public sector, which raised the issue of fundamental human rights whose violation had a direct influence on the lives and working conditions of Japanese workers. The Government of Japan should be called on to take all necessary measures, in law and in practice, to guarantee trade union freedom, including the right to strike. It should also involve workers' organizations in the reform of the public sector, thereby taking the opportunity to improve social dialogue.

The Worker member of Japan pointed out that there were several issues which infringed the provisions of Convention No. 87, namely, the broadly defined scope of managerial personnel; the non-involvement of unions in the decision-making procedure of wages and working conditions; a registration system which violated freedom of association; inadequate guarantees in situations where basic workers' rights were denied. However, he wished to focus on two issues, namely, the denial of the right to organize for fire defence personnel and the total prohibition of the right to strike for workers in the public service. The Government had ratified Convention No. 87 of 1965 but firefighters were still denied the right to organize. In 1995 the Government established the fire defence personnel committee system. However, Japanese workers considered this to be merely a transitional measure in the process of achieving the right to organize for firefighters in Japan. Moreover, no workers in the public service have the right to strike. The ILO considered that the prohibition of the right to strike in the public service should be limited to personnel operating in essential services and to public servants exercising authority in the name of the State. The Japanese Government, however, had enlarged the scope of services where the right to strike could be restricted by creating its own definition of "essential services". Moreover, the Government regarded all public employees to be persons who "exercised authority in the name of the State". This was a serious violation of Convention No. 87. If the Government respected the recommendations of the Committee of Experts, it should take concrete measures to solve these issues as soon as possible. Finally, the speaker referred to an ongoing violation by the Government of Convention No. 87. On 1 December 2000, the Cabinet decided, without any consultation with workers' organizations, the Government's basic policy for the institutional reform of the public service system, which would drastically change the existing wages and working conditions of public employees. On 19 December 2000 the Government set up the "Administrative Reform Promotion Office". The Minister in charge of Administrative Reform, indicated that the framework of the reform would be set by the end of March 2001, its basic design would be developed by end of June 2001 and then a Bill for a new public system would be presented to Parliament in January 2002. The framework of the reform was established unilaterally without any consultation or negotiation with the unions concerned. The Government had consistently been rejecting the workers' demands to negotiate with the workers concerned in developing the basic design of the reform. The speaker requested the Government to fully respect the views expressed by the Committee of Experts in proceeding with its work to reform the public service system. Furthermore, the Government should sincerely negotiate with workers' organizations to reach an agreement thereon. Finally, the fact that the framework unilaterally set and announced by the Government should not constrain any future negotiation with workers' organizations.

The Worker member of France wanted to revert to the restrictions imposed by Japanese legislation on the trade union rights of public employees and public servants. He noted that, since 1965, the date of ratification of Convention No. 87 by Japan, the Committee of Experts had continued to request that Convention No. 87 be effectively applied. He remarked that fire-fighting personnel, public servants and employees of state enterprises continued to be denied of their basic trade union rights. He added that even if the reforms of 1995 which authorized the establishment of staff committees were undeniably a step in the right direction, they continued to be insufficient and could not replace the full application of the Convention for this occupational category. Furthermore, even if the Supreme Court of Japan had considered as constitutional the prohibition of the right to strike of all public servants, it was worth noting that such an interpretation was contrary to the international obligations contracted by Japan, as reiterated by the Committee of Experts on a number of occasions. This restriction also applied to employees of state enterprises. Furthermore, public servants who infringed that prohibition were subject to being fired and even being imprisoned. What was at stake was the violation of the basic trade union rights of workers when the Government of Japan was involved in a reform process of the public sector on a massive scale. He pointed out that the latter did not seem to involve the consultation of representative organizations of the personnel under question. Yet, the reform process offered a unique opportunity for the Government to bring its legislation into conformity with its international obligations. It was useful to recall that the application of Convention No. 87 was the basis for the observance of all the fundamental rights of workers. In the first instance, the Government of Japan had to apply the obligations it had contracted itself to its own staff in order to apply them to private companies. He added that more developed countries were in a position to demonstrate their commitment to fundamental standards. In that context, any other position adopted by the Government of Japan could not be in line with the principles that constitute the foundation of any State in which rights prevail.

The Worker member of Pakistan stated that since Japan was an industrialized country and a Governing Body member, it should be a model for developing countries with regard to the functioning of its industrial relations system. Hence the right to organize of firefighters was an important point and the fire defence personnel committees were not an adequate or appropriate solution for these employees. Concerning the right to strike, he emphasized that this should only be limited to essential services whose interruption would endanger the safety, security or health of all or part of the population. Moreover, in such services where workers were deprived of the right to strike, they should be granted compensatory guarantees which should be impartial and rapid. Finally, with regard to the reform of the public service system, it was the right of society to reform the civil service. However, the fundamental rights of public servants, including their right to organize, should also be taken into account during the course of this reform.

The Worker member of the United States expressed his support for the statements made by the Workers' spokesperson and by the Japanese Worker member. He recalled that the last time the Committee had discussed the issue of the right to organize for fire-fighting personnel was in 1995. At that time, the Japanese Worker member was able to report the establishment of fire defence personnel committees, which was seen as a breakthrough towards granting firefighters their full rights under Convention No. 87. He noted, however, that the Japanese Public Service Union (JICHIRO) and firefighters themselves had argued that the Local Public Service Law must be amended in order to achieve full compliance with the Convention, a position also supported by the Committee of Experts. The Experts had pointed out in 1999 that a number of aspects of the current system had not worked effectively, and unions had made suggestions to the Government on how to improve the system, although it appears the Government had ignored these. Today it appeared that the progress which had begun six years ago had stalled because of government intransigence on the issue. It was the responsibility of the Government to end the stalemate by heeding the advice of JICHOREN and firefighters themselves. He urged the Government to take every step necessary to bring its laws and practice into full compliance with Convention No. 87. The Government should understand, in view of the long history of the case, that the Committee would review the case as long as necessary until the issue had been resolved.

The Worker member of Sweden indicated that Japan had initiated a process with the goal of achieving a reform of the public service system, including changes to the labour-management system in the public sector. In December 2000, the Government had decided

officially to begin its work, setting a timetable aimed at having the Parliament adopt a new law in this regard by January 2002. She expressed concern that this reform had been undertaken unilaterally by the Government, which so far had shown neither the interest nor the will to involve workers' organizations in this important task. Moreover, the Government had already established a framework for the reforms without any consultation with the workers' organizations. This was a clear violation of Convention No. 87, ratified by Japan in 1965. One of the points contained in the framework addressed the establishment of a new system for determining wages and working conditions for public employees. However, no consultations had yet been held on this matter with the workers concerned. In this regard, the Government was completely rejecting the workers' demands that it observe the principles set forth in the Convention.

In her view, if the Japanese Government was serious concerning its commitment to respect the Convention, as the Government representative had indicated at last year's Conference Committee, it must first demonstrate its intent to involve workers' organizations in good-faith negotiations concerning the reforms to the public service system. The Government must also observe its commitment to respect fully the views expressed by the Committee of Experts. The Government must guarantee that the work of reforming the public service system would be done in full compliance with Convention No. 87. She pointed out that fire-fighting personnel in Japan were still not allowed by law to organize and to strike. The Convention was clear, as was the Committee of Experts' interpretation of its provisions. Freedom of association was to be guaranteed not only to workers and employers in private industry, but also to public employees. The exclusion of public employees from the exercise of this fundamental right was contrary to the provisions of the Convention. She therefore urged the Japanese Government to take the necessary measures to enable firefighters to organize and form trade unions.

The Worker member of Germany addressed the issue of public servants' right to strike. As the Worker members had correctly pointed out in earlier statements, the constitutional rights of public servants had been violated for a long time, and the situation had been criticized for the last two years. However, there were no improvements to the situation in sight. He was familiar with this problem, as the legislation in his country had the same prohibition which the Committee of Experts had been criticizing for years. Accordingly, he expressed his emphatic support of public servants' right to strike. Noting that the Committee of Experts' report referred to teachers' right to strike, he noted that the right of this category of employees to strike had been recognized by the Joint ILO/UNESCO Committee on the Status of the Rights of Teachers, as well as by the Committee of Experts and the Committee on Freedom of Association. Noting that the Committee on Freedom of Association had always made its decisions on the basis of a consensus between the Government, Employer and Worker members, he pointed out that the Japanese Government had not followed the comments of the Committee of Experts. He considered this situation to be unacceptable and noted that key institutions which had been established to provide compensatory rights to public servants were now being dismantled. He therefore urged the Japanese Government to fully recognize the right to strike and to apply it in law and practice. With regard to the right to strike of public servants this was particularly important given the proposed changes to the system on labour relations. To this end, the first step to be taken was the full involvement of trade unions in the development of the framework.

The Worker member of Singapore wished to make two points with regard to Japan's application of Convention No. 87. First, it was clear under Article 9 of the Convention that only members of the police and armed forces were exempted from the right to trade union representation. Convention No. 87 did not exclude firefighters from coverage, and for good reason. She stressed that no worker should be denied the right to trade union representation unless this right, if exercised, would compromise national security. Therefore, she expressed the opinion that the Local Public Service Law constituted a violation of the provisions of the Convention. The establishment of the fire defence personnel committees did not in any way address this issue. These committees, which had been established in 1997, were surely meant to constitute a temporary measure. However, the indications were now that these committees had in fact become permanent fixtures. She cited the statement made in the Government's report that "it intends to continue to make efforts for the smooth operation and firm establishment of the system". This showed that there were strong and valid reasons for the concerns expressed by the Japanese Trade Union Confederation (JTUC-RENGO), the Japan Federation of Prefectoral and Municipal Workers' Unions (JICHIRO), the National Firefighters Council (ZENSHYOKYO) and the other trade union organizations cited in the report of the Committee of Experts that there was no intention on the part of the Government to comply with the Convention. There was clearly a distinction between a committee which performed a purely consultative function and a trade union with full rights to represent and negotiate collectively on behalf of workers.

With regard to the right to strike, the position of the Committee of Experts was clear — the prohibition applied only to public servants exercising authority in the name of the State. The basis for the Government's distinction between "specified independent administrative institutions" which have no right to strike and "independent institutions other than those specified", which have the right to strike was unclear and arbitrary. Moreover, it was not sustainable in the light of the Government's explanation that "operation delays in specified independent administrative institutions were deemed to directly and markedly hamper the stability of national life or the society and the economy". This argument was not sustainable when applied to public servants such as public school teachers. She therefore concurred with the statements made by the other Worker members and called upon the Government to review its position seriously and to take corrective measures to bring its legislation and practice into line with Convention No. 87.

The Government representative of Japan explained his Government's position, in response to the statements made by the Worker members. With regard to the issue of fire defence personnel's right to organize, he pointed out that the 1994 General Survey cited Japan as an example among the countries which denied the right of fire defence personnel to organize. He indicated that the Ministry of Home Affairs, the Fire and Disaster Management Agency and the All-Japan Prefectoral and Municipal Workers' Union (JICHIRO) had held intensive consultations and that as a result, the fire defence personnel committees had been introduced as the solution to this problem. This solution had been accepted by the Japanese people by consensus. Under this system, the process of improving working conditions or addressing other issues relevant to fire defence personnel was conducted with their participation at the respective fire defence headquarters to which they were assigned. Problems concerning working conditions or other issues relevant to specific individuals were also handled in this manner. He added that the fire-defence personnel committees had achieved good results as mentioned in his opening statement and, in the future, the Japanese Government intended to continue its efforts to achieve the increasingly smooth operation and firm establishment of this system, in cooperation with the parties concerned, including workers' organizations and fire defence headquarters. The Japanese Government's basic observations regarding fire defence personnel's right to organize had been set forth in its past reports as well as on other occasions. The Government member pointed out that, in the view of his Government, there was no problem in the application of Convention No. 87. He acknowledged, that there were some restrictions on the fundamental labour rights of public employees, due to their distinctive status and to the public nature of their functions. Public employees nonetheless had specific workers' rights that must be guaranteed, and they benefited from compensatory measures, including the National Personnel Authority's recommendation system. While the Government recognized fully the ILO's views on the restriction of public employees' right to strike, it considered that an evaluation of the restrictions needed should take into account the specific circumstances of each country, including its history and the tradition of labour relations in the public service, etc.

With regard to the civil service system reforms in question, he noted that, while the decision made in the Cabinet meeting in December 2000 had provided a rough idea of the contents of the reform, the framework of March 2001 indicated the direction that the Government's internal examination of the issue had taken based on the Cabinet decision. The nature of these two decisions explained why there were no issues calling for negotiations with workers' organizations at this stage. The Government nevertheless intended to proceed in the future with its examination of the new system through good-faith negotiations and consultations with the parties concerned, including the workers' organizations. He stated that neither the Cabinet decision nor the framework would constrain future negotiations and consultations in any way, and the concrete substance of the new system would be determined gradually through discussions with all parties concerned, including negotiations and consultations with the employees' organizations.

The "basic outline" which the Government would issue by the end of June 2001 would not mark the end of discussions on concrete measures. Instead, the Government would continue examining the substance of the system through negotiation and consultation in good faith with the parties concerned, including the workers' organizations, even after the "basic outline" was issued. In conclusion,

he assured the Committee that the Japanese Government had recognized fully the views expressed by the ILO to date and that it was ready to supply information to the ILO on any concrete progress made concerning this matter.

The Employer members called on Japan to provide additional information to the Committee of Experts indicating the measures that remain to be taken in respect of the first point of the report of the Committee of Experts. With regard to points 2 and 3 of the report the Employer members recalled that, contrary to the position taken by the Committee of Experts, the right to strike could not be derived from the provisions of Convention No. 87. They characterized the statements of some Worker members, who called for the right to strike to be extended to firefighters, as verging on the absurd. They noted that not even the report of the Committee of Experts contemplated such a result. Referring to the statements made by the Worker member of Germany regarding the cases examined by the Committee on Freedom of Association, they noted that the Committee on Freedom of Association involved countries that had not ratified Convention No. 87. In these cases, the right to strike had been based on the ILO Constitution. The Employer members found this result strange, given that the ILO Constitution contained only general constitutional principles. Commenting on the nature of the Committee on Freedom of Association, they noted that this body had been established in 1951 to conduct preliminary examinations on cases for the Governing Body, as was also the case for the Fact-Finding and Conciliation Committee. These bodies had no competence beyond fact-finding and conciliation. The Employer members pointed out that the members of these tripartite bodies acted in their personal capacities in achieving agreements.

The Worker members stated that the main problem of this case regarded the various elements of freedom of association in the public sector, even if violations to Convention No. 87 also existed in other sectors. They insisted that the civil servants' unions had fully participated in public function reforms which would have direct consequences on the working conditions of their affiliates. If the Government had taken steps towards this end, including addressing the application of the principles of freedom of association in other sectors, it would have avoided appearing before the Committee the following year.

The Committee noted the statements made by the Government representative and of the ensuing discussion. The Committee further noted that the statements made by the Committee of Experts referred to different aspects, namely, the right to freedom of association of fire-fighting staff, the rights of civil servants' organizations and the situation of hospital staff. The Committee noted that certain trade union organizations had presented statements regarding the denial of the right to freedom of association of fire-fighting staff. The Committee expressed the hope that the Government would hold a bona fide dialogue with the concerned trade unions and would take measures, as soon as possible, to guarantee the right of freedom of association of the staff. The Committee urged the Government to undertake efforts to encourage a social dialogue with the concerned trade union organizations of the public sector on the relevant points. The Committee hoped that the Government would provide detailed information in its next report so that the Committee of Experts could fully review the topics in order to verify whether the situation had improved and trusted that in the near future it would be in a position to consider if real progress had been made in the application of the Convention.

Myanmar (ratification: 1955). **A Government representative** indicated that, as a party to the Convention, his Government had reported on the progress made towards its application as much as possible and the information provided had been duly reflected in the reports of the Committee of Experts. However, there had been times when it had not been possible to submit reports due to unavoidable circumstances. He recalled that, following the adoption of the resolution by the ILO against his country concerning Convention No. 29, his Government had decided to disassociate itself from this decision, which it considered unfair and biased. In doing so, it had also decided to disassociate itself from Convention No. 87, in view of the unwarranted allegations made concerning its application. This explained the absence of reports on the Convention in recent years. In view of the political will of his Government, and the good cooperative approach adopted between Myanmar and the ILO, supported by many well-meaning Members of the ILO, it had been possible to register good progress in the application of Convention No. 29. With a view to demonstrating its good intentions, the Government had therefore decided to appear before the Committee, rather than submitting a written response to report on the application of Convention No. 87 from which Myanmar had already disassociated itself, despite the practical difficulties that it was facing. In earlier reports on the application of the Convention, information had been provided on the genuine efforts made and the difficulties experienced. The principal reason was that Myanmar was going through a period of transition from a socialist society to a peaceful modern democratic society. He added that when the new Constitution, which was currently being drafted, was adopted, it would duly reflect the rights of workers, including the rights required under the Convention. In the absence of the new Constitution, it had been endeavoured to protect the rights of the workers with the existing laws. It had been reported that labour laws had been reviewed systematically. For example, the Trade Unions Law of 1926 had been reviewed and redrafted to bring it into conformity with the new political and economic system. Indeed, a team from the ILO had visited the country in 1994 to hold discussions on matters relating to the Convention. This had been followed up by a visit of an ILO official in 1995. Although these visits had not concretized the application of the Convention, they had been very useful and amply demonstrated the political will of the Government. He emphasized that the Government was taking concrete measures to put in place democratic institutions, including the rights of workers to form their own unions, and that the existing machinery contained provisions to protect the rights of workers. The right of association had been granted by the Government and workers' welfare associations had been formed in various industries and establishments. There were also several professional and trade organizations which were functioning well. Indeed, there were now over 2,000 such welfare associations, which included mechanisms to promote and protect the rights and privileges of fellow workers. It might be said that these organizations constituted forerunners of trade unions, which would emerge later in accordance with the new Constitution. Before being able to fully comply with the Convention, he reiterated that the Government would protect the rights and privileges of workers to the fullest extent possible. However, he regretted that it would not be possible to provide the draft text of the revision of the Trades Union Law at the present time, but hoped that he would be able to do so as soon as possible.

The Worker members thanked the Government representative for appearing before the Committee and for his comments. At the outset, they noted that they had been surprised and troubled by his comments, that conveyed anything but an attitude of cooperation. Especially concerning were the representative's comments regarding his Government's repudiation of its treaty obligations under Convention No. 87. This was a very serious development that, if the Worker members had correctly interpreted his statements, cast a serious pall over the Committee's discussion. There was really very little more to say than what had been said repeatedly over the past 20 years. However, with all the attention given to the forced labour issue, the Committee should not overlook the fact that the violation of Convention No. 87 by the Burmese Government was clearly one of the most serious cases reviewed by the Committee over the last decade. This was the 14th time the Committee had discussed the case during the past 20 years, in fact, including ten out of the past 11 years. On seven of the most recent occasions, its conclusions had been set aside in a special paragraph of its report, the last four of these as cases of "continued failure to comply with the Convention". They regretted that this continued to be a record of dubious distinction, a record that would be worsening, given what the Government had told the Committee today. The Worker members reminded the Committee of the record of a government that had repeatedly expressed its "sincere" desire to cooperate with the ILO as the Committee had heard during its special sitting on Burma's application of Convention No. 29 earlier in the week, although it was not what the Committee had heard today. The language used by the Committee of Experts concerning the nature of the Government's cooperation was strong and clear. The Committee of Experts recalled that they had been "commenting upon the continued failure to apply the Convention, both in law and practice, for over 40 years". Regarding the submission of reports, the Committee of Experts "deeply deplored the lack of cooperation on the part of the Government, manifested in particular by a total absence of reports under this Convention over the past years, despite a serious failure in applying its provisions". They also recalled that a direct contacts mission had been abruptly cancelled in 1996 without any explanation whatsoever. The Government representative conveniently ignored this in his comments. Therefore, five years later, the commitment to allow a direct contacts mission was seemingly forgotten. In expressing the Workers' position, he wished to state clearly that there was absolutely no freedom of association inside Burma today, either in law or practice. This had been the situation for many years and any attempt to freely associate was dealt with quickly and in the severest terms. In regard to the law, as the Committee had stated many times in the past, there was no operating trade union law in Burma nor any legal structure to protect freedom of association. The Committee had discussed Decree No. 6/88, issued after the

military crackdown of 1988. They did not wish to repeat what was said in previous years. Suffice it to say that this was a broad decree that required all associations and organizations in Burma to be approved by the Ministry of Home and Religious Affairs before being established. This was clearly a violation of Article 2 of the Convention that stated: "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their choosing without previous authorization". The Committee had also heard once again about plans for a new Constitution. It had heard about this for many years, but noted that a process accepted by the people to draft a new Constitution had never been put in place. The Committee had also heard about plans to draft a new labour law, as it had for many, many years, and once again there appeared to be absolutely no progress. The Government had been asked repeatedly to supply drafts to the ILO and to accept ILO assistance, such as a direct contacts mission, to ensure that it complied fully with Convention No. 87. The requests from the Committee of Experts and the Committee had been repeatedly ignored and the Committee had heard today that such requests would continue to be ignored. In regard to the actual practice inside the country, the Worker members informed the Committee that one of their Worker colleagues, Brother Maung Maung, had been present at the Conference this year and was present at the meeting today. Thirteen years ago, Brother Maung Maung was a leader of the All Burma Mining Union inside Burma. Together with six colleagues, he was dismissed under Decree No. 6/88 for participating in the 1988 pro-democracy demonstrations. He was forced into exile shortly afterwards and helped to establish the Federation of Trade Unions of Burma (FTUB). He was currently its general secretary. With offices in a number of countries, the FTUB had supported the organization of Independent Trade Unions in a number of the ethnic areas and against tremendous odds. The FTUB had even been able to organize workplaces inside the country. Of course these units were considered illegal and dangerous by the regime since the FTUB was banned in Burma as a terrorist organization. Anyone caught belonging to one of these units would be severely punished. The Worker members drew the attention of the Committee once again to two FTUB leaders, Khin Kyaw and Myo Aung Thant, both arrested in 1997. Khin Kyaw, an official of the Seafarers' Union of Burma, was serving a 17-year prison sentence for his trade union activities and Myo Aung Thant, a member of the All Burma Petro-Chemical Corporation Union, was serving a life sentence for relaying information to union and pro-democracy organizations in exile. His wife was also arrested and sentenced to ten years in prison. The Government was not very pleased that Mr. Maung Maung was present at the Conference. It seemed, when one read the official press, that the Government blamed him for, among other things, fabricating the thousands of pages of documentation supplied to the ILO confirming the existence of forced labour. He had often been the target of vicious personal attack in the official media. The Worker members noted that the Government had tried to block Mr. Maung Maung's attendance at this year's Conference by challenging his ICFTU credential claiming, among other things, that his organization was not legally registered in Burma, presumably, under Decree No. 6/88. This challenge had been summarily dismissed in the Credentials Committee. Such cases of chronic non-compliance over many years were extremely frustrating and could expose, unfortunately, the limits of what the Committee could achieve. Nonetheless, as the Worker member of the Netherlands and others had said on a couple of occasions this year, the Committee members were a patient lot and would continue to do whatever was necessary for as long as it might take to compel the Government to do what it clearly had no intention of doing, namely, to comply fully with its treaty obligations under Convention No. 87. Judging by the Government representative's comments, the Committee's patience would continue to be sorely tested. In conclusion, they recalled the comments of the Employer members during the discussion of Swaziland, that it was not within the mandate of the Committee to deal with broader political matters. And of course the Committee typically structured its discussions around the comments made by the Committee of Experts regarding the violation of a particular Convention by a particular country. However, often the Committee could not divorce its discussions from the broader political context existing in the country at issue. Surely, the Employer members were quite aware of this. Regarding Burma, the Commission of Inquiry made quite clear in paragraph 542 of its report that the problem of forced labour would not be addressed until a process of political normalization occurred. It went without saying that the same could be said about freedom of association. Given the total lack of progress over two decades towards bringing law and practice into compliance with Convention No. 87, a fundamental change in the nature of the regime would be necessary before the Committee would see any real progress. As noted during the special sitting on Burma's application of Convention No. 29, the Worker members sincerely hoped that the current talks between the regime and Aung San Suu Kyi would result in a political normalization, a transfer of power back to the elected civilian leaders and a return to the rule of law. They considered that a release of a few National League of Democracy (NLD) leaders from imprisonment during the past few days was a good sign, and hoped that these releases would result in the reopening of NLD offices around the country so that the current secret talks could develop into a full-blown dialogue. They did not know, however, what the outcome of the talks would be. At this point, they could only hope, and for the Workers, their hopes had been dashed a bit by the comments from the Government representative repudiating freedom of association. If these talks failed, history had shown that it was only a matter of time before workers would drop their tools, leave their workplaces and farms, and exercise their right to strike in defence of their most basic human rights. This was precisely what had happened in 1988 and was only put down by massive military force. In closing, they wished the Committee to know that if this ever happened again, the Workers would stand in solidarity with their sisters and brothers in Burma, as they did in 1988 and as they did with the workers of Poland, South Africa, Chile and elsewhere. Given the context of the discussions this year, they hoped and expected that the Employers, too, would rally to the support of the Burmese people in their greatest time of need.

The Employer members recalled that the Committee of Experts had been commenting on this case for over 40 years. The Conference Committee had also discussed this matter repeatedly. In fact, the Conference Committee had placed its conclusions regarding Myanmar in a special paragraph on at least seven occasions. The crux of the problem was that workers in Myanmar had no right to establish trade union organizations without previous authorization. This was a clear violation of the right of freedom of association contained in the Convention. In the past, the Government had indicated that it was in the process of drafting a new Constitution and reforming its labour laws. Today, the Government representative indicated Myanmar's intent to move away from the Convention because it considered that it had been unfairly treated by the Conference Committee. This was the reason why the Government had not submitted a report to the Committee of Experts. If this statement was intended to be a denunciation of the Convention, then it was in contradiction with the Government representative's statements regarding his Government's cooperative relationship with the ILO. The Government representative had referred to the existence of more than 2,000 social welfare associations which were, according to his definition, precursor organizations to trade unions. It was clear that these organizations were not trade unions. This statement created the impression that the Government feared the inhabitants of its own country, since it gave them no freedom to freely establish organizations to further and defend their interests. It was evident that the right of freedom of association did not exist in Myanmar either in law or practice. In addition, the Government representative had clearly manifested his Government's unwillingness to cooperate with the Committee. Under these circumstances, the Employer members had no alternative but to simply acknowledge this situation. The Government had taken a political position in this matter. However, the ILO and the Conference Committee could not influence this political decision. Their mandate was to address the consequences of this political decision, namely the manner in which the Government complied with its obligations arising out of its ratification of the Convention. This case was regrettable since governments normally cooperated with the Committee and made efforts to bring their legislation and practice into conformity with the provisions of the Convention. However, this Government had clearly shown its lack of will to take the necessary measures to guarantee fully freedom of association in the country. Accordingly, this regrettable situation of the Government's continued failure to implement the Convention should be reflected in the Committee's conclusions.

The Worker member of Pakistan agreed fully with the statements made by the Employer and Worker members in this case. He recalled that Myanmar had repeatedly assured the Committee that it intended to revise its labour laws. In fact, the Committee had been hearing the same promises since 1980. Referring to the Government representative's statements concerning social welfare associations, he considered that there was a clear distinction between trade unions and these associations. He also pointed out that, regardless of the constitutional framework of a country, when a member State ratified a Convention, it undertook to bring its laws into conformity with that instrument pursuant to basic principles of international law. Therefore, the Government's excuse that its laws would be amended in the future was unacceptable. Moreover, the Government had repeated the same excuse for the past 20 years,

but had taken no action in this regard. He recalled that the Conference Committee had repeatedly recognized the gravity of the situation in Myanmar and had repeatedly urged the Government to amend its legislation to provide for freedom of association. The Committee had stated this in a special paragraph in 1995, 1996, 1997 and 1998. The Conference Committee once again deplored the Government's lack of cooperation, manifested by its lack of response to the Committee of Experts. He pointed out that the principle of freedom of association was the life blood of the ILO and that, for this reason, the principle of freedom of association was set forth in the Preamble to the 1919 ILO Constitution as well as in the 1998 Declaration on Fundamental Principles and Rights at Work. He deplored and condemned the situation in Myanmar and urged the Government to take special measures to bring its law into conformity with the provisions of both Conventions Nos. 29 and 87. He expressed the hope that the situation for working men and women in Myanmar would improve.

The Worker member of Senegal stated that the indifference of the Burmese Government vis-à-vis the Committee was clear. He recalled that the mandate of the Committee of Experts consisted in monitoring the application by member States of Conventions they had ratified. The case of the application of Convention No. 87 by Myanmar was a recurrent item, regularly registered on the agenda of the Committee of Experts' sessions. He noted the declaration made by the Government representative according to which he indicated that a new Constitution and new labour legislation were under discussion. In that context, he recalled that it was not the first time that the Government made such announcements which were not followed up by action. According to the information made available to the Committee of Experts, the violations of the Convention continued to be made on a larger scale, and the right of workers of Burma to establish trade union organizations without previous authorization, which constituted one of the basic principles specified in the Convention, remained an objective to be attained. The obstacles encountered were numerous, and constituted yet another impediment in the application of the very essence of the fundamental Conventions of the ILO. The preservation of the public social order could not adapt itself to such violations. He reiterated the need to reaffirm the position of Convention No. 87 in the legal system of Myanmar. The non-observance by the country of the provisions of Convention No. 87 topped a long list of violations. He considered that the examination of such a case for a number of years by the Committee without any positive action taken by the Government, dealt a blow to its relations with the Committee. A State that ratified a Convention was obligated to apply its provisions including the amendment of relevant legislation, if necessary, to repeal or modify the provisions contrary to the ratified Conventions. In the case under examination, the Government had promised to adopt legislation which had not seen the light of day. He concluded by reiterating that the "warning signal" which lay in inscribing a special paragraph on the case in the conclusions of the Committee had not yielded any results so far. The reason was simply due to the deliberate choice made by the Government to operate outside the system. He therefore considered that the Government of the country in question should be condemned with firmness. He concluded by expressing his appreciation of the "knights of a just cause" represented by the trade unionists of Myanmar who were participating in the deliberations of the Committee, in spite of the difficulties encountered.

The Government member of Norway, speaking on behalf of the Governments of Denmark, Finland, Iceland, Norway and Sweden, expressed the regret of the Nordic countries that the Government had not submitted the required reports to the Committee of Experts. In this context, he recalled that the Committee of Experts had been commenting upon the Government's continued failure to implement Convention No. 87 in law and practice for over 40 years. The Nordic Governments urged Myanmar to adopt the necessary measures to ensure the right of workers to establish, without previous authorization, and to join — subject only to the rules of the organizations concerned — unions, federations and confederations of their own choosing, for the furtherance and defence of their interests. The Nordic Governments requested that Myanmar adopt the necessary measures to guarantee fully the right to organize and requested it to supply with its next report a copy of the most recent draft revision of the Trade Unions Law, so that the ILO might assess its conformity with the provisions of the Convention.

The Government member of the United States noted that the Worker and Employer members had outlined this case well, and he concurred with their views in this matter. He wished to point out that this was a serious case and a long-standing one. The Government representative's intervention had also been extremely disappointing. It was unfortunate that, for 40 years, the Government had failed to take any action to guarantee the rights of its workers to establish and join trade unions. While the Government had repeatedly promised that new legislation and a new Constitution were being drafted, no evidence of this had been presented to the Conference Committee. The Government's conduct demonstrated a total disregard for its international obligations arising from its ratification of Convention No. 87, as well as for the rights of its workers. The situation in Myanmar constituted a clear violation of a fundamental ILO Convention and his Government concurred with the Committee of Experts that the situation was totally unacceptable.

The Government representative of Myanmar stated that his delegation had listened attentively to the statements made by the Employer and Worker members, as well as by other speakers. His delegation had explained to the Committee the efforts made by his Government and the practical difficulties that it had experienced in the application of the Convention. At this point, he had no more to add, since he had already mentioned the revision of the Constitution of Myanmar and the role played by the various social welfare associations in protecting workers. These were the steps taken by the Government to comply with the Convention. He stressed that his delegation had appeared before the Conference Committee to demonstrate his Government's political will to cooperate with the ILO, as well as to hear the concerns of the Committee. He considered that the discussion had been useful. He had listened carefully to the comments made and his Government would take these into account in the future. However, he stressed his Government's strong objection to the reference made to the Free Trade Union of Burma by the Worker members.

The Worker members protested against the Government representative's statement regarding the Free Trade Union of Burma, an organization with which the Workers' group had a long-standing relationship. They defended its integrity and credibility and looked forward to the day that the FTUB would be allowed to operate in Burma and represent those workers that chose it to represent them. The Worker members concurred with the sadness expressed by the Employer members in connection with Burma's continued non-compliance and hoped that their sadness and anger would be reflected in the Committee's conclusions. They assured the Government that the Committee would continue to discuss this case until such time as the Government had effected the requested changes.

The Employer members stated that the Conference Committee's work had begun with the case of forced labour in Myanmar and ended with Myanmar's failure to apply the provisions of Convention No. 87. The Employer members had not heard anything new in the concluding statements of the Government representative. They recalled the Government's statement that it would address the issue of freedom of association in the future and considered that this demonstrated the Government's lack of political will to take the measures necessary to guarantee the right of freedom of association in Myanmar. At this time, this right did not exist in either law or practice in the country. They indicated that the deplorable situation of Myanmar's continued failure to implement the Convention should be reflected clearly in the Conference Committee's conclusions.

The Committee noted the statement made by the Government representative and the detailed discussion which took place thereafter. It recalled that this case had been discussed by the Committee on many occasions during the last decade. The Committee shared the concern expressed by the Committee of Experts that the Government failed to send a report and found itself obliged once again to deeply deplore the total absence of cooperation on the part of the Government in this regard. In these circumstances, the Committee could not but once again continue to deplore the fact that no progress had been made towards the application of this fundamental Convention, despite the fact that very serious violations had already been noted over 40 years ago. The Committee was also once again obliged to express its profound regret for the persistence of serious discrepancies between the national legislation and practice and the provisions of the Convention. These discrepancies concerned the basic principles of the Convention. Extremely concerned over the total absence of progress in the application of this Convention, the Committee once again strongly insisted that the Government adopt, as a matter of urgency, the measures and mechanisms necessary to guarantee, in legislation and in practice, to all workers and employers, the right to join organizations of their own choosing, without previous authorization, and the right of these organizations to affiliate with federations, confederations and international organizations, without interference from the public authorities. It also urged the Government to supply to the Committee of Experts for examination this year any relevant draft legislation, as well as a detailed report on the concrete measures taken to ensure fuller conformity with the Convention. 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 his delegation valued this opportunity for a constructive and result-oriented dialogue with the Committee on the application of Convention No. 87 and had always appreciated the guidance and advice provided by the Committee of Experts on issues pertaining to the application of ratified ILO Conventions. This dialogue had always improved the Government's efforts to implement these instruments. The Government member had listened with interest to the comments made by the social partners on some of the issues. He wished to address those concerns and inform the Committee of the positive actions being taken by his Government to do this.

At the outset, he referred to the social and economic challenges that Pakistan was facing on many levels. The Government's efforts were currently focused on reviving the national economy by reversing the slowdown in economic growth, accelerating efforts to generate employment and alleviate poverty, restoring the confidence of investors and addressing Pakistan's high external debt burden. He explained that Pakistan's economic revival strategy was not about economic growth alone, but also concerned justice and fairness, as well as the distribution of growth and its resulting benefits to the largest possible portion of the population, particularly its poorer members. However, Pakistan had been forced to make some difficult decisions as part of its economic revival plans, including privatization and downsizing of the banking sector, on which the Committee of Experts had commented. The Government was nonetheless taking steps to address the concerns of the social partners, particularly the workers, through sustained social dialogue and comprehensive labour law reforms.

The speaker informed the Committee that Pakistan, together with its social partners, was in the process of devising a modern labour law regime in order to address any discrepancies which might exist between the national legislation and Pakistan's international obligations. The social partners would confirm that, after intensive consultation with them, the Government had successfully completed the first phase of the labour reforms. This reform was being conducted in accordance with the recommendations of the high-level National Tripartite Labour Law Reform Commission, which had been established to consolidate, simplify and rationalize Pakistan's labour legislation. In the reform process, Pakistan was attempting to consolidate 100 categories of labour laws into six broad categories. A committee of legal experts, including experts appointed by the workers' and employers' groups, would be responsible for drafting these laws. The tripartite drafting committee would take into account the comments of the Committee of Experts regarding the application of all Conventions ratified by Pakistan. The proposed labour law reforms would then be submitted to the National Labour Conference in July 2001. In the second phase of the reform, the Government would attempt to address the concerns raised by the Committee of Experts with regard to the implementation of Convention No. 87 in some of the public sector organizations, such as the Pakistan Television Corporation and the Pakistan Broadcasting Corporation.

With respect to the concerns expressed by the Committee of Experts at the delay in framing separate rules for export processing zones (EPZs), he was happy to inform the Conference Committee that these rules had already been framed and were presently under consideration by the Ministry of Industries and Production for submission to the Law and Justice Division. The Government was confident that these new rules would satisfy the requirements of the ILO Conventions ratified by Pakistan and would respond to the observations of the Committee of Experts.

Turning to section 27-B of the Banking Companies Ordinance, he stressed that most of the publicly owned banks in Pakistan were in difficult economic straits, and that if the situation continued, it could seriously undermine their economic viability. Apart from the banks' deteriorating economic conditions, he pointed out that bank management was also faced with certain unfair labour practices. The Government had therefore decided to restructure the banking sector and, as part of its structural adjustment programme with the International Monetary Fund, had agreed to privatize these banks. As a result, the banks would be made more economically viable through restructuring and downsizing. To that end, bank workers were being offered the "golden handshake" and voluntary separation schemes for their rehabilitation. In this concept, the Government representative noted that Pakistan had taken the labour unions into its confidence. The Ministry of Labour and the bank management had initiated a dialogue with the banking sector labour unions in order to address their concerns in restructuring the banking sector. Moreover, at the request of the Federal Organization for Banks and Financial Institutions Employees (FOBFIE), the Ministry of Finance, the State Bank of Pakistan and the Secretary-General of Finance had also held separate meetings with the labour union representatives in order to assure them that the Government was aware of the problems being faced by bank employees. He informed the Conference Committee that this dialogue would continue and that his Government was hopeful that this process of social dialogue would smooth the difficult but inevitable restructuring process. In addition, while his Government considered that section 27-B of the Banking Companies Ordinance did not curtail trade union activities within the meaning of ILO Conventions Nos. 87 and 98 (both ratified by Pakistan), and although the Industrial Relations Ordinance had been upheld by the Pakistani courts, the Government had nevertheless noted the observations of the Committee of Experts in this regard. He therefore informed the Conference Committee of his Government's intention to place this issue before the tripartite commission during the second phase of the labour law reform.

As the Committee was aware, the Government had restored trade union rights in the Water and Power Development Authority (WAPDA). He reminded the Committee that his Government had previously provided a detailed account of the difficult financial problems being faced by WAPDA. However, he pointed out that, as soon as WAPDA's financial position improved due to the operational and financial restructuring supported by the World Bank, the Government had immediately lifted its ban on trade union activities. Unfortunately, the weak financial position of the Karachi Electric Supply Corporation (KESC) which, for many years, had had operational deficits, due to electricity theft, billing fraud and large-scale collection problems. These financial difficulties continued to be the main reason behind continued losses and liquidity. Due to these problems, compounded by unfair labour practices, the KESC was faced with a cash shortfall of approximately 22.4 billion rupees in the year 2000-01. In sum, the entire corporation was in dire financial straits. While the Government had expected to quickly improve the KESC's financial situation, particularly after WAPDA's situation had improved, the economic problems being faced by Pakistan had constituted additional constraining factors acting against the Government's desire to improve the situation in the KESC. He informed the Committee that his Government had entered into a technical and financial support agreement with the Asian Development Bank to improve the KESC's financial situation. While the Government was optimistic that the situation could soon be changed, thereby alleviating the Committee's concerns, this was expected to take some time. The Government undertook to keep the Committee informed of further developments in this regard.

Given the challenges currently being faced by Pakistan, the speaker considered that the Government was making efforts not to marginalize the concerns of the social partners, particularly the workers, and he again noted that Pakistan had initiated a comprehensive process of improving both the economic and social development of the country. While the Government had set positive objectives, achievement of those objectives required patience, time and consistent effort. The Government did not claim to have achieved perfection in any of these areas, but the speaker trusted that the Committee would take note of the frankness and sincerity with which his Government sought to address the problems noted, while remaining engaged in a dialogue with the Committee. He asked the Committee to keep in mind that, at this difficult time, every effort was being made to intensify the process of social dialogue and to accelerate efforts to bring national legislation in line with Pakistan's international obligations. While he understood that his Government needed to do much more, he urged the Committee to take due account of the progress made. He was optimistic that the process of labour law reform in which the social partners were actively involved would address the concerns raised by the Committee and he undertook to keep the Committee informed in this regard.

The Employer members indicated that this case had been before the Conference Committee for many years. The Committee of Experts had made observations on Pakistan's application of Convention No. 87 on 11 occasions since 1980 and the Conference Committee had also discussed the case on 11 occasions, the last time being in 1998. They recalled that, in 1987 and 1988, the Committee had found the situation important enough to warrant special paragraphs. Given the extensive history of this case, the Employer members noted that they found the comments of the Committee of Experts to be too compressed and urged the Committee of Experts to give a more complete description of the situation in future comments. The Employer members noted that the comments of the Committee of Experts listed several points regarding freedom of association and the right to organize in Pakistan. The Government's statements in response to the observations of the Committee of Experts differed remarkably from what the Conference Committee

had heard on previous occasions, in that the Government representative had referred to social dialogue, labour law reforms and the need for economic revival and poverty alleviation as reasons why Pakistan had not yet complied with Convention No. 87. The Employer members nevertheless pointed out that the Committee was discussing the application of a fundamental Convention that Pakistan had ratified 50 years ago. Moreover, they considered that the Government representative had not responded to the points raised by the Committee of Experts' observation. This presented the Conference Committee with a dilemma, since the Government had offered no timetable within which changes would be made, but had merely reiterated promises that the Committee had heard before. They pointed out that the report of the Committee of Experts referred to the lifting of certain bans on trade union activities, and this was to be commended. However, the Government had failed to mention this in its statements to the Conference Committee.

Turning to the problem of export processing zones, the Employer members saw no reason why the Government could not begin correcting the situation now. They recalled that a direct contacts mission had gone to Pakistan in 1994 and that in 1998 the Government had told the Committee that the problems described would be corrected by 2000. It was now 2001 and the problems persisted. The Employer members therefore seriously questioned whether the Government had the political will to correct the situation. Moreover, while the Government member had focused on problems concerning the economic viability of the banking sector, the Employer members did not understand how this problem was relevant to the issue of who could be a member of the collective bargaining unit or to the issue of membership in bank trade unions. In this regard, the Employer members noted that the right of freedom of association was broad and that, therefore, if non-bank employees wished to join the bargaining unit of a bank trade union, nothing in the Convention would restrict that right. With regard to the comments of the Committee of Experts pertaining to restrictions on the right to strike, as these comments apparently related to essential services, they requested that the conclusions of the Committee not include this point. In closing, the Employer members considered that the crux of the problem was that the Government was not coming to grips with this case, and they predicted that the Committee would still be forced to deal with the same issues in the future.

The Worker members expressed their thanks to the Government representative of Pakistan for the information provided. They referred to the well-known case of violations of freedom of association in Pakistan which the Committee had examined on six occasions during the last decade, the last time being in 1998. They equally pointed out the strange practice of the Government which consisted in sending reports containing the same information year in, year out. Apart from a few exceptions, they noted that the practice was repeated in the government reports which were examined by the Committee of Experts last November. The situation on trade union rights in Pakistan was also discussed by the Committee on Freedom of Association. The difficulties relating to the application of Convention No. 87 were of different types as they occurred in different sectors, impacting thousands of workers. The latter point was a case of gross violation of basic human rights. They underlined that the Committee of Experts needed to include a paragraph of 14 lines to simply list the points of "serious discrepancies between the national legislation and the provisions of the Convention". Indeed, the categories of workers who did not have the right to join a trade union were numerous. This concerned, among others, a large section of public servants, teachers, forestry, railway and hospital workers, agricultural workers, and executive officers. One of the most important problems related to the export processing zones (EPZs). Besides the provision of setting up or joining a trade union, the workers of such export processing zones (EPZs) in Pakistan had no right to bargain collectively nor to strike. They had no protection whatsoever against any interference acts committed by employers and against anti-trade union discrimination. The Worker members noted the intervention made by the Government in indicating that export processing zones (EPZs) would no longer be excluded from labour legislation. They fully endorsed the request of the Committee of Experts to the Government to keep it informed of progress made in practice on the issue. Another serious problem of violations of freedom of association in Pakistan related to the banking sector. With reference to the restrictions applicable to the trade unions in that sector, the Worker members recalled that the Committee of Experts, together with the Conference Committee, had previously concluded that such provisions infringed the provisions of Convention No. 87. Article 27-B of the Ordinance governing banks was not in conformity with Article 3 of the Convention as it infringed the right to freely elect workers' representatives. The Worker members had asked the Committee to take on board the request formulated respecting the amendment of the legislation in place. They equally requested the authorities to take immediate and effective measures to put an end to the attacks directed against trade unions in the banking sector to which the Committee referred. In conclusion, the Worker members reiterated that the case was an example of systematic, continued and often institutionalized violations of freedom of association, and that the Government did not exert sufficient efforts to remedy the situation. Indeed, legislation in general did not sufficiently protect workers who were active in trade unions and even less so those who were dismissed on account of their trade union activities or on account of their trade union membership. There were other important problems relating to the resolution of social conflicts. Trade unions cited as an example corruption and inefficiency prevailing in labour tribunals. They insisted that the Government take effective measures, in the short term, to bring its legislation and its practice into conformity with Convention No. 87. They recalled that the Government could always request the technical assistance of the International Labour Organization (ILO).

The Worker member of Pakistan noted that he had listened with interest to the statements of the Government representative as well as to the comments of the Employer and Worker members. He pointed out that Pakistani workers shared the ideals expressed by the Government representative concerning the challenges faced by Pakistan in the fields of work, poverty alleviation and employment promotion. However, he stated that the Government should involve the workers in achieving these ideals, and expressed his belief that those countries who actively involved workers' organizations were able to achieve their goals more efficiently. As the Government representative had acknowledged, it was essential for Pakistan to establish a dialogue with its workers. He considered that the points raised by the Committee of Experts regarding Pakistan's application of Convention No. 87 merited attention so that elements violating the Convention could be removed. He also cited the importance of trade union involvement in the Government's attempts to privatize and downsize the banking sector, pointing out that the bank trade unions' involvement could ensure that bank workers received a fair deal in the restructuring process. Turning to section 27-B of the Banking Companies Ordinance, he stated that this provision clearly conflicted with Article 3 of the Convention. In addition, he stressed that the problems noted by the Committee of Experts with regard to employees in export processing zones, teachers, hospital workers, forestry and railway workers, public servants of grade 16 and above, postal sector employees and employees in the television and broadcasting sectors, must be addressed. Recalling that the ILO had carried out a direct contacts mission to Pakistan in 1994, he noted that the ILO had pointed out to the Government how these issues could be addressed. He therefore asked the Government to review the current situation, particularly taking into account Article 2 of the Convention, which provided that all workers should be entitled to form and join organizations of their own choosing, with the possible exception of the police and armed forces. He welcomed the Government's indications that the bans on trade union activities had been lifted in WAPDA and at PTV and PBC. However, he noted that the Government had recently announced its intention to impose a similar ban on trade union activities in the Pakistan International Airlines. He therefore urged the Conference Committee to put this issue before the Government and he requested the Government to amend its legislation in light of the comments of the Committee of Experts. With respect to the right to strike in essential services, the Committee of Experts had stated that these workers should have the right of recourse to independent adjudication. He welcomed the positive developments made by the Government, but stressed that the other deficiencies which had been repeatedly criticized by the Committee of Experts should be corrected and that the Government should avail itself of ILO technical assistance. He hoped that the Government would take his statements into account and that it would include workers in its future plans concerning economic development.

The Worker member of Japan fully concurred with the comments of the Worker members and the Worker member of Pakistan on the issue of Pakistan's application of Convention No. 87. This case had been commented on for a number of years and the Conference Committee had consistently pointed out that Pakistan's law and practice were not in conformity with the provisions of the Convention. She noted that there was a positive element this year in that trade union rights in the largest public utility company, WAPDA, had been restored. Nevertheless, trade union rights were still being denied in other areas of the public sector, including the railway sector, the hospital and teaching sectors, the postal sector, in export processing zones, for public servants above grade 16, in the Karachi Electric Supply Corporation and the Pakistan Broadcasting Corporation. She also noted the restrictions placed upon the trade union activities of workers in the banking sector. Now it had

been reported in the press that the Pakistani Government had decided to suspend fundamental trade union rights in the national airline, the Pakistan International Airlines. There was no doubt that this was in violation of Convention No. 87 and that the right to strike was seriously restricted in many areas. She noted that the Committee of Experts had urged the Government to review the relevant legislation and bring it into conformity with Convention No. 87. In this regard, she urged the Conference Committee to request the Government to take the necessary measures and to avail itself of ILO technical assistance in light of the Committee of Experts' observations.

The Worker member of Singapore wished to reiterate certain points concerning this case. Pakistan had ratified Convention No. 87 and Article 2 of that Convention was clear and unequivocal, stating that "workers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization". Article 8 of the Convention provided that "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention". Article 11 of the Convention placed the responsibility on the government "to take all necessary and appropriate measures to ensure that workers may exercise freely the right to organise". Pakistan had clearly violated the obligations imposed upon it by each of these provisions.

First, Pakistan's legislation was not in line with the Convention. It periodically and systematically banned workers in certain sectors from union activities and prevented workers in the export processing zones from enjoying the basic rights which it grants to workers in other sectors of the economy. Moreover, the Committee had now learned that the Government intended to suspend trade union activities in another entity, the Pakistan International Airlines.

The Government had indicated that it was embarking on labour law reforms, but had not told the Committee of what the reforms consisted. More importantly, the speaker questioned whether those reforms would restore the rights of workers and within what time frame this would be accomplished. She recalled the Government's statement that the laws on export processing zones were being reviewed. However, this same promise had been made by the Government to the Committee on a prior occasion, when it promised to lift the exemption of EPZs from the application of the labour laws by the end of 2000. This had not yet been done.

Pakistan had clearly violated Convention No. 87. The speaker was particularly concerned that there appeared to be a consistent pattern of violating the Convention, to some extent, with impunity. The Government had lifted the ban on WAPDA and had promised to do so for the Karachi Electric Supply Corporation. Yet, the Government continued to ban workers' rights in the EPZs and now apparently intended to suspend trade union activities in the Pakistan International Airlines. She noted that the Government appeared to be taking conflicting positions. In light of the statements of the Government representative regarding economic development, she questioned whether the Government's motive was to ensure greater progress or to attract more investment to the country. While economic growth was certainly important, it should not be achieved by muzzling unions and depriving workers of basic rights.

She urged the Government to enter into social dialogue with the unions and to put the welfare of the people above all else. Noting that the Government member had mentioned social dialogue with the social partners several times, she recalled that it must involve a serious and sincere effort on the part of the Government to consult the unions and take their needs and concerns into consideration. More importantly, for meaningful social dialogue to take place, there must be strong unions which would be free to articulate their views without fear of being disbanded at any time subject to the Government's discretion.

She agreed with the views expressed in the Committee that enough empty promises had been made and called upon the Government to live up to its obligations under the Convention by immediately restoring workers' rights and refraining from suspending the trade union activities of the Pakistan International Airlines.

The Worker member of Senegal noted that the case of Pakistan was raised for a number of years by the Committee of Experts. He highlighted that Pakistan refused to bring its legislation into conformity with the provisions of the Convention which it had ratified for the last half century. If one were to list the derogation exemptions from the Convention, one would realize that its violation constituted a deliberate act, and that it was the rule rather than the exception. He mentioned that the majority of public services were excluded from the application of the right to strike, by virtue of the Ordinance of 1969. Thus, it could be seen how the civil aviation employees, the employees of the Pakistan Television and Broadcasting Corporation were excluded from the scope of application of the Convention, and that the arguments put forward by the Government were thus unacceptable. He added that the restrictions on membership to bank unions and to joining leading trade union organizations in addition to imposing a penalty of up to a seven-year prison sentence as stipulated under the Act of 1997, in the case of illegal strikes, were a few examples of the harassment committed against trade union organizations and the workers. The Committee of Experts had indicated that the banking sector institutions were resorting to systematic dismissals based on article 27-B of the Banking Companies Ordinance which imposed exemptions in application. He therefore requested the Committee to stress that the Government amend the provisions of its legislation which violate Convention No. 87, which constitutes the very basis of the right of workers to defend themselves. The Committee on Freedom of Association which examined the complaints had suggested the adoption of relevant measures which were approved by the Governing Body in November 2000. He recalled that freedom of association and the right to organize constituted a permanent quest. He concluded by inviting the Government to spare no effort in putting an end to the unjustified trend to dismiss workers, and to amend the legislation in question.

The Government representative stressed that his Government was engaged in a serious exercise to amend, consolidate and rationalize its labour legislation, a process which it hoped to complete in a few weeks' time. Responding to the statements of the Worker member of Singapore, he pointed out that his Government understood the concept of social dialogue quite well and was applying it in both letter and spirit. He assured the Committee that his Government would take the concerns of the trade unions into account and would involve them in the reform process. In closing, he reminded the Committee that Pakistan was undergoing an economic restructuring under the World Bank and that the ensuing changes would take time.

The Worker members mentioned that they had listened attentively to the different interventions on the case. They took note of the interventions made by the Government in which they indicated that the amendments to the legislation in question would be made. They emphasized that the Government take effective measures, in the short term, to bring its legislation and its practice into conformity with Convention No. 87. Furthermore, they requested the Government to provide information to the Committee of Experts on the evolution of the situation.

The Committee noted the statement by the Government representative and the discussion which took place thereafter. It recalled that this case had been discussed by the Committee on numerous occasions over the last decade. The Committee shared the serious concern expressed by the Committee of Experts and noted that these comments concerned numerous discrepancies in the legislation and practice in respect of the right to organize of several categories of workers, including workers in the public and private sector, hospital and police personnel, public servants of grade 16 and above, forestry workers, railway employees, workers in export processing zones, and administrative and managerial employees. It further noted the divergencies raised by the Committee of Experts in respect of the ban on trade union activities in the Karachi Electric Supply Corporation and the restrictions on the right of workers' organizations to select their officers in full freedom in the banking industry. While taking due note of the statement made by the Government representative concerning the labour law reform which was currently under way in consultation with the social partners, the Committee was nevertheless obliged to observe with deep concern that no progress had yet been made in respect of the outstanding matters. The Committee urged the Government to develop concrete proposals and to take all necessary measures in the very near future in consultation with employers' and workers' organizations to bring its legislation and practice into full conformity with the Convention which it had ratified one half century ago. It urged the Government to supply to the Committee of Experts detailed information on the concrete progress made in this regard in its next report.

Panama (ratification: 1958). **The Government representative** said that Panama had ratified 74 ILO Conventions, which placed it in 19th place for ratification of Conventions. Of the 74 Conventions ratified, 68 were in force, which put Panama in 13th place for Conventions in force. It had also always submitted its reports on time and had paid its contributions in advance up to 2002, which showed the great interest and respect in which it held the ILO. At the meeting of June 2000, Panama was called to answer in Case No. 1931. On that occasion it was explained that Panama had a democratically elected Government, that the country was also governed under a system of separation of powers and that the Government of Panama was very keen to comply with ILO standards. The Com-

mittee's recommendation in that case would require an amendment to the Labour Code and, unfortunately, the Government did not have the necessary parliamentary majority in the Legislative Assembly to pass the amendments requested, particularly as the labour organizations had expressed their opposition to those reforms. The reforms to the Labour Code requested by the Committee were directly related to strikes and their effects. It was over a year and nine months since the Ministry of Labour of Panama had ceased to be a ministry in charge of conflict to become the Ministry of labour development, social dialogue, cooperation and prevention and alternative solutions to disputes. As for strikes in Panama, 26 strikes were announced in 1999 and none actually materialized. In 2000, 33 strikes were announced and only one took place and in 2001 only 13 strikes had been announced, of which only one had taken place and that had lasted two-and-a-half days. That showed that strikes were virtually non-existent in Panama. The previous Government in 1995, which did have a parliamentary majority, reformed the Labour Code, a reform which was endorsed by the employers and the majority of workers, despite the fact that the reform led to social upheavals, disruption of social harmony and the deaths of four people. The Government believed in cooperation and tripartism, which was the *raison d'être* of the Organization and the Committee, and was fully convinced that the only way to bring about the changes proposed by the Committee was through social dialogue. For that reason, in a letter dated 6 August 2000, the Minister of Labour formally requested technical assistance from the Office and a multidisciplinary technical team was sent from San José, to provide specialist support in activities connected with employers' and workers' organizations. He did not have specific details of the result of that mission. The speaker reported that the Ministry of Labour and Work Development of Panama was developing a series of tripartite projects on cooperation and social dialogue, some of them sponsored by ILO and some by other bodies, among them the following: regional programme for modernization of the labour market sponsored by the IDB-USAID-SIECA which had established an executive body, the Labour Foundation, a bipartite body for social dialogue between employers and workers, promoted by the Government; pilot project for the promotion of renewed social dialogue to facilitate the creation of productive employment, labour protection and investment in human resources in the context of alternative dispute settlement, sponsored by IDB-USAID-SIECA; ARPE project sponsored by the ILO, a tripartite project promoting job-creation and poverty reduction; Relacentro project, sponsored by the ILO, on freedom of association, collective bargaining and labour relations in Central America; and ILO-PRODIAC project on social dialogue in Central America, to strengthen the consolidation of democracy. As could be seen, the Ministry of Labour and Work Development had been fulfilling its institutional mission as the leading, formative and standard-setting body for labour development policies, to promote harmonious labour relations and the use of alternative means of preventing and resolving disputes, and had developed strategic alliances with university institutions, government bodies, non-governmental organizations, employers' and workers' organizations, to implement programmes to facilitate social dialogue, cooperation and alternative ways of dispute settlement. Panama today enjoys an enviable social peace. The Government was making enormous efforts, to the extent of its powers, to encourage the necessary social dialogue, since it considered that on completion of those projects, conditions would have been created to narrow the gap between employers and workers and, on a basis of consensus, allow the presentation of a bill on the matters requested by the Committee. For all those reasons, the Government representative requested the Office to continue with the bipartite technical assistance through specialists in the activities of employers' and workers' organizations as the ideal channel for achieving the result hoped for by the Committee, since the Government, as already indicated, did not enjoy the parliamentary majority necessary to pass the labour reform bill needed to reflect the comments of the Committee of Experts.

The Worker members noted that the last discussion in this Committee concerning difficulties in the implementation of Convention No. 87 in Panama dated from 1992. Moreover, this country was on the list of individual cases examined the previous year by the Committee with respect to the application of Convention No. 98. Many of the problems which had been examined on that occasion, were raised again. The Committee of Experts had formulated comments on a wide range of legal provisions. Many of these comments concerned strikes in the public services. The Committee of Experts observed that the Government had adopted an excessively wide interpretation of the concept of "essential public services" and minimum service to be provided in certain public services in case of strike. Concerning the definition of "essential public services", the Worker members referred to the report of the Committee of Experts. Concerning the minimum service, they underlined that the legislation which required the conscription of 50 per cent of the personnel in case of entities providing essential public services, should be modified in consultation with workers' organizations. It was in fact important to look for a solution which guaranteed a minimum service without infringing upon the freedom of association of the civil servants concerned. Another problem tackled by the Committee of Experts was the constitutional obligation to be of Panamanian nationality in order to serve on the executive board of a trade union. The Worker members fully supported the position of the Committee of Experts in this respect. It was in fact necessary that the Government took appropriate measures in order to abolish this constitutional requirement which was not compatible with the right of workers to freely elect their representatives. With regard to points IV and IX of the observation of the Committee of Experts, the Worker members referred to last year's discussions regarding the application of Convention No. 98 by Panama. These questions had been examined by the Committee on Freedom of Association in the context of case No. 1931 and some legislative provisions could be incompatible in fact with the provisions of Convention No. 87. The Worker members underlined that it was important to seek a solution on a tripartite basis. It was essential that the Government introduced modifications to its legislation and consulted with the organizations of workers and employers. To conclude, the Worker members observed that there were difficulties in the implementation of the Convention in Panama and indicated to the Government that it could have recourse to the technical assistance of the ILO in order to bring its legislation into conformity with the Convention, as underlined by the Committee on Freedom of Association in its conclusion in Case No. 1931.

The Employer members stated, in respect of Panama's application of Convention No. 87, that they intended to focus only on the salient points in the case, as the Worker members had done. Further, they intended to focus on those points on which they considered that the Employer and Worker members were in full agreement. With regard to these points, the Employer members had taken a consistent position. First, in respect of the prohibition of more than one association of public servants in an institution, and more than one chapter per province, they considered that this prohibition gave rise to a trade union monopoly situation, which violated the Convention. Second, they considered that the excessively high number of members required for the establishment of employers' and workers' organizations at the enterprise level were unjustified and violated the principle of freedom of association. Third, the requirement that individuals serving on the executive board of a trade union be of Panamanian nationality was excessive and unjustified. It was enough to require the person to have resided in Panama for a certain period of time, but subsequently the individual should have access to employers' or workers' organizations and be permitted to hold office in such organizations. The Employer members pointed out that the issue of the right to strike had been addressed in the conclusions of the Committee on Freedom of Association, with which they were not in agreement. However, they noted some excessive provisions in the legislation which they considered to be incompatible with the Convention. In Panama, strikes resulted in the immediate closure of the enterprise, establishment or business affected. This closure was so complete that, even employers and management had no access to their property, non-striking workers were prevented from entering the premises and all production was stopped. They also considered that it was excessive for police to be involved in enforcing this closure. These provisions had a negative effect on business and were not based upon the provisions of either Conventions No. 87 or No. 98. Accordingly, they considered that the Government should repeal the relevant provisions of the Labour Code. Another aspect of the legislation to which the Employer members objected was the legal obligation for employers to pay wages due in respect of strike days. The Committee of Experts, referring to the conclusions of the Committee on Freedom of Association in the case of Panama, had addressed all points but this one. In contrast, the Employer members cited the case of Australia, discussed at last year's Conference, which involved a provision where workers were not allowed to be paid in the event of a strike. The Committee of Experts had criticized the Australian legislation, but where, as in this case, the provision required employers to pay the wages of striking workers, the Committee of Experts had said nothing. The Employer members noted that the Committee on Freedom of Association had correctly concluded that this issue was not one to be dealt with by the legislature, but must be resolved by the social partners themselves. Nevertheless, the Employer members urged the Government to repeal the legislation mentioned, considering that it impaired the rights of employers in the collective bargaining process. Unfortunately, the Employer members had heard few answers from the Government representative regarding

which provisions were to be amended and when. They therefore demanded that the Government took measures to amend the provisions at issue so that Panamanian law and practice would be brought into line with the Convention.

The Worker member of Panama indicated that Panama was going through a difficult economic, social and political situation at the present time, which made it impossible for amendments to be made to the Labour Code, in a consensual manner. He recalled that the Panamanian Labour Code was amended in 1976, 1981, 1986, 1990 and 1995, and that all the above amendments had done away with the progress achieved by the workers. However, what was most serious was the excuse given that such amendments would allegedly create new jobs. On the contrary, the unemployment rate had increased in fact by 13.2 per cent of the total labour force. In that sense, he indicated that the complaint submitted by the business sector of Panama was not founded for the following reasons: (1) with regard to section 435(1) of the Labour Code regarding the setting of a deadline of 35 days for the negotiation of collective agreements, the above was sufficient time for the negotiation, through labour administration, and that if the claims of the employers were to be heeded, negotiations would be left without a set deadline. He added that the latter would prejudice greatly the workers. He equally highlighted that it was important for the majority of trade unions to negotiate directly, without any restrictions; (2) with respect to section 452(2) of the Labour Code, with regard to which the employers asked that collective conflicts be submitted to arbitration by mutual consent, he noted that the latter would imply a setback for the trade union movement of Panama, since the majority of the labour conflict cases had been submitted to arbitration in order to avoid strikes. He pointed out that, as claimed by the workers, leaving arbitration to be submitted by mutual consent would aggravate labour conflicts in the country because some enterprises would prolong the conflict in the case of strikes, and thereby the aspirations of workers would be aborted; (3) with respect to sections 493(1) and 497 concerning the closure of enterprises, establishments or businesses affected by strikes, the claims with respect to the amendments of the Labour Code put forward by the employers would lead to mediatized strikes, and the latter would mean in turn that the employers would continue to operate in their enterprises with new personnel. The latter would render the strike ineffective, and furthermore would lead to confrontation among workers. He added that in the case of Swaziland, the employers were of the view that the question of the right to strike was not envisaged in Convention No. 87. And even more, the details relating to the right to strike were not relevant, and if the right to strike were to be examined, the latter could not be dealt with in the Conference Committee, since according to the Employer members, the above point was not provided for by Convention No. 87. In that sense, he indicated that he did not understand how the contrary criterion was applied to the case of Panama. Finally, he emphasized that this Committee and the Committee of Experts were badly informed, indicating that the trade union movement was never officially notified that the ILO had sent any experts or technical staff to Panama to deal with the issue.

The Employer member of Panama indicated that during that day representatives of the National Council of Organized Workers (CONATO) had distributed to the room a publication titled, “Complaints against the Government of Panama, member State of the International Labour Organization, for violations of the right of freedom of association in Panama”. These complaints refer specifically, on the one hand, to violations of freedom of association principles and the trade union rights contained in Conventions Nos. 87 and 98 in relation to civil servants who are only allowed to organize themselves as “associations” limiting in this manner their numbers, not allowing them to organize into federations or confederations, prohibiting their exercise to call a strike, establishing a wide range of essential services and other limitations that posed a great obstacle to the effective application of the aforementioned Conventions. On the other hand, with regard to the private sector, these complaints denounced the excessive requirement of a minimum of 40 members to form a trade union. The use, on behalf of the labour authorities, of excessively detailed articles of the Act to prevent unions from bargaining with employers and substituting them by a group of non-organized workers or excluding the union representatives to replace them by persons without legitimate representation and rejecting the group of petitions by means of a subterfuge allowing for an excessive regulation of trade union freedoms. These freedoms and rights of trade unions were seriously undermined in Panama and the Government had the responsibility, which it had not yet taken up, for bringing about the necessary legislative changes (see page 5 of the previously mentioned publication). These complaints mirrored the recommendations made by the Committee on Freedom of Association, such as the conciliation procedure full of procedural requirements which was far from being a mechanism that promoted voluntary bargaining, infringement of the rights of the social partners, the imposition of compulsory arbitration for non-essential public services, etc. He mentioned, however, that the individual responsible for this complaint, which had been made public that day, was one of the eminent authors of current labour legislation in Panama. His knowledge of the problem would be of great assistance and would help towards its solution with the determination and firmness that is characteristic of this Committee. He indicated that he was acting in the capacity of an Employer delegate at this Conference and that he represented the National Council of Private Enterprise in Panama (Consejo Nacional de la Empresa Privada de Panama), originator of the complaint which resulted in the review of specific articles of the Act that were not in conformity, in writing, spirit or application, with the principles and trade union rights of workers and employers. He was satisfied that on this occasion it was the National Council of Organized Workers of Panama (CONATO) that had acted in concert with the wishes and objectives of the organized employers of Panama. The challenges posed by globalization required a concept that was new for his small country but that only needed the exclusive and effective recommendations of the Committee on Freedom of Association. He mentioned that he wholeheartedly believed that Conventions Nos. 87 and 98 had been conceived for promoting and strengthening social peace, elevating human dignity and the right of all to happiness. He emphasized that the Committee’s steadfastness would help the Government of Panama to take on its responsibilities and he concluded by saying that he hoped for a future of peace and fraternity in Panama.

The Government representative of Panama reiterated that the Government did not have a parliamentary majority to insert the amendments to the Labour Code, as requested by the Committee of Experts. He requested again the technical assistance of the International Labour Organization at the bilateral and tripartite levels so that the Panamanian workers’ and employers’ organizations reach an agreement on the amendments. He highlighted that the issue was not a problem of freedom of association, but that of social dialogue. He indicated his concern with the declaration made by the Worker member of Panama, which indicated that no communication was received from the ILO. The Government was in agreement on making the amendments suggested by the Committee, but indicated its need for technical assistance so that the social partners agree on pending questions. He noted that the ILO should keep up its efforts at the bipartite and tripartite levels, with regard to the amendments mentioned in Case No. 1931 and in respect of other standards that violate Convention No. 87.

The Worker members stated that Panama clearly faced difficulties in the application of Convention No. 87. They once again reiterated that solutions to the problems raised by the Employer members and Worker members should be found in the context of a genuine tripartite dialogue ensuring the full participation of the trade union organizations. Contrary to the statement of the Worker member of Panama, they also insisted that all matters previously addressed by the Committee of Experts be carefully examined.

The Worker member of Panama indicated that it was unacceptable for the trade union movement of Panama for a sixth reform to the Labour Code be undertaken, since each time that it had been modified the workers had lost rights. He mentioned that the social, political and economic conditions did not presently exist in the country for another reform. The problems faced by the workers of the public sector were not the ones mentioned by the Committee of Experts in their observation. He stated that the main problem was the refusal of the right to organize of these workers and that he hoped that next year the Committee would be in a position to address this issue. Finally, while recalling that one of the objectives of the ILO was to guarantee the existence of social peace, he pointed out that it was important to understand that a new reform of the Labour Code could have catastrophic results for the country.

The Employer members noted a series of issues examined by the Committee of Experts which represented restrictions on freedom of association for both employers and trade unions. They considered that these provisions constituted clear violations of freedom of association and that they should be repealed. This case was unusual in that it involved provisions which imposed extreme restrictions on the employers’ freedom to carry out their activities. As the Worker member of Panama had correctly pointed out, Convention No. 87 did not govern the right to strike. However, the Employer members had addressed a different point in their earlier statement. The issue raised by the Employer members did not focus on the right to strike, but rather addressed the relationship between the strike and the employers’ activities since, under Panamanian legislation, a workers’ strike negatively affected the ability of employers to carry out their business. They considered these provisions to be exces-

sive, involving the closure of the enterprises, imposing the obligation upon the employers to pay wages to striking workers, and barring employers and management from the employers' premises. They therefore believed that these provisions endangered if not violated employers' freedom of association rights. While acknowledging that there was no basis for such a finding in Convention No. 87, the Employer members nevertheless agreed with the conclusions of the Committee on Freedom of Association and called for the Government to repeal the provisions of the Labour Code at issue. They expressed the hope that workers and employers could move forward to reach consensus on other issues once a more balanced legislation had been enacted in Panama.

The Committee took note of the oral information provided by the Government representative and the subsequent debate. The Committee underlined its concern that for years the Committee of Experts had been reporting serious discrepancies between national legislation and practice, on the one hand, and the Convention, on the other, particularly with respect to the following points: trade union unity imposed by law in public institutions, an excessively high number of members required to form workers' and employers' organizations, interference in the activities and internal affairs of workers' and employers' organizations, including the right to freely elect their officials, legislation on matters which should be settled by collective bargaining and disproportionate sanctions in the process for resolving collective labour disputes. The Committee noted that the Committee on Freedom of Association had also raised some of those issues. The Committee regretted to note that there had been no progress in the application of the Convention and urged the Government to take all necessary measures to bring national legislation and practice into full conformity with the provisions of the Convention. The Committee urged the Government to promote tripartite discussions to enable a consensual solution to problems that arose, in conformity with the Convention. The Committee recalled, like the Committee of Experts, that the technical assistance of the Office was available to the Government. The Committee expressed the firm hope that in the very near future it would be in a position to note real progress towards full application of the Convention, with respect to violations of the rights of employers and their organizations and workers and their trade unions. The Committee requested the Government to provide detailed information in its next report to allow the Committee of Experts to assess progress in the situation.

The Government representative highlighted that his previous declarations regarding the technical assistance of the ILO at the bipartite levels were made in accordance with what had been requested by the Committee of Experts in its conclusions.

Swaziland (ratification: 1978). **A Government representative** stated that during the visit of the ILO technical advisory mission to the country in November 2000, preliminary draft amendments to the Industrial Relations Act were prepared with the authorities. These amendments had received Royal Assent and had now entered into force. Moreover, the Committee of Experts had noted with satisfaction that a number of discrepancies between the legislation and the provisions of the Convention, which had been raised previously, had been satisfactorily addressed by the new Act. These issues were enumerated in the report of the Committee of Experts. His Government had tried to ensure that the recently adopted amendments reflected as closely as possible the advice of the ILO technical advisory mission. The Government representative then referred to the two remaining discrepancies between the Act and the Convention. With regard to the issue of the exclusion of the correctional services from the scope of the Act, the Government representative stressed that this had been deliberate since these services formed part and parcel of the armed forces in his country. This was also the situation in many other countries. With regard to the lengthy procedure to be followed before strike action could be taken legally, the speaker indicated that the period of time of 70 days mentioned in the report of the Committee of Experts was wrong. This period had been decreased from 70 days to 14 days. Concerning the issue of civil liability of federations, unions and individuals under the Act, he indicated that they were subject to civil liability only if they engaged in criminal activities during a protest action, as mentioned by the Committee of Experts. The Government representative wished that the Committee of Experts would examine at length the amendments adopted late last year. He also thanked the ILO for its assistance in ensuring that national legislation conformed to Convention No. 87.

The Worker members stated that this Committee was dealing with a Government which ruled by decree; believed in brute force and impunity as opposed to social dialogue; disregarded the rule of law; ruled under a state of emergency laws since 12 April 1973; was alien to voices of dissent; rewarded armed forces for brutalizing peaceable protesting citizens; had no respect for, but malicious interference with the judiciary. This was the sixth consecutive year since Swaziland had appeared on the agenda of this Committee in 1996. During the last six years, when recommendations were made, Swaziland agreed to make improvements but the reality was that each subsequent year there would be a fresh excuse at the expense of deteriorating human and trade union rights. In the last six years, there had been two major cases presented to the Committee on Freedom of Association against the Government of Swaziland (Cases Nos. 1884 and 2019) and other very important violations against trade unions occurred. The speaker then went on to explain in detail the broad content and aspirations of Convention No. 87. Freedom of association was about the right of organizations to function and organize their administration without interference; the right to protest and picket; the right to free expression, free speech and freedom of assembly; protection against acts of anti-union discrimination; protection against acts of interference; the right to freedom of movement; rights of due process; protection against arbitrary arrest and detention; and the right to demonstrate. However, even after the promulgation of the new Industrial Relations Act, 2000 a series of violations of human and trade union rights had occurred and included the closure of the *Observer* newspaper and the dismissal of union members at the government-owned television station. Between October and December 2000, union meetings had been banned by the Prime Minister. Trade union leaders were under 24-hour surveillance, were denied freedom of movement and were in detention during mass actions. Union leaders and activists were brutalized and trade union meetings were brutally dispersed, while prayer services summoned by workers' organizations and progressive elements were brutally dispersed and tear-gassed. The independent print media, the *Nation* and the *Guardian* had been banned. Charges had been brought against trade union leaders for having led and participated in a protest action. Trade union leaders' passports had been withdrawn. Disciplinary measures had been brought against trade union leaders who were civil servants for having participated in the peaceful demonstration of 13 and 14 November 2000. It was evident that while the enactment of the Industrial Relations Act seemed like a positive step, the Government was still using the state of emergency laws against the workers (section 12 of the 1973 Decree and the 1963 Public Order Act).

It was clear that, without the AFL-CIO, the American Government, and the threat of the suspension of privileges under the Generalized System of Preferences (GSP), no genuine changes would have ever been made. It was clear to the workers of Swaziland that without international solidarity and pressure, there would have been no political will within the Government to adhere to social justice as aspired by the ILO and the Declaration of Philadelphia. The ILO technical advisory mission had been given the impression that draft amendments in line with the Convention would be adopted. As soon as the United States Government removed the GSP threat, the Government reinforced the section on civil liability completely impeding the right to protest on socio-economic issues. The Government had no consideration for the rule of law, the Conventions it had ratified, the national legislation and fundamental human rights. This kind of government would never make positive steps unless it were under pressure. Before the Committee adopted a recommendation on this matter, it should first consider the following questions: First, were the dictates of the Convention applied in law and in practice in Swaziland? Second, could human and trade union rights exist under a state of emergency? Third, could a good and conforming labour law or any good law for that matter in any country supersede the Constitution? The answer was obviously no, but this was the case of the notorious and draconian Decree of 12 April 1973 which had usurped the Constitution and revoked the Bill of Rights and all civil liberties. As a result of this unfortunate situation, despite the merits of the new Industrial Relations Act, it could not be implemented since it contradicted the 28-year-old state of emergency decree. Although the Committee had always advised the Government not to apply section 12 of this Decree and the 1963 Public Order Act against workers' organizations, the Government had always failed to comply. The fundamental problem was the state of emergency decree which was the supreme law of Swaziland, so that it prevented any labour law compliant with the Convention from entering into force. On this basis, the Worker members proposed that a high-level ILO mission be sent to Swaziland to investigate, meet the social partners and assist them to establish a forum for social dialogue to address in particular the political concerns that unavoidably prevented workers from exercising their rights and civil liberties and enjoying freedom of association. Alongside the high level ILO mission, the Government should be assisted to make the necessary amendments to the Swazi administration order as advised by the Committee of Experts since 1989.

The tripartite social partners should amend and refine all remaining discrepancies under the auspices of the Labour Advisory Board.

The Employer members indicated that this Committee had dealt with this case since the middle of the 1980s. Since 1996 this case had been dealt with on a yearly basis. The previous year a new Industrial Relations Act had been adopted which appeared to address the shortcomings of former legislation. In fact, the Employer members pointed out that this Act had been brought to the attention of this Committee the previous year. However, it had not commented thereon but had preferred to await the comments of the Committee of Experts in this regard since it had been their experience that new legislation often had shortcomings vis-à-vis the Convention. A technical advisory mission from the ILO had visited the country in November 2000 during which preliminary draft amendments to the Act were prepared. Royal assent had been given to the new Act and according to the Committee of Experts the issues raised by it had been satisfactorily amended. These issues concerned nine points which were listed in the report of the Committee of Experts and which had previously been the subject of its comments. These issues concerned considerable amendments to previous legislation. In this respect, Swaziland had been cited as a case of progress in paragraph 210 of the report of the Committee of Experts. This point should not be ignored by this Committee. Apart from this the report of the Committee of Experts addressed two other issues, the first of which regarded the denial of the right to organize of prison staff. Since the Government representative had explained that the prison staff formed an integral part of the armed forces of Swaziland, this exclusion could be considered to be justified. The Committee of Experts should therefore consider whether their exclusion from the scope of the Industrial Relations Act was legitimate. The second issue concerned the very long procedures (70 days) that were required before legal strike action could be taken. The Employer members were now informed by the Government representative that this had been reduced to 14 days. In any event, in the view of the Employer members the issue of the right to strike was simply not dealt with in Convention No. 87. Hence the details concerning the right to strike were not relevant. Regarding the issue of civil liability of federations, unions and their members, the Government representative had indicated that they were open to such liability only in the event of criminal acts committed by them, and not in the event of protest action undertaken by them. The Employer members indicated that the account given by the Government representative and that of the Worker members were completely different. The new information provided by the Government was not reflected in the report of the Committee of Experts. Moreover, the violations of the Convention referred to by the Worker members were not mentioned at all by the Committee of Experts. Hence the Employer members would await the comments of the Committee of Experts in this respect before making any pronouncements. In any event, in the view of the Employer members, a number of satisfactory legislative amendments had been carried out by the Government in line with the requirements of the Convention with ILO technical assistance and expertise.

The Worker members recalled that this was the sixth time this Committee was called to discuss the application of Convention No. 87 in law and in practice in Swaziland. Even though, at each consecutive session, the Government had committed its goodwill towards change, the practice, particularly with regard to human and trade union rights, was still not in conformity with the letter and spirit of Convention No. 87. The Worker members first of all wished to underline the two remaining areas of discrepancies in the Industrial Relations Act, 2000. The Act still excluded prison staff from its scope which was completely unacceptable under Article 2 of the Convention. The Worker members were also very concerned with the unacceptable limitation on the right to strike contained in the new legislation. Even if the new Act had amended the dispute settlement procedure which foresaw a 70-day delay before lawful strike action could be taken, they strongly denounced the fact that under the amended section 40 of the Act, the procedures required a delay of 32 days before peaceful protest action could be taken. Furthermore, two other elements needed to be recalled. First, the requirements for a strike ballot were so complex that they made strike action very difficult or even impossible. In this regard, the Worker members strongly disagreed with the Employer members that the Committee of Experts and the Committee on Freedom of Association were not competent to interpret a right to strike in Convention No. 87. Secondly, unions, federations and individuals were subjected to civil liability if involved in protest action, de facto infringing their rights and leading to prohibitive costs if they exercised their trade union rights. The Worker members had been pleased to learn at the end of last year that, following a technical advisory mission to the country, a number of discrepancies between the Swazi legislation and Convention No. 87 had been addressed during the Industrial Relations Act, 2000. Unfortunately, their hope that the new legislation would be conducive to a real change and a true recognition of the fundamental role of a free and independent trade union movement in Swaziland did not last long. A concrete example of this was reflected in the breaking up of a peaceful march of workers from all over the country on 7 November 2000 by road blocks and heavy artillery. Several union leaders were still waiting for a decision by the court on their peaceful protest action. They had been prosecuted by virtue of section 12 of the 1973 Decree and the 1963 Public Order Act which the Committee of Experts had previously commented on. To make things worse this incident had occurred after the promulgation of the new Act. This was why law and practice could not be separated. The role of this Committee was to examine the compliance with a Convention in law and practice. Hence, the Worker members requested that the current legislation be amended in order to remove the restrictions referred to above. Moreover, they requested that a high-level ILO mission, supported by ILO technical staff, visit the country and meet freely with the Government, trade unions and employers in order to engage the parties in meaningful social dialogue. There was no social dialogue taking place at this time and this should be recognized by the Committee as contrary to the spirit of cooperation claimed by the Government.

The Worker member of the United States underlined that the work of the ILO, especially its technical assistance and its standards enforcement machinery, were complemented quite effectively with the threat of economic sanctions by the United States to finally produce a long sought-after result of the ILO and this Committee regarding the case of Swaziland. However, not all of the legal changes needed to bring the law into compliance with Convention No. 87 had occurred. Some very important changes promised by the Government were rescinded at the last moment. He emphasized that according to the law, unions and persons involved in lawful protest actions and not criminal activity as alleged by the Government member, were subject to civil liability. These promises were not only made to the ILO but also to the United States Government and it was on the basis of these promises that the United States Government agreed to suspend its review of special trade privileges under its Generalized System of Preferences (GSP). This last-minute backing away from its commitments to the ILO was an act of bad faith on the part of the Swazi Government that revealed continued refusal by it to comply fully with its obligations under Convention No. 87. This attitude was confirmed by the continuing troubles experienced by the unions in exercising their freedom of association. He urged the Government to change its attitude and respect fully all provisions of Convention No. 87 both in law and practice. He wished to inform the Swazi Government that the American unions would be kept abreast of developments in Swaziland and would work closely with the United States Government to ensure that the commitments made by the Swazi Government were honoured. If this did not occur, the American unions would be ready to renew their request to suspend Swaziland's GSP trade privileges.

The Worker member of Austria stressed that the repression used against trade unionists in Swaziland must be stopped. The Government member had made two incorrect statements with regard to the Industrial Relations Act, 2000. Section 40 clearly stipulated what notice period was required before peaceful protest action could be taken. This was a lot more than the 14 days mentioned by the Government member. The second incorrect point concerned the issue of immunity for civil liability. It was clear that federations, unions and their members were open to civil liability in the event of their involvement in a demonstration. The Government had enacted a new law but was not at all serious about implementing it. The speaker called upon the autocratic regime in Swaziland to ensure that freedom of association and human rights were fully respected. He also urged this Committee to send an ILO mission to that country.

The Worker member of Denmark noted that the Nordic trade unions had been following the political and trade union situation in Swaziland for quite a few years, hardly believing that the country having ratified the Convention already in 1978 could neglect its obligations to such an extent. Some of the discrepancies between the legislation and the provisions of the Convention had now been addressed in the new Industrial Relations Act. However, these improvements did not convince them that trade union rights would no longer be violated. Through the years they had seen extreme examples of violations of human and trade union rights, and recent incidents referred to them by the trade unions convinced them that this case should be followed very closely. They were not sure that tripartite consultations would be practised, nor that the new labour legislation would be implemented. It should not be forgotten that Swaziland was still under a state of emergency which meant that the Government disregarded the rule of law whenever it found it

necessary and suitable. It did so quite often and especially the trade unions and the media had become victims of this state of emergency. It was especially important to be aware of the discrepancies between the Industrial Relations Act and the requirements of the Convention. The most important issue concerned the right to strike which was now severely restricted. Complex procedures were required to be followed before strike action could take place. The Committee should also be aware of the hostility of the Government concerning the right of trade unions to hold meetings. The Prime Minister had announced that such meetings would be allowed under the condition that the police be present and no general policy discussions take place. Despite some positive signs, the situation of workers in Swaziland was so dramatic that the ILO should continue its pressure to remove the undemocratic procedures from the new Act and its supervision of the applications of the new legislation. The next step, especially in the light of the grave incidents which had taken place since this Committee had last met, should be to send a high-level ILO mission to Swaziland.

The Employer member of Swaziland believed that the Industrial Relations Act, 2000, largely complied with the requirements of Convention No. 87. Whatever discrepancies remained could reasonably be dealt with by the social partners in Swaziland provided there was a will to do so. What Swaziland needed from a forum such as this was a recommendation to the ILO to consider giving technical assistance to promote social dialogue in that country. The case before this Committee was a clear testimony that social dialogue was very weak in Swaziland. Condemnation of the country would not solve the problems of relationships in Swaziland. What was needed was assistance to enable the social partners to deal with their differences in a creative and a constructive manner.

The Government member of the United States recalled that her Government had followed this case closely for some time including on a bilateral basis in the context of trade preferences legislation and had actively encouraged the Government of Swaziland to avail itself of ILO assistance in amending its Industrial Relations Act in order to ensure compliance with the Convention. She welcomed the comments made by the Committee of Experts which noted that as a result of ILO technical assistance the Industrial Relations Act of June 2000 constituted a considerable improvement in safeguarding the ability under the law to form and join trade union organizations and for these organizations to carry out their activities. She also welcomed the fact that further amendments to the Industrial Relations Act had been prepared again with ILO assistance and approved by the King of Swaziland in late November 2000. These amendments appeared to address most of the remaining discrepancies commented on by the Committee of Experts, but the Committee would decide if that was indeed the case. She would also like to make it clear that her Government would continue to follow developments closely. She strongly urged the Government to continue to do its utmost to ensure with continued ILO assistance that the Industrial Relations Act and especially the way it was applied in practice was in full conformity with the letter and the spirit of the Convention.

The Government representative reiterated what he had previously stated. His Government had done everything possible to comply with the Convention. He requested the Worker member of Swaziland to clarify the situation and share information with his colleagues about the recent amendments he was aware of regarding the recent amendments not mentioned in the Committee of Experts' report such as the issue of civil liability, of federations, trade unions and their members, as well as that of the reduced length of time to be followed before strike action could be lawfully taken. He finally emphasized that a tripartite body already existed in Swaziland and all social partners could be involved in its work. Recently, the Prime Minister had initiated a Smart Partnership meeting for all social partners. However, if the Workers chose to ignore social dialogue in order to attempt to overthrow the Government, then the Government would only conceive this as political considerations and not genuine trade union activities.

The Worker members, responding to the statements of the Government representative, stated that it was clear that the Government's anti-trade union practices were continuing and were motivated, in part, by the recognition that the SFTU was the main democratic organization in the country. They had listened to the Government's promises, had seen the relevant legislation and heard the explanations of the Government representative to the Conference Committee. Nevertheless, the law and practice in Swaziland remained in violation of Convention No. 87. The Government had to demonstrate a genuine political will to address the grave situation in the country with regard to trade union rights. The Worker members clarified that it was for the purpose of ensuring respect for the fundamental rights of those nine civil service trade union leaders who had been summoned for disciplinary action for attending and participating in peaceful demonstrations that they requested the Committee to take action today. Moreover, it was for the sake of the six trade union leaders that were prisoners-in-waiting for participating and leading peaceful demonstrations that the Committee should ask the Government to take two necessary measures, to mark its first step in a positive direction. First, the Government should amend its current legislation to eliminate existing limitations on freedom of association. Second, a high-level mission, supported by ILO technical staff, should be permitted to visit the country and meet freely with the Government, trade unions and employers in order to promote meaningful social dialogue, and full observance of Convention No. 87.

The Employer members concurred with the initial statement made by the Worker members which did not distinguish between violations in the law and practice in Swaziland since what ultimately mattered was the practical impact. The Employer members had been saying this for 19 years. However, new facts could not be introduced to examine this case. The Conference Committee had never done this since it had always relied on the comments of the Committee of Experts. However, in this case the facts did not appear to equate with what the Committee of Experts had noted. The Employer members noted with astonishment that the Worker member of the United States had threatened that the United States would use trade measures to bring pressure to bear on Swaziland unless the Government took positive action. This was a new tactic, which the Employer members noted. A number of statements in the Committee had made reference to respecting principles of democracy. While the Employer members assumed that all members of the Committee would be in favour of establishing such principles in Swaziland, including the rule of law, free elections, the independence of the judiciary and perhaps even freedom of association, they noted that it was not the role of the ILO to promote democracy. The ILO was limited to examining elements covered by its Conventions and in this regard its terms of reference were clear. They considered that the Committee of Experts would have to look at the issue of the freedom of association rights of prison staff, to determine whether they could fairly be considered members of the armed forces, as this could affect their freedom of association rights. If, however, the issue involved the right to strike, then they considered that it could not be dealt with by the Conference Committee, as this point was not covered under Convention No. 87. The Employer members therefore requested that the issue of the right to strike not be included in the Committee's conclusions for reasons which they had often stated, namely that this issue was not within the competence of the ILO. However, the Employer members trusted that the Worker members would find a way to include this matter in a review system. Then, this matter could be addressed by the Committee of Experts and the Conference Committee, but not before.

The Committee noted the oral statement made by the Government representative and the discussions which took place thereafter. It noted with interest the adoption of the Industrial Relations Act, 2000, which had brought the national legislation into fuller conformity with the provisions of the Convention on some points previously raised by the Committee of Experts. It further noted the statement made by the Government representative concerning the amendments made to the Act in December 2000 following an ILO technical assistance mission to the country, which took place in November 2000. It recalled that it was for the Committee of Experts to examine the compatibility of these further amendments with the provisions of the Convention. The Committee also noted that the Committee of Experts had pointed out that discrepancies remained between the legislation and the Convention. The Committee therefore hoped that the Government would pursue its commitment to full social dialogue so as to redress any remaining obstacles to the application of the Convention in law as well as in practice. The Committee suggested in this regard that the Government consider the possibility of an ILO high-level mission to collect information on the practical application of the Convention and to assist in the development of meaningful social dialogue in the country. It expressed the firm hope that the Government would be in a position to indicate concrete progress made on the issues raised in its next report for examination by the Committee of Experts.

Venezuela (ratification: 1982). **A Government representative** indicated that the Government's principal duty was to respect the Constitution as the mandate of the people and for that purpose it should pursue two strategic objectives, namely the common good and social justice. He indicated that the process of developing new laws was continuing in the framework of social dialogue and recalled that the commission of jurists responsible for drafting legislation took into consideration the suggestions made by the ILO's supervisory bodies. With respect to the law that required that workers

should have ten years' residence in the country to hold executive office, he stated that it had been technically abrogated with the adoption of article 95 of the new Constitution which provided that "workers, both male and female, without distinction and without any requirement for prior authorization, had the right freely to form such trade union organizations as they considered appropriate". The constitutional body established the "electoral authority" to ensure that any electoral process was conducted in an impartial and transparent manner. To that end, the National Electoral Council was formed, to draft, in consultation with trade union representatives, the Special Transitional Statute on the re-election of trade union officers which would remain in force pending the re-election or trade union executive officers. He pointed to the existence of a draft law on trade union democratization and guarantees, which was the result of an inter-union agreement between the various central trade union bodies. The Government was committed to ensuring that such draft legislation was decided democratically by the trade unions. He commended the ILO's active participation in that agreement and emphasized the need to quickly re-elect trade union officers. As for the application of Convention No. 87, he confirmed that his Government had not intended to violate trade union freedom and that, on the contrary, there had been an openness reflected in the 3,600 trade unions currently registered. Convention No. 87 had constitutional status and its application was therefore mandatory. He denied the allegations of interference by the National Audit Office in the management of trade union funds, pointing out that, under article 95 of the Constitution, trade union organizations were not subject to control or administrative dissolution. On the other hand, trade union officeholders were required to make a sworn declaration of assets before taking up office and leaving office. He also highlighted the fact that the Audit Office was an autonomous and independent body which had a series of appeals procedures which could be exercised by anyone who felt that their rights had been infringed. He expressed the Government's determination to continue working for the eradication of poverty, full democratic worker participation to achieve social peace and decent and productive work. Lastly, it valued the technical cooperation provided by the ILO to the Government from its Regional Office in Lima.

The Employer members thanked the Government member of Venezuela for his statement which was on a particularly friendly note although its content was less instructive and in fact it was worrying. Last year, the Employer members had agreed to introduce a summary on this case in a special paragraph in the hope that they would not have to deal with this case again this year — a hope which was unfortunately dashed. The Committee had been repeatedly occupied with this case since the early 1990s and was discussing it for the fifth time since 1995. The Committee of Experts had repeatedly expressed criticism and the Committee on Freedom of Association had placed a series of specific demands on the Government of Venezuela to bring its legislation in compliance with the Convention. The Organic Labour Act contained detailed provisions on issues relative to the internal matters of employers' and workers' organizations and set excessively high requirements regarding the number of employers and workers needed to establish their organizations. The statement made by the Government member of Venezuela last year and this year made reference to the new Constitution which came into force in 1999. However, the Committee of Experts had noted with concern that the new Constitution contained a number of provisions which were not in conformity with the requirements of the Convention. If the Constitution itself already breached Convention No. 87, it would be impossible to bring a change in the law. The Government representative had also mentioned that a commission of jurists specialized in labour law was formally established with instructions to take into consideration the suggestions made by the ILO's supervisory bodies. However, on the strength of the comments made by the Committee of Experts, this Committee already knew what needed to be changed regarding this case. In this respect, the fact that a commission of jurists had been set up seemed like a postponement of necessary action. The Committee on Freedom of Association had already examined at least 18 cases related to Venezuela. Moreover, there was a move to promote a unified trade union movement which fundamentally contradicted the provisions of Convention No. 87. To conclude, the Employer members recalled that during the last five or six years the situation in Venezuela had gone from bad to worse. It was time for the Committee to urge the Government to undertake immediate action in the right direction.

The Worker members stated that for a number of years, the Committee of Experts had drawn the attention to existing discrepancies between Venezuelan legislation and the provisions of the Convention. That case was repeatedly discussed by the Committee. The previous year, the total absence of progress and the lack of indicators demonstrating the goodwill of the Government had led the Committee to repeat its conclusions in a separate paragraph. Furthermore, a joint letter by the Chairpersons of the Workers' and Employers' groups was addressed to the President of the 88th Session of the International Labour Conference, in which the Government was asked to observe its international obligations in view of the adoption of Decree No. 36.904 of 21 March 2000, which was a gross violation of the ILO standards in the field of freedom of association and collective bargaining. In its comments, the Committee of Experts stressed that the Government had inserted anti-trade union provisions in the Constitution. Thus, article 95 of the Constitution imposed the non-renewal of the mandate of the leadership of trade unions, a factor constituting an important obstacle to the guarantees set forth in Article 3 of the Convention. In addition, in accordance with article 293 of the Constitution, the organization of trade union elections should be supervised by a National Electoral Council mandated to seek trade union unification and to deal with issues respecting membership of workers' organizations. The Committee of Experts had considered in that respect that the rules governing the procedures and the arrangements for the election of trade union leaders as well as the issue of trade union unification or the quality of trade union members should be examined by workers' organizations and, in no event, could be subject to decisions imposed by law. This constituted one of the most serious violations conceivable of freedom of association. Equally, the Committee of Experts had considered that the agreement reached by the National Assembly on the organization of a trade union referendum aimed at trade union unification and the dismissal or suspension of trade union leaders constituted a gross interference in the internal affairs of trade union organizations. The Worker members could not but associate themselves with the harsh appraisal formulated by the Committee of Experts as reflected in the terms used, such as "the most serious violations", "a very serious interference" or even "totally incompatible". The Government could not go on in this path as it should observe its international commitments. To that end, it should take the necessary measures to amend the Constitution and repeal the abovementioned Decree No. 36.904. Furthermore, the Worker members suggested that a direct contacts mission be undertaken in order to strengthen the dialogue with the Government, and to seek concrete and satisfactory solutions to the problems raised.

The Worker member of Venezuela said that he was a member of the provisional executive of the Confederation of Workers of Venezuela which had over 2,000 affiliated trade unions and remained one of the largest trade union federations in Venezuela. He recalled that a good many of the violations of Convention No. 87 noted by the Committee on Freedom of Association had their origin in the intention of the Government to dissolve the Confederation of Workers of Venezuela and support a trade union confederation that was in harmony with its views. The speaker regretted that the necessary corrective measures had not been adopted to prevent it continuing to be among those States that had not fully complied with their obligations as Members of the Organization. He regretted even more that the Government had not proposed any amendment in the light of the strong signals contained in the report of the Committee of Experts. Despite the undertakings given at the last Conference, the Government had insisted on continuing anti-trade union practices and in passing laws which seriously violated Convention No. 87. He asserted that despite the indications of the Committee of Experts and the repeated warnings of the Committee on Freedom of Association on the incompatibility of a referendum whereby the Venezuelan people would vote on matters that were the exclusive prerogative of the workers, the referendum was held in December 2000. Anyone who was listed on the electoral register had the opportunity to vote in that referendum. As a result of the referendum, the trade union executives at the head of confederations and federations were suspended. At the same time, the National Electoral Council was authorized to draw up a Special Statute designed to regulate the electoral process for re-electing trade union executive officers. He stressed that the Government had disregarded every warning that the referendum was a violation of trade union rights, and in particular Article 3 of Convention No. 87 which provided that "workers' and employers' organizations shall have the right to draw up their constitutions and rules, and to elect their representatives in full freedom". The speaker added that the Chief of the Freedom of Association and Social Dialogue Branch and the Director-General of the ILO himself had informed the President of the National Electoral Council that the referendum was a serious violation of trade union rights. Despite that, the Government had continued with the process. For its part, in deciding the appeal by various federations, the Supreme Court of Justice had held that the referendum was in conformity with Convention No. 87. The speaker added that, on the basis of the referendum, the National Electoral Council had issued electoral regulations which

conflicted with trade union freedom since they determined the methods for holding elections. Furthermore, the National Audit Office had issued a decision which required trade union executive officers to submit to it a sworn declaration of their assets, constituting a clear breach of Convention No. 87 and government interference in trade union affairs.

The Worker member of the United States recalled that Venezuela was certainly no stranger to the Committee which had resolved to cite this country in a special paragraph in last year's Conference due to serious non-compliance with the Convention. Regrettably, as was evident from the report of the Committee of Experts, the Government had only increased its interference with, and its intervention in the self-organization of Venezuelan workers since June of last year, justifying its measures in the name of popular democracy. Regarding Venezuela's record since June 2000, the Organic Labour Act's violations of the Convention remained unremedied with the exception of section 404. Nothing in the Government's present report indicated to the contrary. In addition to this, even though the language of the Venezuelan Constitution and specifically article 23 protected freedom of association and workers' organizations from intervention, suspension and administrative dissolution, it was totally contradicted and superseded by articles 95 and 293. Article 95 told workers and their unions how to conduct their own elections. In article 95, language of "universal, direct and secret suffrage" clearly suggested that workers and their unions could no longer conduct the elections of their officers by means of delegates at conventions. Moreover, article 293 could be interpreted to mandate the participation of non-members as well as members within a union's jurisdiction and imposed an outside electoral authority on the workers to ensure this so-called suffrage. The Worker member underscored that it was very important for the purposes of Convention No. 87 to make the clear distinction between government-supervised elections to determine collective bargaining representative status and government-sponsored interference in the members' election of their own union leaders. Yet, even when Venezuelan workers and their unions attempted to conduct direct elections trying to live up to the Government's own rhetoric, they had been thwarted. On 14 July 2000, the National Electoral Council prohibited the holding of union leadership elections until February 2001, and in late March 2000, the Federation of Campesinos and Farmworkers was enjoined from internal direct elections and found its property and assets placed in the receivership of the National Ombudsman. On 3 September 2000, the President of Venezuela announced the creation of their "Bolivarian" Workers Force (FBT), a new labour federation with the ostensible purpose of displacing the Venezuelan Workers' Confederation (CTV). Finally, as the Committee of Experts had clearly pointed out, the government-mandated public referendum of 3 December 2000 to allow every eligible Venezuelan voter to decide the future conduct of trade union elections in the country, including the issues of "overhauling of union leadership" and the "suspension" of union officials, violated every conceivable standard and principle of the Convention and created an ominous and terrifying example. Fortunately, the Venezuelan people had the good sense to effectively boycott this full-scale offensive against freedom of association as evidenced in a national abstention rate of at least 77 per cent according to the CNE's own figures. In conclusion, the speaker noted that given the Venezuelan Government's impunity and contempt with respect to the Convention since the special paragraph was adopted last year, he could only join the rest of the Workers' group in requesting the dispatch of a direct contacts mission to Venezuela. Indeed, trade union democracy was too important not to be left in the hands of the workers.

The Worker member of Argentina stated that the interference of public authorities in the organization and management of trade unions in Venezuela constituted a grave violation of freedom of association. She expressed her deep concern with the new Constitution of Venezuela which reinforced such violations through the imposition of rules on the selection of the executive committees of trade unions. She recalled that only workers had the legitimate right to formulate such rules without the interference of the Government in place nor that of workers. What caused most concern was the substance of Decree No. 36.904/2000 regulating trade union elections which imposed, in a unilateral fashion, a uniform model of trade union organization. The latter pointed to a deliberate campaign orchestrated by the Government to discredit the trade union movement of Venezuela and did not constitute an isolated attempt to do so. In fact, in March 2000, three events occurred against trade unions: the repeal of the Collective Agreement in the Oil Industry; the dismissal of union leaders; the setting up of an Electoral Board to interfere in trade union elections. Such elements were supplemented by the statements made by the President of Venezuela who admitted that he had asked the National Assembly to dissolve the Confederation of Venezuela's Workers. In that context, a positive development was the breakdown of the referendum which was called by the Government in order to continue its interference in the operation of trade unions, with a high abstention vote of 80 per cent. That development had caused anarchy and chaos in labour relations; a factor used by employers to discredit trade union representatives and to reject their demands. She asked the Government to repeal all legislation that violated Convention No. 87, and put an end to its anti-trade union campaign.

The Worker member of Mexico said that although Venezuela had ratified Convention No. 87 in 1982, in 1999 it had adopted a constitution that failed to acknowledge the country's international commitment thereunder. He indicated that the Government spoke of "openness to freedom", but the measures taken contradicted that assertion. In that respect, he pointed to those relating to the National Audit Office, which must be provided with sworn declarations by trade union officeholders, or the convocation of a referendum in which the general public was called on to decide matters which only concerned the trade unions. The time had come for the Organization to take steps to prevent such practices being followed as models by other countries. It was not acceptable that trade union rights should be violated on the pretext of exercising governmental freedom. A direct contacts mission was needed to verify the actual trade union situation in Venezuela.

Another Worker member of Venezuela shared the views of the Committee of Experts concerning the requirement for an excessively long and detailed list of duties and aims to be achieved by workers' and employers' organizations, and the delay in amending the legislation. He indicated the need to carry out those reforms in the near future with the participation of all sectors involved, as guaranteed by the present Constitution of his country. With respect to the current situation in Venezuela, he indicated that there had been major political, economic and social changes which had an impact on workers and the trade union movement. More than 65 per cent of the population was below the poverty level, the rate of unemployment hovered around 16 per cent and the informal economy accounted for 50 per cent of the employed population. There was no social security policy and a complete lack of trade union protection, a result of disunity and a decline in trade union membership. Twenty years of this situation had led the federations, confederations and trade unions to formulate proposals in the framework of the drafting of the Constitution in Venezuela in 1999. Some of them were incorporated in the Constitution of the Republic and supported by the entire population, such as, for example, article 95 which endorsed national and international agreements on trade union freedom and envisaged the possibility of holding direct elections by secret ballot throughout the country's trade union structure. Preparations were in hand for elections in all trade unions, federations and confederations in the near future. He suggested that it would be helpful if international trade union confederations and ILO representatives were present during that process. He was confident that the process of change in his country would help to strengthen trade union rights which had crumbled in the previous 30 years, and he acknowledged the important contribution of the ILO through its regional office in the discussion on the unification of the Venezuelan trade union movement.

The Government representative took note of the discussion and reiterated that he was ready to engage in dialogue on social justice and eradication of the poverty which, paradoxically, existed in a rich country. With regard to trade union rights, he maintained that the issue had been resolved with the adoption of the 1999 Constitution. As for the problem of trade union unification, that would be solved independently by the representatives of the central trade union bodies. With respect to the National Audit Office, he reiterated that the Office did not interfere in the management of trade union funds, but simply received sworn declarations of assets from trade union officers before and after their term of office. Finally, he stated that he would accept a permanent international direct contacts mission and visits by international organizations, both of which would help to strengthen the tripartite process and also ensure that the ILO was kept informed.

The Employer members indicated that it was difficult for them to grasp what the Government member had to offer by way of factual information. There had been a long discussion on this case but the problems contained therein had not been resolved and could not be resolved if the constitutional provisions themselves were in violation of Convention No. 87. Moreover, they noted that the Worker members had asked the Government several times to accept a direct contacts mission to the country. However, the Government member had indicated that it wanted a permanent presence in the country which did not necessarily mean the acceptance of a direct contacts mission. This issue needed to be clarified.

The Worker members stressed their profound concern at the development of freedom of association in Venezuela. They expressed their dissociation with the statement made by the Worker member of Venezuela who seemed to share the view of the Government which equated freedom of association with the freedom to adhere to the Government's project. Already the previous year, the Worker members and Employer members had expressed their concern at the attitude of the Government which received special attention in a specific paragraph. During 2001, one could witness a more serious situation in which the violations originated in the new Constitution. In such conditions, the Government should be asked to take the necessary measures to amend the Constitution, and repeal Decree No. 36.904 of 21 March 2000. Furthermore, the Government should clearly indicate whether it would accept a direct contacts mission.

Another Government representative, the Minister of Labour of Venezuela, referred to the recognition of trade union rights and underlined that there were 3,600 trade unions in existence. She said that the new process of change did not in any way disregard trade union rights nor the legitimate right of workers to organize. In that respect she highlighted that 57 collective agreements had been negotiated. She stated that the Government wished to conform to Convention No. 87 which had constitutional status, and which had also been wholly incorporated in article 95 of the Constitution. She asked the workers to have confidence in the process which was under way and added that it was not in the interest of the Government to infringe their freedoms. If that were the case, employers' and workers' organizations would stop it. She requested the ILO to await the outcomes of the process to evaluate them. She said that a fundamental process of change was involved such as had not happened in the country for some 40 years. She also said that never before had there been a trade union database. That database would serve the trade unions themselves. She added that no one would interfere with trade union decisions and if any government body did so, the trade unions had judicial remedies guaranteed by the Constitution. Finally, she expressed appreciation of the ILO's vigilance and the support received from the Office in monitoring the process. She indicated that the great debate would culminate in elections to be held shortly in all basic trade unions.

The Committee took note of the oral and written information communicated by the Government member and the subsequent discussion. The Committee recalled with great concern that it had examined the case on several occasions without achieving positive results. With respect to the serious discrepancies between national legislation and the requirements of the Convention, the present Committee, like the Committee of Experts, urged the Government urgently to amend its legislation to ensure that workers and employers could form organizations and freely elect their representatives without interference by the public authorities. He stressed the need to eliminate the excessively long and detailed list of duties and aims to be achieved by workers' and employers' organizations. The Committee further observed that new complaints had recently been submitted relating to interference by the authorities in the internal affairs of trade unions, in particular trade union elections. It also regretted to note that the new Constitution of the Republic contained provisions that were not in conformity with the Convention. The Committee observed that the situation had deteriorated very seriously and deplored the fact that it was again necessary to examine the case. The Committee also requested the Government to take steps to withdraw the draft texts criticized by the Committee of Experts. In addition, the Committee expressed its profound concern at the convocation of a national trade union referendum in December 2000 with a view to the unification of the trade union movement and the suspension or removal of its leaders. The Committee considered those to be very serious violations of the Convention which struck at the basic principles of trade union freedom, and it requested the Government to refrain from any action designed to impose trade union unity.

The Committee noted that the Government had accepted a direct contacts mission to gather information on the application of the Convention and to prepare amendments that would guarantee its full implementation. The Committee urged the Government to take the measures necessary to bring its national legislation and practice fully into conformity with the provisions and requirements of the Convention. The Committee urged that in the very near future, real progress should be made in the application of the Convention and expressed the firm hope that the next report of the Government would contain information to indicate concrete and significant progress in the application of the Convention both in legislation and in practice.

The Committee decided that its conclusions would be included in a special paragraph in its report.

Convention No. 95: Protection of Wages, 1949

Ukraine (ratification: 1961). **A Government representative**, the Minister of Labour and Social Policy, indicated that the Government of Ukraine had informed the Committee of Experts in due time on the efforts and results of the measures taken to resolve the problem of wage arrears in the country. In its recent report, the Government had provided detailed information on the positive changes achieved during the last year and he now wished to supplement this information. The Government recognized the exceptional social importance of this programme of measures. In 2000 and 2001, the Government had taken a number of economic and organizational measures aimed at reducing wage arrears. As of 10 May 2001, wage arrears in Ukraine had been reduced to 2 billion grivnas, or by more than 29.3 per cent. Compared to the maximum level of wage arrears in August 1999 (7,192.3 million grivnas), the wage arrears had been reduced by 40 per cent. In the first four months of 2001, the amount of wage arrears has been further reduced by 7.6 per cent, compared with the same period in 1999 and 2000, when it had increased by 6.7 per cent and 0.6 per cent respectively. The total amount of wage arrears as of 10 May 2001 was 1.3 times the monthly wage mass of all workers, compared with a figure of 2.3 in 2000.

As of 10 May 2001, the wage arrears owed to workers of the sector financed out of the state budget had been reduced by 365.2 million grivnas, or 73.4 per cent compared to the previous year. Between January and April 2001, the amount of wages paid in kind had also been reduced. The volume of wages paid in kind constituted 6 per cent of the total amount of wages. Positive changes had occurred in all branches of the economy, in both the public and private sectors, and in all territorial subdivisions of the country.

The legislation providing for the protection of wages had also been improved. In 2000, the Law of Ukraine on the compensation to citizens of lost income because of its non-payment, and a Presidential Decree on urgent measures to accelerate the repayment of wage arrears, had been adopted. The Decree provided for the creation of territorial bodies of a state department to supervise the observance of labour legislation before 1 September 2001. This will signify the completion of the transformation of the state labour inspectorate in accordance with the requirements of Convention No. 81 and the recommendations of the Committee of Experts. The efficiency of state control over the observance of the legislation respecting wages had been improved. While in 1999 administrative sanctions had been applied by state labour inspectors to one out of five directors of inspected enterprises which were in arrears in the payment of wages, in 2000 this figure was one in three directors, and in the first quarter of 2001 it had reached practically one in two directors.

The problem of the repayment of wage arrears was reflected in the text of the general collective agreement for 2001. The situation with regard to the measures taken for the repayment of wage arrears had been discussed at the last meeting of the National Council for Social Partnership, where it had been decided to consolidate the efforts of the parties for the solution of the problem. Moreover, the new Prime Minister of Ukraine had met with the representatives of the trade unions on 28 May 2001 and had emphasized that the issue of the repayment of wage arrears was a priority for the Government.

The Worker members thanked the Government representative for the information provided. They said that the protection of wages, as set out in Convention No. 95, constituted an essential right. For several years, they had been expressing their concern at the spread of the scourge of the non-payment of wages throughout the world. The case of Ukraine was a sad illustration and had been addressed every year since 1995 by the Committee of Experts, and in 1997 and 2000 by the Conference Committee. In its conclusions the previous year, the Conference Committee had expressed its deep concern at the continued violation of the Convention and had emphasized the serious nature of the problem which affected millions of Ukrainian workers and requested the Government to take the effective measures that were needed to ensure compliance with the Convention. Unfortunately, the report of the Committee of Experts had not found any real progress in the case. The Committee of Experts had noted, among other problems, the persistence of wage arrears, the non-payment of wages and the absence of effective penalties against those who violated the Convention.

At the sectoral level, although the Committee of Experts had noted that the situation had improved somewhat in certain sectors, it had grown worse in others, to the extent that it was imperilling the proper functioning of the labour market. They also noted that, in sectors such as agriculture, restructuring had resulted in a deterioration in the situation. While the public sector was greatly affected by violations of the Convention, workers in the private sector also

suffered from violations of their rights. As indicated by the Government representative, some 65 per cent of cases of wage arrears occurred in the private sector. In relation to controls covering the payment of wage arrears, the Worker members noted the increased activity of the labour inspection services. These appeared to be accompanied by new legislative initiatives. The Worker members shared the concern expressed by the Committee of Experts concerning the real and enduring effect of these initiatives in bringing the country into lasting conformity with the Convention.

The previous year, they had drawn the Government's attention to the importance of the three criteria set out by the Committee of Experts for the application of the Convention, namely effective control, appropriate sanctions and measures to remedy the damage suffered. While welcoming a certain strengthening in the activity of the labour inspectorate, they were of the view that this would not be sufficient unless it was backed up by significant sanctions and compensatory measures. They therefore called on the Government representative to provide the Committee with more complete information on the penalties set out by the legislation, their effective imposition and the rigour with which court rulings were applied.

Economic transition could give rise to short-term imbalances. Since the Committee of Experts had started addressing this case, the Government had systematically tended to justify the ineffectiveness of its policies by resorting to the argument of the transition to a market economy. They believed that this reason could not be used for ever, particularly since other transition countries had been able to comply with the provisions of the Convention. They emphasized that the Government needed to bring itself into conformity with the Convention by taking the necessary measures, and particularly by following the advice of the Committee of Experts on the need to strengthen controls, the application of meaningful penalties against those who violated the Convention and the implementation of measures to compensate the prejudice suffered by workers. The Worker members expressed agreement with the comment made by the Committee of Experts that the problem of non-compliance with the Convention by the Ukrainian Government persisted and continued to affect millions of workers in all sectors. These violations were rendered particularly serious by their scope and duration. The Worker members therefore firmly reaffirmed the urgent need for real progress to be made in this case through the application of effective measures to guarantee the payment of wages and for the total liquidation of wage arrears.

The Employer members thanked the Government representative for the information provided. In many respects, despite the progress made, the case continued to raise the same issues that had been examined by the Committee the previous year. Indeed, the Committee of Experts had made observations on the case every year since 1995 and this was the third occasion on which it had come before the Conference Committee. In the view of the Employer members, the case was related to the problems arising out of the transition from a centrally planned economy to a market economy. Indeed, the transition process had not yet been completed. Nevertheless, the problems caused by the transition process could not perpetually be used as an excuse for the failure to pay wages, which was highly reprehensible. The Government openly acknowledged that it was in violation of the Convention. Indeed, the problem of wage arrears was so pervasive that it affected a large number of sectors, including, for example, mining, information technology and housing.

In the view of the Employer members, it was still the case that the economic and legal structures were not in place for the establishment of a viable market economy in the Ukraine. Indeed, they were concerned that the decline in wage arrears was mainly related to the good performance of the world economy last year. In view of the current slowdown in the international economy, it was to be doubted that the volume of wage arrears would continue to fall. The Government had said that the main reasons for the wage arrears problems were the radical structural reforms and the privatization of state property. But the Employer members questioned whether in practice the radical structural reforms necessary for a market economy had actually been implemented. They also expressed doubts as to whether wage arrears were primarily a private sector problem. Indeed, they considered that further privatization constituted the means of resolving the problem. More information was needed, particularly on the delineation within each sector between what was state-owned or public and what was private.

Despite all the action taken by the Government, the problem of wage arrears persisted. It could not be resolved without major market reforms. They emphasized that in a market economy unpaid workers could file a claim with an administrative agency or a civil court. Moreover, workers would be free to give up their job and look for another. In a market economy, enterprises which were facing financial difficulties would normally restructure, or in the worst case file for bankruptcy. None of these options appeared to be available in Ukraine. In that respect, the Employer members questioned the comment made by the Committee of Experts that the State lacked a controlling influence over companies that had been inspected. Such an approach appeared likely to perpetuate the centrally planned system. They therefore believed that the emphasis placed by the Committee of Experts on inspection and sanctions might not be a totally adequate solution. What was needed instead was to give priority to the economic and structural reforms required for a successful transformation to a market economy. Without such reforms, the Committee might well be examining the case for many years to come.

The Worker member of Ukraine expressed his gratitude to the Committee for considering the problem of wage arrears in Ukraine once again. He indicated that, as a result of the rise in GDP and the commitments undertaken by all the social partners under the general collective agreement, the amount of wage arrears had been significantly decreased in 2000. In that year, the amount of the wages owed had fallen by 1.5 billion grivnas, or 23 per cent. As a result, the number of workers to whom wages had not been paid had decreased by more than 2.9 million persons. Unfortunately, despite all the efforts of the Government, wage arrears had not been fully liquidated in 2000. As of May 2001, the total amount of wage arrears in the industrial sector was around 4.5 billion grivnas.

The Federation of Trade Unions of Ukraine and its constituent organizations were using all the rights available to them to protect the legal rights of workers. First of all, the trade unions had encouraged the submission of wage claims to the courts for the recovery of wage arrears from employers, as well as representing the interests of workers in the courts. As a result, the courts had adopted decisions concerning the recovery of more than 406 million grivnas in wages in 2000. The trade unions also instigated the termination of employment contracts with those directors of enterprises and organizations which violated the national legislation on wages. In 2000, at the initiative of the trade unions, 144 contracts had been terminated. In addition, the trade unions were making use of the system of collective agreements. At the request of the trade unions, in the general collective agreement for 2001, the Government and the employers had committed themselves to the full repayment of the wage arrears owed to the workers of enterprises, organizations and institutions of the country in 2001.

He indicated that in his opinion measures should be taken to improve the situation. First, the adoption of the Law on the procedure of repayment of debts of taxpayers to the budget and state special purpose funds should be accelerated. This Law would allow enterprises the freedom to determine independently the ways and amounts of their resources to be used. Secondly, changes needed to be made to the Law on the insolvency of the debtors or the adjudication of bankruptcy respecting the priority of the payment of wages in the event of bankruptcy or liquidation of enterprises. Thirdly, the existing procedures for the purchase and sale of property, which did not provide for the mandatory acceptance by the legal successor of obligations concerning the repayment of wage arrears, would need to be changed. Fourthly, the Government should ask the ILO for technical assistance concerning the observance of Convention No. 95 in Ukraine and the transformation of the wage system in Ukraine.

The Worker member of the Russian Federation recalled that this question had already been discussed by the Committee the previous year and he expressed his support for the workers of the Ukraine. He stated that the information provided by the Government concerning the measures taken to improve the situation was very similar to the information provided the previous year, which meant that the efficiency of these measures had been very low. Six years ago, when the similar case of the Russian Federation had been discussed, it had been considered as a relatively rare incident. Last year, there were already 12 such cases. Now the report of the Committee of Experts contained information on violations of Convention No. 95 in 17 countries. This meant that the problem of wage arrears had become global in its nature.

He added that the solution to the problem of the transfer of money out of the country to the accounts of "virtual", or fake, companies located in offshore zones could contribute to resolving the problem of the full payment of wages in such a rich country as Ukraine in terms of its natural and human resources. The workers of Russia, who are very familiar with this problem, considered the claims of the workers and trade unions of Ukraine to be fully justified. They also shared the conclusion of the Committee of Experts concerning the need for the Government to take very urgent measures to improve the situation, not only in respect of Convention No. 95 in general, but also to comply with its individual provisions.

The Worker member of France emphasized the worsening of the situation with regard to violations of the Convention throughout

the world. Wages were the only means of subsistence for employed persons. They were therefore priority claims which needed to be given absolute preference over all the other debts of enterprises and in the budgets of the State and local authorities. He reaffirmed the fact that the right to a wage was an essential right which made all the difference between free work and forced labour. Violations of the provisions of the Convention were therefore an extremely serious matter. Payment in vouchers and coupons was not acceptable unless they were easily, freely and immediately transferable at the same value as the wage that was due. Although payment in kind was possible, it depended on the services or goods provided. For example, with the consent of the workers, housing and food could represent part of the wage. However, it would be unacceptable for an enterprise which produced pottery to pay its workers in pots. He doubted that the Employer members were justified in claiming that privatization would be the solution to the problem, in view of the fact that private enterprises appeared to have the highest level of wage arrears. The Government needed to make the regular payment of wages its absolute priority. He added that the Government should take all possible measures to ensure the regular payment of wages and the liquidation of arrears. The very dignity and subsistence of workers and retirees was being undermined, which had very serious personal consequences for many of them. In conclusion, he called on the Government to resolve the issue in collaboration with the social partners, particularly through the adoption of sanctions. The requirement to pay interest on wage arrears should be included in the legislation.

The Employer member of Ukraine said that employers suffered from the problem of wage arrears more than anybody else. He pointed out that the problem of wage arrears existed in 17 countries and that it was therefore necessary to speak of a certain trend in labour relations. The roots of this problem in Ukraine could be found in the process of the transition from an administrative system to a market economy. He also indicated that this was the first year that business in Ukraine had started to emerge from the crisis. For the solution of the problem, it would be necessary to improve the tripartite relations in the country and to strengthen the role of employers in the formation of tax and economic policy in the country. He expressed the hope that these measures would be taken in the very near future and that, with the participation of the new Government and the assistance of the ILO, it would not be necessary for the Committee to examine the problem of wage arrears in Ukraine again.

The Worker member of Côte d'Ivoire stated that the case of Ukraine was of great importance at a time when the ILO was advocating decent work for all. Although the principles of the Convention were known to all, they were not applied in Ukraine, where workers remained without wages for months on end, unable to feed their families or provide them with the basic necessities for a normal life. Decent work, which was an activity through which human beings were fulfilled, would lose its entire meaning. The report of the Committee of Experts showed that the crux of the Government's arguments consisted of figures, increasing and decreasing rates which it was the only one to understand. What value did these figures have for workers who worked and had not been paid? The Government claimed to have designed reforms to achieve prosperity and had established a public supervisory department. He questioned the nature of these two measures which, in his opinion, constituted window dressing, set out in generic terms to appease and distract from the real situation of Ukrainian workers. The Government's arguments had not changed, but the actual situation was constantly deteriorating. Concrete measures and firm commitments had to be made by the Government. There was no justification for withholding payment of wages for work that had been performed, even in the event of economic crisis, a problem which the whole world faced. The statement made by the Government representative had only one purpose, to gain time. The mere fact of not paying wages regularly was a very dangerous practice which must be stopped immediately before it spread to other countries. He urged the Government to take concrete measures to end the suffering of the Ukrainian workers, and expressed support for all the proposals made by the Trade Union Confederation of Ukraine.

The Government representative expressed appreciation for the comments made by the Employer and Worker members. He emphasized that in 2000 and 2001, for the first time, a trend of economic recovery had emerged and that the Government believed that the resolution of the problem of wage arrears was closely linked to such economic recovery. He assured the Committee that the Government would make every effort to achieve an effective solution to the problem of wage arrears and the timely payment of wages. He pointed out that significant progress had recently been achieved in this respect. He hoped that the ILO would provide advice and technical assistance to resolve the problem and that the case of Ukraine would not be discussed by the Committee once again next year.

The Worker members noted once again non-compliance by the Government with Convention No. 95 and the gravity of the problem which affected millions of workers. They noted the efforts that were being made, especially to strengthen labour inspection in an effort to resolve the problem. They called upon the Government to take vigorous measures to guarantee the practical application of the Convention, including the importance of sanctions on those who committed violations and measures to compensate the damages suffered. They encouraged the Government to request the technical assistance of the ILO. Such assistance should not only apply to the problem of wage arrears but also to the entire wage structure.

The Employer members still expressed some difficulty in understanding the exact nature of the legal and labour market institutions that were in place in Ukraine and whether they were of the nature required to facilitate the resolution of the problem. They therefore requested the Government to provide information to the Committee of Experts on these matters. They also requested clarifications on what was meant by state-owned and private property, and what was considered to be a private enterprise. Without such information, it would not be possible for the supervisory bodies to assist in the resolution of this vital and complex issue.

The Committee noted the oral information provided by the Government representative of Ukraine and the discussion that followed. It recalled that the Committee of Experts had commented for the past six years on the serious problem of the failure to pay wages or delays in the payment of wages to millions of workers and that the Conference Committee had already discussed this case on two previous occasions.

In noting the Government's efforts, the Committee was nevertheless obliged to express its regret that there were still more than 5 million workers whose salaries had not been paid or who had experienced delays in the payment of their wages. The Committee observed that, according to the information provided by the Government, new legislation had been adopted with the aim of strengthening penal or administrative sanctions in cases involving wage arrears or unpaid wages. The Committee also observed that other legislation had been adopted with the aim of compensating workers for losses suffered due to delays in the payment of their wages or to enable the management of the enterprises concerned to pay workers' salaries on a priority basis, prior to paying their taxes due to the State. The Committee recalled that the problem of delays in the payment of wages or failure to pay wages was typical of an economy in transition.

Nevertheless, the Committee was once again obliged to note that the measures taken to reinforce the legal machinery of the State were not sufficient to resolve this urgent problem; it was also necessary that measures be taken at the practical level to guarantee the effective application of the legislation to lead to an effective solution of this grave problem. In this context, the Committee also noted that the monitoring functions carried out by the Labour Inspectorate had been reinforced and that special committees, established at the various state levels, were already in operation, with the aim of resolving the problem of unpaid wages or wage arrears in the payment of the wages of state employees (central and local government and municipalities) as well as in the private sector. The Committee took particular note of the statement of the Government representative indicating that the payment of wages was a priority issue for his Government. The Committee urged the Government to double its efforts so that the legislation adopted would be effectively enforced and so that the practical measures taken could be consolidated in order to achieve a rapid solution to this serious problem.

Consequently, the Committee requested the Government to provide a detailed report for examination by the Committee of Experts at its next session in November/December 2001, asking that the report include specific information regarding the progress achieved in the implementation of the legal and practical measures described and regarding measures that might be adopted in order to render them genuinely effective. The Committee also requested that the report include information on the measures adopted to implement the provisions of the Convention relative to the prohibition against the payment of wages with coupons or promissory notes, the payment of wages in kind, the effectiveness of measures taken to permit employees to place priority on the payment of workers' wages over the payment of their debts to the State and the sanctions imposed in the event of violations. The Committee also requested the Government to communicate statistical data which would permit an assessment of the progress achieved in resolving the worrisome problem of unpaid wages or wage arrears of millions of workers.

Lastly, the Committee urged the Government to take the necessary measures so that the Committee could confirm that genuine

progress with regard to resolving these problems had been made, and that it involved the social partners to that end. The Committee hoped that the Government would avail itself of the technical assistance of the Office to assist it in its struggle against the problem of unpaid wages or wage arrears, considering that the payment of wages was a fundamental right of workers.

Convention No. 97: Migration for Employment (Revised), 1949

Spain (ratification: 1967). **A Government representative** said that the incident that gave rise to the observations of the Committee of Experts had occurred in El Ejido, in the province of Almeria in Andalusia. It had been an isolated and deplorable occurrence, and did not reflect racist or xenophobic movements. He observed that the information used by the Committee of Experts, extracted from a report by the European Commission against Racism and Intolerance and a report by the United Nations Commission for the Elimination of Racial Discrimination were taken out of context, and gave a misleading idea of their real content. Indeed, in comparison with other countries, Spain was one of those with the least number of such movements, which had traditionally been totally alien to Spanish society. He indicated that his Government was preparing the report requested by the Committee of Experts for that year and it would be submitted to the Office in due course. As for the events in El Ejido, he mentioned that the implementation of the Agreement signed on 12 February 2000 had begun as soon as the Standing Committee formed for the purpose had considered that all urgent measures had been completed. The Standing Committee was replaced by the Board for Integration of Immigrants, in order to follow up with action in the medium and long term. He referred to the situation in El Ejido concerning the regularization of irregular status of the province of Almeria. On the housing question he reported that an agreement had been concluded between the Ministry of Development and the government of Andalusia, resulting in a decree for assistance to promote housing construction to accommodate temporary workers, both national and foreign, partly subsidized by the State. With respect to the judicial proceedings relating to the events in El Ejido, he provided detailed information on proceedings in progress. The information reflected the robust action by local authorities to arrest aggressors, whether nationals or foreigners.

Among the specific actions taken as a result of the events in question, it was worth mentioning that 400 immigrant workers had been registered for work in the strawberry harvest and that of other fruits. Pilot schemes were also being set up for contracting workers in their country of origin in collaboration with the Governments of Morocco, Colombia and Ecuador. Under those pilot schemes 170 foreign workers took part in the harvest that year with an undertaking to return them to the country of origin and with travel and lodging expenses paid by the companies. He also highlighted that the Andalusia health service had issued 15,000 cards in the last year guaranteeing the right to medical care for all immigrants in the province of Almeria, in application of the Organic Law No. 4, 2000 as amended by Organic Law No. 8, 2000. Also in connection with the events in El Ejido, he reported that the Labour and Social Security Inspectorate had launched an action plan, at the beginning of 2000, aimed at seasonal agricultural workers. The basic objectives of the plan were: to check on work status with special attention to cases of discrimination; to combat illegal trafficking in labour; to promote the principle of fair competition and prevent offending companies gaining advantage to the detriment of those that obeyed the law; and to check on the labour, work and social security conditions of foreign workers, whether or not in possession of a work permit. The speaker indicated that offences were punished by heavy fines and he gave detailed information on the results of those actions.

As for general immigration policy, he maintained that until recently Spain had been a country with little immigration and that, on the contrary, its administrative and legislative systems were geared to deal with significant levels of emigration. He emphasized that in a very brief space of time, his country had had to adjust to a significant level of immigration for which it was not prepared. Among the measures taken in that context, he mentioned: firstly the creation of the Government Department for Foreigners and Immigration, in May 2000. The department was responsible for formulating government policy on immigration and integration of foreign residents; secondly, the creation in April 2001, of the Supreme Council on Immigration Policy with the mission of ensuring proper coordination of actions by the central Government, the autonomous regions and local authorities. The Council was to establish the basis of a global policy for the integration of immigrants into society and work; thirdly, the reform of the Permanent Immigration Monitoring Agency, in April 2001, a body whose function was to analyse and study immigration in Spain and publish the information obtained; fourthly, the reorganization of the Forum for the Social Integration of Immigrants, a tripartite body made up of representatives of government, immigrant associations, and social organizations including workers and employers' organizations. It was a consultative, information and advisory body on all immigration policies. Those bodies had developed a general policy on foreigners and immigration. In that connection, in April 2001, the Government adopted the Global Programme for the Regulation and Coordination of Aliens and Immigration. The programme was based on the idea that immigration was a desirable phenomenon for Spain within the framework of the European Union. Its objectives were: integration of foreign residents and their families; regulation of migratory flows to ensure coexistence and integration of immigrants and nationals; and maintenance of the system of protection of refugees and displaced persons. The specific measures taken under that programme included: (a) regulation of arrival of immigrants from their countries of origin through bilateral agreements signed with Romania, Poland, Ukraine, Colombia, Cuba and Morocco; (b) application of the Integrated Programme of Action for the Development of the Mediterranean Region, through technical assistance to immigrants' countries of origin; (c) implementation of medical care, education and family reunion measures, as a way of achieving the full integration of immigrants into Spanish society; (d) adoption of a policy for incorporation of immigrants in the labour market, through vocational training interviews and activities; and (e) establishment of mechanisms to combat exploitation of workers, through controls over working conditions, wages and social security, by the Labour and Social Security Inspection Service. The Global Programme included provision for information campaigns to publicize the consequences and negative effects of illegal immigration. Also envisaged was the creation of specialist units to combat immigration networks and forging of documents as well as improved arrangements to combat racism and xenophobia. The Global Programme envisaged joint action by the central Government, governments of the autonomous regions and local governments, for which collaboration agreements had been concluded for joint financing of those activities. He mentioned procedures for regularizing the position of illegal immigrants. In that connection, he said that, as a result of the various processes already implemented and planned for the future, over 200,000 workers whose status was illegal would be regularized in less than a year.

The Employer members noted that the Government representative had provided a lot of detailed information. This was a very special case and the Committee of Experts had made specific comments which were based on a communication transmitted by the Democratic Confederation of Labour (CDT). This communication related to the events which had occurred in February 2000 in the town of El Ejido (province of Almeria, autonomous region of Andalusia) during which the Moroccan workers of the town, along with the members of their families, were violently set upon, attacked and assaulted (houses set ablaze, shops pillaged, mosques destroyed) by the inhabitants of the town. According to the CDT, these events had taken place without any intervention from the local authorities, who were passive witnesses of this drama for 24 hours. The CDT also described the general working and living conditions of these migrant workers who were employed in the agricultural sector, more especially in greenhouses where, for example, the temperature reached 50°C and the use of pesticides caused workers to suffer from lung and skin diseases. Nevertheless, a few days after these events had occurred, an agreement had been reached between the various protagonists, namely the central Government, autonomous government of Andalusia and employers' and workers' organizations. This agreement related to issues concerning compensation, the carrying out of an in-depth investigation into the events, the establishment of immigrant reception offices in the various town halls in the province as well as the development of intercultural programmes to encourage better integration of immigrants. The Employer members noted that the Government had communicated its reply to the CDT's comments. It had pointed out that legal action had been taken and in particular 82 persons had been arrested in the hours following the onset of the riots. As for the living and working conditions of migrant workers, the Government had indicated that all farm workers had the same rights as Spanish workers. While working conditions in greenhouses were particularly arduous, all workers were subjected to the same working conditions. With regard to the report of the European Commission against Racism and Intolerance (ECRI) prepared in 1998, indicating signs of rising racism in Spain against certain groups of immigrants from the developing world especially those from the Maghreb, and the report of the United Nations Committee on the Elimination of Racial Discrimination, the Government had not denied the existence of a certain racism in Spanish society. The

Employer members noted the adoption of Act No. 4 of 11 January 2000 on the rights and freedoms of foreigners in Spain and their social integration the main purpose of which was to guarantee equality of treatment between nationals and foreigners who were lawfully present on Spanish territory, with the view to better social integration of this category of the population. In this regard, the Employer members welcomed the question raised by the Committee of Experts regarding the implementation of this law and measures envisaged by the Government to inform the public through the media on respect for human rights. A periodic assessment of the impact of the measures taken or envisaged was important since it was an indicator of the effective application of the Convention. Regarding the statistics communicated by the Government concerning the number of violations recorded by the inspection service for labour and social security relating to foreign workers, the statistics needed to be seen in the context of other statistical data such as data on violations against nationals. There might be a general increase in violations in the whole society. Referring to the agreement signed on 12 February 2000 between migrant workers who were victims of brutality, the central and autonomous governments and the workers' and employers' organizations, the Employer members noted the rapid reaction to the events which had occurred. Although the financing of the implementation of the agreement was difficult and expensive, the Employer members agreed with the Committee of Experts that experience had shown that the social exclusion of part of the working population was always costly in the medium and long term. Moreover, the issue had to be seen in the context of the overall situation in the country. Spain had changed in a short period of time from a country of emigrants to a country of immigrants. This was due to its economic success achieved within the framework of its membership in the European Union. Indeed, measures of administrative and legal nature had to be taken in order to prevent repetition of such events. Finally, the working conditions in Spain for foreign workers from EU countries were the same as those for nationals. As for foreign workers coming from other countries, the Government had referred to bilateral agreements between the Spanish authorities and the authorities of States who were not EU Members. In conclusion, a report containing all available information should be transmitted to the International Labour Office for further examination by the Committee of Experts. This Committee might then examine this case again, if necessary.

The Worker members underlined that the complex nature of this case had given rise to many observations by the Committee of Experts concerning Convention No. 97 but also the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Wage Fixing Convention, 1970 (No. 131), and the Occupational Safety and Health Convention, 1981 (No. 155). The complexity of this question revealed also the central character of decent work for the dignity, the conditions of work and the life of workers as underlined by the Director-General in the Report which he had presented this year to the Conference. The issue of migrant workers had multiple aspects which reflected the inseparable nature of the Conventions on the conditions of work and living of workers beyond the, sometimes arbitrary, distinction made between fundamental and other Conventions. Following a communication by the Democratic Confederation of Labour (CDT) of Morocco concerning the events of February 2000 in the area of El Ejido in southern Spain, the Committee of Experts was informed of the situation of migrant workers and their families. These workers mostly employed in the agricultural sector, more especially in plantations in greenhouses, worked under extremely difficult and harmful conditions for wages lower than the daily minimum living wage. They were excluded from medical or social coverage and were accommodated in makeshift shelters. According to the Committee of Experts, the treatment inflicted upon these workers violated the provisions of Articles 3 and 6 of the Convention. The aforementioned events led to the conclusion on 12 February 2000 of an agreement between the workers and the employers' and workers' organizations aimed at finding a solution to the situation of these workers. Various engagements had therefore been undertaken. In response to the communication of the CDT, the Government had noted that neither legislation in the area of employment and conditions of work nor collective agreements contained any discriminatory provisions. Moreover, any breach of this legislation could be denounced to the labour inspection service. The Worker members referred to the observations of the Committee of Experts on the application of various provisions of the Convention following the information provided by CDT and the Government. They recalled, with respect to the application of Article 3, the importance of the combat against the discriminatory treatment suffered by migrant workers in Spain as well as many other countries in Europe and the world where many incidents of racism and xenophobia took place. With reference to the comments of the Committee of Experts, they underlined the importance of the information on measures taken by the Government in order to combat the propagation of stereotypes on foreigners and periodic assessments of the impact of these measures. Regarding the application of Article 6 of the Convention, the Committee of Experts thought that the situation denounced by the CDT concerned mostly the effective implementation of the legislative provisions rather than the existence of discriminatory provisions. The Worker members thought in this respect, like the Committee of Experts, that the Government should be requested to provide detailed information concerning the supervision of the practical application of legislation, especially the provisions relative to remuneration and social security of foreign workers in conditions of equality with national workers. With respect to the issue of accommodation, the Worker members also stated that they were concerned about the submission of a programme for the construction or rehabilitation of housing for foreigners to financial conditions, given the structural nature of the problem. It was important that the Government, on the one hand, indicated the measures that it had taken in order to qualify acts of racial discrimination as such and, on the other hand, provided information on the judicial follow-up including the penalties actually imposed on persons recognized as guilty of these offences. The rise of racism and xenophobia in the world, especially with regard to migrant workers was very worrying and this case was an illustration of innumerable other cases in the world, and especially in Europe. The supervision of the implementation of the relevant standards in this respect was essential. Governments too often confined themselves to the adoption of legislative measures without caring to know whether in practice the migrant populations were protected against acts of racism, xenophobia and intolerance. Even if it were true, as the Government claimed, that social and labour legislation did not make distinctions based on nationality, one should be preoccupied by the fact that a considerable part of migrant workers were found in sectors where the worst conditions of labour prevailed. It would be useful to have a study on the synergies linking various international labour standards in the present case of the five Conventions mentioned above. The Worker members asked that the Government be urged to fully implement the engagements undertaken under the agreement of 12 February 2000 including the provision of compensation for damages and losses, the regularization of illegal immigrants and the judicial proceedings brought against the perpetrators of these acts against migrant workers. The Government should also take all necessary measures to ensure that the requirements of the Convention be respected in law as well as in practice. Finally, the Government should be invited to demonstrate and bring up to date its commitment and its political will to eliminate all forms of discrimination against migrant workers by ratifying Convention No. 143 which contained complementary provisions to those of Convention No. 97. The ratification of Convention No. 143 had moreover been recommended by the Governing Body in the framework of its decisions relative to the policy regarding the revision of standards.

The Worker member of Spain said that the events in El Ejido were no accident, but the result of a series of circumstances and policies which culminated in that intolerable expression of xenophobia and which could be summarized under four headings: (a) a huge expansion in the hidden economy in the countryside, absolutely intolerable working conditions and inadequate inspection by the employment authority; (b) abusive practices by some unscrupulous employers and agents; (c) a social model which regarded immigration solely as cheap labour to contribute to economic development and a nuisance the next day; (d) the absence of a proper immigration policy which, among other things, would provide genuine possibilities for integration and social participation by the immigrant population and at the same time educate the general public in the value of coexistence and respect for immigrants. While there was, of course, no discrimination in law against immigrant workers, in practice such discrimination did exist. Firstly, because in the sector which was the subject of the representation by the CDT (work by seasonal workers in certain geographical areas), immigrant workers were in the majority and there was fierce wage competition, a deterioration in working conditions and employment of workers without payment of social security contributions. Secondly, there was also discrimination by some employers in the sector who as far as possible avoided workers of Moroccan nationality because they regarded them as better organized and aware of their labour rights because they had lived longer in Spain. Finally, the absence of essential social services, such as minimum levels of housing, was well known. He added that, likewise, the Agreement on Migration for Employment in the agricultural sector was blatantly disregarded by many employers in certain geographical areas in the country. The agreement provided that employers must announce offers of employment three months before the commencement of seasonal

work, so that it could be checked that the working conditions complied with those laid down in law. Instead, many employers resorted to the abundant immigrant labour, generally irregular, in order to get round the labour legislation. With regard to the application of the agreement to which the Committee referred, he indicated that it was not observed, especially the requirements relating to housing. He also indicated, for information to the Committee, that the Spanish General Workers' Union (UGT) had submitted a complaint against the Spanish Government to the Committee on Freedom of Association in that Act No. 8/2000 of 23 December, the Aliens Act, prevented the exercise of the freedom of association, the right to belong to a trade union and the right to strike by illegal foreign workers, and did not comply with the provisions of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). As well as denying those rights, the main purpose of the Act was to control flows of immigrants to specific sectors, such as agriculture, domestic service and construction, and not to integrate them in society and work. The fundamental problem lay in the lack, in his country, of an employment policy in relation to immigration. He said that it was scandalous that any democratic political party should allow people like the Mayor of El Ejido within its ranks. Spain was a country tolerant of different cultures but that did not mean that the El Ejido incident should not be denounced. Apart from the explanations presented, the Spanish Government knew about and was aware of the real employment conditions of the migrant workers and the events in question. It would be enough, in those circumstances, to require that the Government should fulfil its obligations to ensure respect for the rights of the migrant workers, that the agreement of 12 February 2000 should be honoured in full, that inspection mechanisms should be negotiated and strengthened and that the public authorities should act to safeguard labour rights and integration as required by the Convention under consideration.

The Worker member of Morocco emphasized that the events of the previous year had been very serious in view of the dramatic situation of migrant workers in the country. Migrant workers had been attacked, their property destroyed and a mosque burned down, all under the eyes of the security forces, who had done nothing to help. Nor was El Ejido an isolated incident, since an event of the same type had occurred in Catalonia in 1999. The migrants concerned in El Ejido worked under difficult circumstances, in very high temperatures and were subject to occupational diseases due to the use of pesticides. They were also afflicted by low wages, the absence of health and safety measures and social security, and a shortage of housing. Following the incident, an agreement had been signed between the workers' representatives, with the support and solidarity of Spanish trade unions, and the local authorities to resolve the reasons for the tensions, particularly through an improvement in their administrative situation, measures to provide them with proper housing and to improve their working conditions. Although the incident had occurred one-and-a-half years ago, the underlying reasons which had given rise to it still persisted. Moreover, the authorities had not applied the conditions of the agreement, which had been designed to build a climate of confidence and tolerance. He therefore called for the provisions of the agreement, as well as those of the bilateral agreement between Spain and Morocco on migrant workers, to be respected. It was very important to end the suffering of the workers, or similar events might occur again. He also hoped that the ILO would follow up the case and appealed to the Spanish authorities to resolve the difficulties of migrant workers so as to create a climate of tolerance and coexistence.

The Worker member of France stated that the Worker spokesperson had described in detail the lot of the migrant workers in Spain, as well as the ins and outs and outcome of the serious events arising from the February 2000 uprising in El Ejido, in the Almeria province. These events had caused considerable emotion and concern in Morocco, Spain, Europe and even throughout the world. It appeared that the authorities had not only been unable to prevent these events from occurring, but also unable to stop the sudden violent and xenophobic uprising from the start; according to the information provided by the trade union organizations, the local authorities were guilty of being too lax. This sudden violent uprising was denounced by the Spanish and Moroccan confederation of trade unions as a serious violation of Conventions Nos. 97 and 111 and the speaker supported them. He recalled that the migrant workers had enabled landowners to make their fortune in this desert province. They worked in extremely difficult conditions and were often treated in a subhuman manner and often suffered incredible brutality which remained unpunished to this day in a great number of cases. It was regrettable that, despite the promises made, the Government and local authorities had not seriously undertaken to offer the migrant workers and subjects of such violence, suitable housing and appropriate protection. He fully supported the request made by the trade unions and invited the Government to observe the agreement of 12 February 2000 which acknowledged these facts and provided solutions which, to this day, had still not been fully implemented due to a lack of political will. Migrant workers had rights and the Government had the obligation of enforcing such rights and of fighting against all manner of racist or xenophobic expression of ideas, propaganda and demonstrations, in the context of job precariousness and outside the scope of labour legislation, without which attempts could be made to murder exploited workers who were discriminated against on the grounds of their national origin. If, as the Government representative claimed, these facts were in principle foreign to Spanish society and culture, these events had nevertheless occurred at a specific time and place. That was why he invited the Government to worry more about the occurrence of such events which constituted a symptom of a development which should be examined carefully in order to avoid a repetition or extension thereof. Having listened to the Government representative's statement rejecting the statements of the Workers and the comments of the Committee of Experts, and providing reassurances that everything had been resolved for the better, he expressed the fear that the Government representative had underestimated the seriousness of the events which had occurred in El Ejido. That was not, in any event, the opinion of the parties concerned and the same causes could result in the occurrence of the same events again. In order to comply with the Convention, the Government should examine more closely the effective working conditions, the housing and living conditions of workers in general, but of migrant workers in particular, and also ensure that all victims were entitled to full compensation as well as a substantial improvement in their material and legal condition. He expressed the hope that the practical and legal measures announced would fulfil these objectives and reiterated the need to remain vigilant against all forms of xenophobic activity and to fight firmly against it — in his opinion, only effective equal treatment between national and foreign workers would encourage the integration of migrant workers into Spanish society. The new legislation and measures to regularize these workers, as well as the detailed report on migration policy and effective measures taken towards its implementation, should be the subject of a detailed study by the Committee of Experts next year, particularly as such questions dealt with the subject of fundamental human rights.

The Employer member of Spain indicated his support for the comments by the Employer members because he thought that they served to focus very clearly the issue before them. He stressed that the phenomenon of immigration was relatively new in Spain. He added that foremost among the various reasons for that change were the need to fill certain jobs that could not be filled by nationals (mainly in the agricultural sector) and strong migratory pressure from other countries. Another aspect was that the legal and administrative procedures had not always been equipped to deal with those needs and it had not been uncommon for forecasts to be exceeded by migratory movements that were not easy to channel. It was consequently not surprising that, as in other EU countries, there had been particular concentrations of illegal immigrants as had occurred a year previously in the Andalusian town of El Ejido. He indicated that the social explosion that had occurred in February of the previous year in the El Ejido area and which had led to the unfortunate events described in the report of the Committee of Experts, had as its immediate cause the killing of two Spanish citizens in El Ejido by two Maghreb immigrants. It had occurred in a highly unstable environment, due to the heavy concentration of illegal immigrants. The conflict therefore, as described in the report of the Committee of Experts, was not so much related to work relationships as to the social relations between citizens in the area resulting from a very tense social situation. Many of those individuals were either awaiting regularization, looking for a job or waiting to move to other regions of Spain or other countries of the European Union. It should be emphasized that, from the outset, both the social welfare agencies and the Government itself and especially the employers' organizations in the area, reacted rapidly and effectively to reach an agreement that would help to improve the social climate in the area and integrate the immigrant community. He stressed that the greatest problem was to find a contact point for the immigrant community which hitherto had not been properly organized. As a result of those efforts, and in a very short period of time (less than a week) an agreement was reached on 12 February 2000, primarily thanks to the support of the technical and human resources of the employers' organizations, with almost all the social welfare and trade unions in the area. The agreement consisted of two main parts. The first part was intended for immigrants, not employed by a third party, who had suffered the consequences of the abovementioned social explosion. It urged the Government to fulfil its obligations, namely: rehousing of immigrants who had suffered damage to their homes: compensation for damage and injury suffered; regular-

ization of immigrants without documentation and the immediate application of a series of measures, already in the pipeline, by the regional and national Governments to increase economic growth and social stability in the area. The second part required the social welfare agencies themselves to accept certain commitments, basically on two issues: firstly, promotion and development, in collaboration with the administration, of intercultural programmes to improve the social integration of immigrants and enhance social awareness and understanding of their problems and secondly, measures to ensure equal treatment of immigrants in terms of working conditions and full application of the collective agreement for the sector. Shortly after signing the agreement, the Democratic Federation of Labour of Morocco alleged failure to fulfil the ILO Convention on migrant workers. That representation was followed by the corresponding report of the Spanish Government which included comments by the Comisiones Obreras, the only Spanish trade union organization to provide comments. The government report contained the content of the abovementioned agreement, statistics on the application of the existing legal framework, and measures that were immediately taken to prevent a repetition of such incidents in compliance with the provisions of ILO Convention No. 97. The Committee of Experts, in its report, took note of those initiatives and did not express any criticism of the measures taken by the Spanish Government to comply with the provisions of the Convention, confining itself to seeking further information on specific points, in particular: more specific statistics on national and local authorities, especially in relation to communication, remuneration and social security; copies of judicial decisions concerning the application of the principle of non-discrimination against immigrants; details of measures taken to provide more precise statistics (number of disputes, inquiries, effective sanctions); and information on progress in the programme to finance immigrant housing (measures to facilitate the departure, travel and reception of immigrants). He indicated that the Government had just provided extensive information in a precise, rigorous and pertinent manner well within the deadlines set out in the regulations on the procedure for complaints and representations to the ILO. That information concerned the requirements of Articles 1, 2, 3 and 4 of Convention No. 97, in particular measures adopted to combat misleading propaganda on immigration and emigration to which Article 3 of Convention No. 97 and the report of the Committee of Experts referred. Underlying that request for additional information was the concern of the Committee of Experts that xenophobic behaviour might spread throughout Spanish society. It referred in that respect to a study prepared by the European Commission in 1998 which referred to signs of rising racism against certain groups of immigrants from the developing world. It was important to note that the same report, which was regularly drawn up in respect of all countries of the European Union, referred to Spain as one of the EU countries least affected by racism and intolerance. Finally he said that the conclusion should take into account not only the deplorable events of the previous year, but also the enormous efforts and the ability to respond rapidly as demonstrated by the social welfare agencies and the national and regional Governments to create a climate of social stability based on the integration of the immigration community; the effectiveness of the majority of the initiatives undertaken jointly to fulfil the provisions of Articles 3, 4 and 5 of the Convention in the areas of education, raising awareness, non-discrimination, regulation and housing; the pertinent additional information provided by the Government representative of Spain in response to the questions of the Committee of Experts which answered virtually all the questions asked; and the firm rejection of any intent to derive political gain from the events which took palce last year or any needs or difficulties faced by the immigrant population, as to do otherwise would be contrary to the principles of the Convention.

The Employer member of Canada, speaking in support of the statements made by the Spanish Employer member, the Employer members and the action taken by the Spanish Government, recalled that Canadians knew that immigration and migration generally strengthened a country tremendously, not just culturally, but also in economic terms. However, they also knew that it could lead to many challenges for a country as it endeavoured to incorporate the unique needs of those who had just arrived. In extreme cases, this could lead to conflict of tragic proportions. She said that there was little doubt that the events in El Ejido had been tragic. However, it had taken only one week from the time of the incident to the signing of an agreement between all the stakeholders. In addition to coordinating the negotiations that had led to the signing of the agreement, the Spanish Government had taken measures to address the broader issues which may have contributed to the conflict. It had implemented a programme of sensitivity training for public officials and the population in general. She therefore expressed the belief that a country should be judged, not only on the actions of its citizens and inhabitants, but also by its response in addressing their actions.

The Government representative thanked the Vice-Chairpersons and everyone who had participated in the discussion, in particular, Mr. Bonmati and Mr. Suarez. He took note of the observations made and he indicated that these would be forwarded in a timely manner to the appropriate authorities.

The Employer members, acknowledging the detailed nature of the debate which had covered all the important points, reiterated their request for the Government to provide further information, including information in a written report, on the issues which had been raised and the various questions that had been asked. They also called upon the Government to take all the appropriate measures in national law and practice, in full conformity with the Convention, to ensure that there was no reoccurrence of the event and so that migrant workers in Spain, who played such an important role in the development of the country, could benefit from their full rights.

The Worker members noted that the Government representative, endorsed by the Employer members, had refused in his conclusions that the Committee invite the Government of Spain to ratify the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), supplementing Convention No. 97. They expressed regret that the Committee would not be in a position to participate in the promotion of the ratification of the ILO standards.

The Committee took note of the statement by the Government representative and the subsequent discussion. Having noted that the Committee of Experts had referred to Conventions Nos. 102, 111, 131, 155 and 97 its analysis was limited to the latter. It noted with concern the gravity of the events described in the observations on the treatment of migrant workers and, in particular, those of Moroccan origin, in the deplorable event which took place in February 2000 in El Ejido. It took note of the subsequent efforts by the Government and workers which led to the conclusion of an agreement to resolve the situation and tackle the situation of migrant workers in the province more comprehensively and, for example, to regularize the position of illegal migrant workers and provide housing assistance for both national and non-national workers. The Committee noted that the Government had indicated that the problem was an isolated one, and urged the Government to promote awareness among the general public and government authorities of the issue of racism, xenophobia and non-discrimination. The Committee urged the Government to put into practice the initiatives that it had announced and to provide detailed information on the implementation of the agreement and any other practical measures to promote the equality of workers of foreign origin and to provide adequate housing for migrant workers and real equality with regard to remuneration and social security. The Committee also requested the Government to submit information on the status and content of legislation on migrant workers, statistics on violence against non-national workers and judgements in legal proceedings against persons responsible for the events in El Ejido. The Committee hoped that the Government would send detailed information in its report for the next session of the Committee of Experts.

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

Costa Rica (ratification: 1960). The Government has supplied the following information:

The President of the Republic and Minister of Labour signed an Executive Order on 30 May 2001 concerning regulations for the negotiation of collective agreements in the public sector (copy received by the Office).

The Office has prepared the following summary of the Executive Order:

The regulations apply to public companies, State institutions of an industrial or commercial character and, with a few exceptions, to employees in the rest of the civil service. These regulations set the subject-matter for negotiation, including productivity wage incentives, within the limits set for government expenditure, and all bonuses, benefits or incentives within the scope of the administrative body. Trade unions negotiate the compulsory agreements with a commission which represents the employers. The draft of this collective agreement is submitted to a policy commission for negotiation. The members of this commission include the Minister of Labour and the Minister of Finance. This commission will issue instructions to the negotiators appointed by the relevant body. In order for any question which has financial implications to be valid, this must respect the legal requirements relating to the state budget.

In addition, before the Conference Committee, **a Government representative**, the Minister of Labour, referred to the written

information communicated by the Government. He stated that the judgements to which the Workers Confederation Rerum Novarum referred to in the statements made to the Committee of Experts had not been correctly interpreted by this trade union since they had denied the right to collective bargaining of the workers in the public sector. Actually, in February 2001, the Constitutional Chamber of the Supreme Court of Justice had pronounced a judgement additional to previous judgements in which it left open the negotiation and signature of collective conventions in the public administration. Following, on 31 May 2001, the President and the Minister of Labour had signed a decree that made guidelines of the judicial authority more systematic by affirming the right to collective bargaining in the public sector. After having listed several provisions of the abovementioned decree, the Government representative indicated that the government committee responsible for drafting the decree had continued its work and would consider a bill on this issue, and to be applicable to a certain public, with the object of strengthening the hierarchy of the new standards pertaining to the rights of the workers of the country. The abovementioned Committee had called on several trade union organizations and had submitted the draft of the decree to be reviewed by the most representative trade union organizations giving them ten days in which to make their observations, already having taken into account several of these. The text had also taken into account the observations made by the ILO. He emphasized that the decree included legal provisions with immediate effect and that they were in conformity with Convention No. 98. On the other hand, he informed that in September, a technical assistance mission, requested by the Government, would visit Costa Rica in order to provide suggestions and observations regarding the collective right to bargaining in Costa Rica. The labour legislation in the public sector and in the private sector was satisfactory, but the country was open to suggestions. Costa Rica fully respected the rights of freedom of association and collective bargaining, and the Government maintained a permanent dialogue with the representative worker and employer organizations. He added that there existed a national tripartite body namely, the High Labour Council, where a variety of labour issues were discussed.

The Worker members thanked the Government representative for the information which he had just submitted to the Committee and for the written information which he provided to the ILO. They noted that the Worker members had already wished to discuss this case at the previous session of the Conference but this had not been possible because of the various limitations faced by the Committee when the list of individual cases was established. The reason for which the Worker members had wished to discuss this case last year was that serious violations of the right to collective bargaining had been noted by the Committee of Experts. These related in particular to the difficulties that workers had to confront in order to create or join a union; this problem appeared in particular in banana plantations and export processing zones.

They noted that the problem tackled by the Committee of Experts in this year's report concerned essentially the right to organize and bargain collectively in public services. This was an important problem which affected a large number of workers who found themselves in a situation where they did not have the possibility to be informed of or negotiate any changes to their laws and conditions of work. This was a violation of Convention No. 98 since collective bargaining was prohibited in the public sector. The Government promised for years to the Committee on the Application of Standards that a draft bill would be examined in Parliament in order to modify the situation. However, a judgement rendered in September last year by the Supreme Court concerning the rights of workers in the public sector and public institutions to negotiate collective agreements specified that neither national legislation nor the Constitution recognized the principle of collective bargaining in the civil service.

The Worker members wished to point out that the executive decree relative to the regulation of negotiation for the conclusion of collective agreements in the public sector, communicated at the present session by the Government representative, did not satisfy at all the demands of the unions of this country. The main reason for which the workers' organizations of Costa Rica could not confine themselves to this decree was that it did not offer any guarantee at the legal level. It was an executive decree which could be modified by the Government at any moment, that is to say, if the Government changed, this decree could simply be withdrawn — this could happen for instance in May 2002. Moreover, this decree did not bring about any genuine improvement to the situation to the extent that it was a return to the previous situation, established by the regulation of 1992, for which the Committee of Experts had already ruled in the past that it did not comply with Article 4 of Convention No. 98. In addition, it seemed that many other provisions of this regulation, which unfortunately was not available to the Committee (since the latter was able to acquaint itself only with the summary prepared by the ILO in document D.10), took up provisions of the actual legislation which had already been criticized by the supervisory organs of the ILO.

The Worker members considered that in fact the problem of the right to collective bargaining in Costa Rica was much more complex than one would think. It should be kept in mind that even if the case considered by the Committee today concerned the public sector, violations of Convention No. 98 took place in other sectors as well. The last regulatory initiative of the Government did not settle the question of collective bargaining in the public services. They thought that in order for this situation to change, the law and practice should be made to comply with the provisions of Convention No. 98 either through legislative means or through one more modification of the Constitution of this country.

This was why the Worker members wondered whether a direct contacts mission would be appropriate, or as an alternative, invited the Government to request technical assistance from the ILO in order to receive help in adopting the necessary provisions to bring national law and practice into conformity with the Convention. They requested that the mandate of this technical assistance mission be sufficiently large in order to allow it to examine additional contentious points regarding the implementation of Convention No. 98 in the other sectors.

The Employer members recalled that at earlier sessions the Committee had already dealt with issues concerning freedom of association and the right to organize and collective bargaining in Costa Rica. As in 1999, the Committee of Experts had reached the conclusion that in part a preliminary examination had been possible only. Today the core issue was collective bargaining in the public sector and the question how far it was permitted or prohibited. There had been several court decisions demonstrating that the position in law was still unclear and unstable. Then the Government had adopted a decree under which, in the Government's view, collective bargaining was again possible in the public sector. The Government was also prepared to take further steps, as had been confirmed today by the Minister. The Employer members, however, also understood from the Committee of Experts' report that the trade unions had been invited to bipartite negotiations but had refused to participate unless the Government was prepared to accept the ratification of further ILO Conventions. If that was correct, the unions had resorted to a kind of blackmail; there was no legal obligation to the ratification of Conventions and a decision on this belonged to Parliament as the representation of the whole nation. It was also unwise not to show up at talks; this was against Convention No. 144 which had been ratified by Costa Rica. Dialogue had collapsed for lack of reciprocity. As to the substantive problem, collective bargaining in the public sector needed to be dealt with further. The Government was prepared to receive technical assistance and advice and the Committee should join the Committee of Experts in encouraging this. At the appropriate time, the issue should again be raised and discussed, if necessary.

The Worker member of Costa Rica stated that the limits to exercising the right to collective bargaining was an issue that the different supervisory bodies had frequently encountered. Several reports regarding the violation of Convention No. 98 on the two aspects of protection included in this Convention, and which were not fulfilled in Costa Rica, had been sent to the ILO. On the one hand, freedom of association had not been properly guaranteed and the proceedings to resolve these violations had been slow and inefficient, and, on the other, collective bargaining had been in a state of deterioration. In the private sector there were only 12 collective conventions signed in comparison to the 207 conventions that had been concluded during the period 1977-81. The restrictions on the right to collective bargaining had considerably increased.

Despite the fact that in 1999 the ILO offered the Government an assistance mission, Costa Rica had accepted technical assistance from the Office two years later. In the meantime, the Constitutional Chamber of the Supreme Court of Justice further restricted the right to collective bargaining by means of a decision that established as unconstitutional the collective conventions of civil servants whose services were of a statutory nature. Additionally, by means of this judgement, each public administration could determine in which cases they were before public employees with the right to conclude collective conventions and in which cases they were before civil servants who are prohibited from concluding collective labour conventions. Moreover, the abovementioned judgement established that only employees working in state-run enterprises and who are involved in activities under ordinary law could negotiate collective conventions in conformity with the Labour Code. In this way, all personnel belonging to public entities or institutions whose activity was not regulated under ordinary law

followed a regime of a statutory nature and therefore did not benefit from what was contained in the aforementioned judgements regarding the right to negotiate collective conventions.

He stated that by means of an additional judgement the above-mentioned Constitutional Chamber had declared unconstitutional several articles of the collective convention concluded between the Trade Union of Workers in the Petroleum and Chemical Industry and the state-run enterprise Recope, thus eliminating the rights required by the workers. This new decision by the Constitutional Chamber had dangerously left room for unconstitutional activities to eliminate workers' rights included in the few collective conventions existing in the country. The supervisory bodies of the ILO had referred to the rule on collective bargaining in the public sector, No. 162 of 1992, regarding the incompatibility of the Committee on Official Approval with the principles of collective bargaining. However, the said Committee provided the trade union Sitrarena and the National Registry with a collective convention that had previously been negotiated by the parties. He emphasized that the trade union movement in Costa Rica had refused to participate in the elaboration of a new rule or decree on collective bargaining since, in actuality, an executive decree is an instrument inferior to a law and could easily be declared unconstitutional, and could also be modified at any moment by the executive and thus did not constitute an effective guarantee. The trade union organizations of Costa Rica had not participated in the elaboration on the bill for the new rule that had been delivered to the secretariat of the Conference, which was also critical of several Articles such as Article 3, paragraphs (d), (h) and (i), and Article 4 regarding the interference and intervention of budgetary authority in collective agreements. He also made reference to the failure to comply on behalf of the Government with the obligation required resulting from the negotiation that took place during 1993 to ratify the Labour Relations (Public Service) Convention, 1978 (No. 151) and the Collective Bargaining Convention, 1981 (No. 154). Finally, he asked the Committee to approve a direct contacts mission to verify the matters presented by the trade union organizations of Costa Rica, and to recommend the adoption of measures guaranteeing freedom of association and the right to collective bargaining as described in Convention No. 98.

The Worker member of the United States recalled that the Committee had reviewed the matter of Costa Rica's non-compliance with Conventions Nos. 87 and 98 over the past several years, noting that this review had led to a technical mission, which would presumably be received in Costa Rica later this year. He laid the responsibility for the continuing nature of the problem with all executive, judicial and legislative branches of the Costa Rican Government. He recalled that, when Dr. Miguel Rodriguez was elected as President of Costa Rica in 1998, he had requested that both the ILO and the AFL-CIO, the speaker's national trade union, give him time to improve the labour rights situation in the country. Accordingly, the Rerum Novarum Workers' Confederation of Costa Rica suspended the petitions it had brought before the United States Trade Representative pursuant to the United States General System of Trade Preferences. However, after more than three years of the Rodriguez administration, Costa Rica remained in fundamental non-compliance with Convention No. 98.

He noted that the report of the Committee of Experts focused on the issue of non-compliance in relation to public sector workers, a point which had been dealt with by the Worker member of Costa Rica. He added that collective bargaining rights for most Costa Rican public employees did not exist due to the Government's consistent interpretation of the 1979 General Law on Public Administration, with limited exceptions for local governments and universities and those collective bargaining agreements which had existed prior to 26 April 1979, and provided that the activities of the eligible public entities were governed by ordinary law.

In 1992, the Government had promised that it would remedy this violation of collective bargaining rights by enacting a new public employment law. This promise remained unfulfilled, notwithstanding the Costa Rican President's latest proposal and the executive decree whose announcement coincided with the Conference Committee's deliberations. He characterized the decree as a last-minute gesture which failed to resolve the problem of Costa Rica's non-compliance with Convention No. 98. He pointed out that, having failed to enact a law guaranteeing public sector bargaining rights in 1992, the Government had issued a provisional Regulation on Collective Bargaining for Public Servants, known as Directive 162. The ILO's Committee on Freedom of Association had examined this Directive and found it to be in violation of Convention No. 98, as all collective agreements were reviewed by a Certification Commission *(Comisión de Homologación)*, which included government ministers, and which had full authority to reject any negotiated agreement. Moreover, Directive 162 excluded any negotiation of salaries or other issues which might conflict with the government budget. It was clear that the latest executive decree issued by the Government was similar to Directive 162 and suffered from similar defects. While there was no Certification Commission as such, there was a Policy Commission *(Comisión de Políticas)*, which included the same government ministers, who could give government negotiators instructions to reject any proposed agreements which allegedly conflicted with the requirements of the Government's budget and its economic policy. Moreover, the public employment law had still not been adopted.

He considered that Convention No. 98 had been undermined in the Costa Rican private sector, as in his view the Government had permitted a climate of impunity to flourish by tolerating the growth of *"solidarista"* associations and by failing to prevent and detour anti-union firings, resulting in an alarming decline of trade union density and collective agreements. He pointed out that only 5.24 per cent of Costa Rican private sector workers had managed to maintain union representation and protection. That figure fell to 2.29 per cent if one excluded small agricultural producers. While the 1984 *Ley de Asociaciones Solidaristas* (Law on Solidarista Associations) formally prohibited such associations from negotiating collective agreements, *"solidarismo"* had taken advantage of a loophole based on the legal recognition of direct arrangements *(arreglos directos)* which could be made between employers and groups of workers. Consequently, 479 direct arrangements had been registered in the private sector between 1994 and 1999, while only 31 collective bargaining agreements between unions and employers had been registered during the same period. Moreover, the *"fuero sindical"*, the Costa Rican legal doctrine which was supposed to protect union activists from retaliatory dismissal, applied only to a small number of union leaders and only for a limited period of time. He pointed out that this doctrine had not been recognized as a constitutional cause of action. This contributed to often fatal delays and did not require the employer to establish a case of just cause before carrying out the dismissal. He also noted that the Costa Rican judicial system had no effective mechanism for compelling employers to reinstate workers.

For all the reasons mentioned, he joined the Worker members in recommending that the technical assistance mission to Costa Rica be given a broad mandate. Moreover, in solidarity and in consultation with members of the Costa Rican labour movement, he cautioned that the AFL-CIO was prepared to lodge a petition for a labour rights review for Costa Rica pursuant to the United States General System of Preferences and the Caribbean Basin Economic Recovery Act. He nevertheless expressed the sincere hope that the case of Costa Rica would not need to come before the Committee in future ILO conferences.

The Worker member of Brazil expressed concern with regard to certain aspects of the application of Convention No. 98 in Costa Rica, including its observance by the Government as well as by the constitutional court. Prior to presenting his comments on the Convention's application in Costa Rica, however, he made a brief critical comment regarding the report of the Committee of Experts, stating that, in the face of the technical complexity of the situation, he found the report of the Committee of Experts this year to be lacking in detail. The Committee was aware of the difficulties faced by those who attempted to form free trade unions in Costa Rica and who attempted to evade the anti-union logic of *solidarismo*. Therefore, he requested that the Committee of Experts provide the Committee in its next report with more specific details regarding the legal discussions taking place in Costa Rica regarding the methods of application of the Convention at issue. As the Committee of Experts had repeatedly observed, once a country ratified Convention No. 98, even if it had not ratified the Labour Relations (Public Service) Convention, 1978 (No. 151), which specifically addressed the public administration, it was obligated to adopt mechanisms guaranteeing collective bargaining and collective agreements. The only exemptions permitted were for designated state functions. Although a ratifying State might face legal and constitutional difficulties in achieving this aspect of implementation of the Convention, nevertheless, the position of the Conference Committee, the Committee of Experts and the Governing Body was clear. The ratifying State was required to make the modifications necessary to permit the full application of the Convention so that the mechanisms for collective bargaining and collective agreement could operate.

A number of the problems addressed by the Costa Rican Supreme Court in this area stemmed from Costa Rica's administrative law system, a system which was typical of countries that had adopted the civil law legal model. In those countries, the public administration sometimes classified its employees under the administrative law system. This system, if it did not prevent, certainly hindered the adoption mechanisms for collective bargaining and collective agreement in the public service. Nevertheless he considered that it was possible to overcome these difficulties which currently compro-

mised the full application of Convention No. 98 in Costa Rica. For this reason, he recommended that the Office provide technical assistance to help the Government find the best means to fully implement the Convention. On the other hand, he expressed concern that the Constitutional Chamber of the Supreme Court had held that collective bargaining and collective agreements were constitutional for those employees that were not governed by the statutory regime. This decision in itself already represented a limitation on the full application of the Convention if it included workers that did not exercise state functions. Another worrisome aspect of the court's decision lay in the fact that it delegated to the different levels of the public administration the power to decide when employees would or would not be protected by collective agreements. He considered that this decision gave great discretionary power to the public administration. Being familiar with the tradition of *solidarismo* and its harmful effects on free trade unions, he feared that the different levels of the public administration in Costa Rica were not completely committed to constructing an atmosphere of full trade union and collective bargaining freedom. This was demonstrated by the dramatic reduction in the number of collective bargaining agreements in Costa Rica.

In conclusion, he noted that the Government representative's statement had not clarified the situation. If a constitutional decision had in fact interpreted the Costa Rican Constitution in the manner described, namely, restricting the application of Convention No. 98, which Costa Rica undertook to observe, the Committee would have no alternative but to recommend that the Government submit a constitutional amendment to Parliament which would guarantee the full application of the Convention.

The Worker member of Argentina pointed out that collective bargaining, and the exercise of freedom of association for state employees was a fundamental right that was historically hampered by governments which happened to be their employers as well. In the fight for the recognition of such rights, the regulatory activity of the ILO proved essential, especially the adoption of Conventions Nos. 98, 151 and 154. She indicated that, for that purpose, it was a matter of concern that a government in the American continent had violated Article 4 of Convention No. 98 by denying the right of public sector employees to collective bargaining. She pointed out that even if the government had informed the ILO Office of the decree which authorized public sector employees to negotiate collective labour agreements, it was important to highlight that, in the manner it was regulated, collective bargaining as specified in the decree, besides being unconstitutional, was limited. The reason was that the full application of the collective convention depended on a legislative approval subject to a budgetary provision. She indicated that, in view of the current situation in a number of countries where budgetary adjustments had hindered an effective collective bargaining for state employees, she was afraid that obstacles imposed on collective bargaining would render it out of reach. She called for the formulation of legislation in line with the provisions of Convention No. 98 in which the principle of good faith within the framework of social dialogue, and with the active participation of trade union organizations, would be highlighted. Otherwise, Costa Rica would continue to violate the provisions of Convention No. 98. She concluded by endorsing the statement of the spokesperson of the Worker members.

The Government member of Trinidad and Tobago noted with interest the initiatives undertaken to date by the Costa Rican Government in order to give tangible effect to the provisions of Convention No. 98, with specific reference to the right of public employees to bargain collectively. He expressed the hope that, with the continued assistance of the ILO's multidisciplinary advisory team, requested by the Government, Costa Rica would finally be able to bring its legislation and practice into line with the requirements of the Convention in the shortest possible time.

The Government representative indicated that several members of the Committee had not adequately understood the information provided in his initial statement. He firmly denied the fact that there were no guarantees at the judicial level to conclude collective conventions in the public sector. He indicated that last February, the Constitutional Chamber of the Supreme Court of Justice had amended a previous restrictive interpretation regarding the General Law of Public Administration of 1979, with the result that, presently, the collective conventions and the collective bargaining conventions in general were constitutional in any of the country's institutions. However, there were limits when considering certain higher positions but this was not a problem with regard to Convention No. 98. The recent rule on collective bargaining was not in any way a copy of the 1992 directive. In effect, the decree abrogates this directive which included a bargaining procedure at lower levels (there had not been any signatures to collective labour conventions, it had only taken into account a very limited number of issues and the result of the bargaining had depended on the official approval of a committee). That directive had been abrogated and no longer existed. What did exist, was an additional judgement made by the abovementioned Constitutional Chamber in the speaker's previous statement. Due to this judgement, there existed a decree with extensive guarantees for collective bargaining in the public sector. This negotiation had included certain characteristics since what had been negotiated needed to be in conformity with the principle of legal budgeting which is a frequent principle in several countries and which the ILO bodies had interpreted in this manner. He reiterated that the decree had been submitted to the ILO and to the representative organizations. He categorically denied that the decree had been quickly drafted prior to the Conference of the ILO. The process that had culminated in this decree had begun in February 2001 when the Constitutional Court had given its judgement on the matter of collective bargaining in the public sector. Afterwards, a committee of legal experts of the highest level had developed a draft which they submitted to the worker and employer organizations and to the ILO. The State had needed to act expediently when dealing with important labour matters and in this case it had found, by means of the decree in question, an immediate solution in conformity with the national law and the ILO standards. He reiterated that the decree on collective bargaining in the public sector needed to be strengthened by a bill and that presently collective conventions could be signed. Regarding the doubts expressed by several Members whether the legislation included sufficient guarantees, it was for the Committee of Experts to provide an answer to this question. With regard to other issues that had been stated by several members of the Committee, he indicated that he had available abundant documentation to provide an adequate response but that since these issues dealt with matters not pertaining to the discussion and were unrelated to the observations made by the Committee of Experts, he had chosen to limit himself to the specific issues of the discussion.

The Worker members stated that they could only reiterate their conviction that the application of the right to collective bargaining in Costa Rica posed serious problems in several sectors. In relation to the public sector, they once again emphasized that the executive decree mentioned by the Government member and communicated to the ILO in the present Committee session did not respond to the claims made by the Costa Rican workers. Consequently, they demanded that a direct contacts mission or a technical assistance mission travel there to review all the difficulties in the application of Convention No. 98. They also invited the governments to submit information to the Committee of Experts on the legal and practical measures taken in order to conform with Convention No. 98. Finally, they informed the Committee that the Worker members would review the case again if the Committee of Experts had found that real progress had not been made in the following reports.

The Employer members noted that the discussion had shown the need for further clarification; this was also true for the concluding remarks of the Minister representing the Government; otherwise, it would not have been logical to accept the offer of technical assistance. The Minister was prepared to reinforce the position in law and that should indeed be done. They advised all sides to heed in future Convention No. 144 which was the basis for dialogue and progress. They asked the Government to act accordingly and would see in future what changes had occurred.

The Committee noted the verbal and written information communicated by the Government, and the discussions that ensued. The Committee stressed that the Committee of Experts and the Committee on Freedom of Association had noted for a number of years the discrepancies that existed between national legislation and practice on the one hand, and the Convention on the other hand, in respect of the right to collective bargaining of public servants who do not work in the state administration. The Committee noted the declarations made by the Government relating to a recent executive decree by the President of the Republic. The decree regulated the right to collective bargaining in the public sector including state institutions. Likewise, the Committee observed that the Government had solicited the technical assistance of the ILO, to be held in September 2001. The Committee requested that the technical assistance mission examine, in a comprehensive and exhaustive manner, the situation relating to the various aspects of collective bargaining. The Committee expressed its firm hope that, in the near future, it would be able to record some progress made in legislation, and in practice, with respect to the application of the Convention. The Committee requested the Government to forward thereto a detailed report which could be examined at the forthcoming session of the Committee of Experts in such a way as to carry out an evaluation of the situation, if deemed necessary.

Peru (ratification: 1960): **A Government representative** recalled that the present Government of Peru had set itself the fundamental objective of ensuring a smooth and trouble-free transfer of power to a democratic regime. Its mandate would conclude with the transfer of power, on 28 July next, to the recently elected Government led by Mr. Alejandro Toledo in elections which had been described by all international observers as transparent and exemplary. In that context and as an essential part of the labour policy of the interim constitutional Government, the speaker expressed the Government's will to guarantee and respect in legislation and practice the fundamental labour principles and rights universally promoted by the ILO.

Under the same heading and, as part of its policy of reconciliation, national unity, and strengthening democratic institutions, the interim constitutional Government, from the moment it took office, restored tripartite social dialogue through the National Council of Labour and Social Promotion, a forum for collaboration which was the ideal way to launch a process of democracy in labour relations leading to active participation by, and cooperation between, the social actors. As a starting point, the National Council issued a unanimous "Declaration" which "committed" it to working for a social climate in the country based on recognition of human rights, respect for the national and international legal order, democratic social dialogue, productivity, competitiveness, cooperation, mutual respect between the parties and a common vision of Peru's problems. Furthermore, an analysis of vocational training in Peru and a working document on employment in Peru during 1990-2000, had been adopted by consensus.

Finally, he reported that the Government regulated trade union freedom, collective bargaining and strikes, and had recently submitted to the Congress of the Republic, a bill to amend the Industrial Relations Act, incorporating the observations and recommendations of the Committee of Experts. That was in addition to the fact that the Committee of Experts itself, in its report for 2001, page 65, mentioned Peru in the list of cases where progress had been made in respect of Convention No. 98. Referring to the comments of the Committee of Experts on the lack of protection against anti-union discrimination, he said that the Committee of Experts had expressed its satisfaction at the passing of Act No. 27270, the Anti-Discrimination Act, which included penal sanctions. He considered that provisions of the Act itself did not expressly mention anti-union acts. With regard to the lack of sanctions for interference in trade union affairs, sanctions had been specifically contained in the draft bill but had been deleted. Nevertheless, the bill submitted to Congress proposed to extend the scope of subjects protected under trade union immunities, which was a protection of particular importance with regard to acts of interference. The extension of trade union immunities would affect candidates for trade union office or delegates (30 calendar days before their election and following their term of office) and members of negotiating committees. In addition, the penal legislation included offences such as particular forms of interference which might directly affect workers belonging to unions and indirectly, trade union organizations. These included coercion, violation of privacy, improper use of computerized records, violation of the home, violation of correspondence, telephone-tapping, improper withholding or diversion of correspondence, disturbing a public meeting and attacks on freedom of work and association.

There were then generic provisions in the legislation to prevent interference with trade unions, without prejudice to any preventive activities by the administrative authority, such as publicity campaigns carried out by labour inspectors designed to create a culture of respect for collective rights. With regard to the so-called constitutional jurisdiction, the recourse of *"amparo"* (appeal) allowed natural or legal persons, as applicable, to seek the extinction of acts that breached constitutional rights, such as the right to collective bargaining and freedom of association in general. In addition, the Labour and Social Security Committee of the Congress of the Republic had unanimously approved Bill No. 1670/2000, which restricted the arbitrary dismissal of trade union officials and workers who belonged to a trade union. In other words, their dismissal would only be justifiable for an objective reason laid down in national legislation.

As for the point indicated by the Experts on the slowness of judicial processes to deal with acts of anti-union discrimination, the organic law of the judiciary established sanctions against civil servants of the judiciary who did not properly perform their duties. The measures adopted to evaluate and adopted measures to remedy the slowness of the judiciary were as follows: formation of a committee of members of the Congress of the Republic, representatives of the Ministry of Justice and advocates in the Supreme Court of Justice to draft an organic law of the judiciary. In April 2001, an inter-institutional agreement was concluded creating a high-level commission consisting of the President of the Supreme Court of Justice, the Attorney-General and the Minister of Justice, under the programme for improving access to justice, to examine and propose measures to improve the quality of the administration of justice in Peru. In the framework of this programme, which had the support of the Inter-American Development Bank, it was proposed to establish 43 basic justice centres throughout the country, concentrating prosecutors, judges and official defence lawyers of the Ministry of Justice under one roof to facilitate access to justice. In addition, early in 2000, the Supreme Court of Justice had created an additional chamber for labour and social security matters solely to hear appeals in labour cases, thus speeding up judicial proceedings. Furthermore, extra judicial measures were being considered to resolve labour disputes through compulsory conciliation prior to court proceedings, conducted in the Ministry of Labour and Social Promotion and specialized conciliation centres authorized by the Ministry of Justice.

As for collective bargaining, the Labour Committee of the CNT and PS, the tripartite consultative body launched by the Government in January 2001, was examining a draft amendment to the Industrial Relations Act which would be discussed by the social partners, covering all aspects of collective bargaining.

As for article 9 of the Act on Competitiveness and Productivity at Work which allowed employers to modify shifts, days and hours of work, as well as the form and manner in which work was performed, the speaker indicated that the employers' power was subject to what was collectively agreed. In that respect, the Industrial Relations Act, Legislative Decree No. 25593, clearly established that collective agreements could only be amended by consent of the parties.

With respect to regulation of the single productivity bonus in the public sector, the speaker listed the requirements set out in Ministerial resolution No. 05-99-EF/15, article 1: (a) the amount of the bonus should be established taking into account the level of responsibility, contribution and commitment of the worker, as reflected by a process of evaluation; (b) the amount could be paid in instalments; and (c) for personnel covered by collective bargaining, the single productivity bonus would be fixed and awarded by means of collective bargaining. As would be appreciated, the Committee understood that the requirement in subparagraph (a) would extend to the collective bargaining covered in subparagraph (c); however, a literal interpretation of subparagraph (c) would lead to the conclusion that the parties could freely negotiate the terms on which the bonus was granted, subject to the availability of budgetary resources in the sector concerned. Ministerial resolution No. 038-2001-EF/10 of 25 January 2001 regulated the conditions for awarding the bonus to workers in entities covered by the National Fund for the Financing of State Entrepreneurial Activity (FONAFE). That rule explicitly provided that the single productivity bonus granted in the context of collective bargaining should be awarded only to workers who satisfied certain requirements such as punctuality, attendance, meeting targets, productivity, etc. As a result, cases arose such as the one relating to collective bargaining in PETROPERU S.A., a state company, in which the parties had not agreed the single productivity bonus, but had directly agreed an unlimited increase in remuneration.

As for the opinion of the Experts that the bill to amend the Industrial Relations Act of 31 July 2000 contained certain provisions that were not in conformity with the Convention, the speaker indicated that three bills to amend the Industrial Relations Act which incorporated all the observations and recommendations of the Committee of Experts were currently before the Congress.

The Employer members recalled that the comments of the Committee of Experts in the case of Peru focused on the absence of sufficient protection against anti-union discrimination when taking up employment and in relation to other measures. Although the Committee of Experts had noted with satisfaction a number of improvements in the case, it had still found that provision was not made for sanctions against acts of interference by employers in trade union organizations. It was unfortunate in this respect that the Committee of Experts had not referred to individual cases since, as all agreed, practice was more important than theory in cases such as the present one. In this respect, the Government representative had referred to a number of provisions providing for penal sanctions and the Committee of Experts could therefore examine the matter again in the light of the new information.

Another question raised in the report of the Committee of Experts concerned the slowness of judicial procedures in the event of complaints made by trade unions. In this respect, the matters raised seemed to be something of a borderline case related principally to issues concerning the judicial infrastructure. The problem of the slowness of procedures should not be seen in isolation, since it might depend, for example, on the number of different stages involved in the procedure and whether or not a preliminary arbitra-

tion was required. Another reason might be the number of cases which had to be handled by the judicial bodies. The Conference Committee did not have the information available to make judgements on these questions, which required an overview of the situation with regard to the judicial system in the country. This would also need to be examined more carefully by the Committee of Experts.

Another point raised by the Committee of Experts was the requirement of a double majority in order to be able to conclude a collective agreement. This meant that both a majority of workers and of enterprises was required. The Committee of Experts had stated that this double requirement was difficult to meet. However, this view might perhaps be over-simplistic. The question arose, for example, as to whether the double requirement only applied to *erga omnes* agreements which were applicable to all parties, and might not therefore cover collective agreements that were more limited in scope, so that these collective agreements would not be applicable to all the parties. Moreover, this particular issue was not covered by Article 4 of the Convention and the Employer members recalled that it was important to stay within the provisions of the Convention in interpretations of it.

The final point raised by the Committee of Experts concerned the powers of employers to introduce changes in working conditions. The Government had indicated that such changes were subject to three criteria of reasonableness. However, in the view of the Committee of Experts, these safeguards were not adequate and the practice was contrary to the principles of collective bargaining. The Employer members found this to be a somewhat surprising conclusion, particularly in view of the different traditions of collective bargaining in the various countries. For example, in certain States with a long tradition of collective bargaining, collective agreements could have effects at different levels, such as being assimilated to legal provisions, having a contractual effect or merely having the status of recommendations. The situation differed widely in the various countries and it was therefore unproductive to speculate on the effects that a collective agreement might or should have. This was another matter on which no firm provisions were contained in Article 4 of the Convention.

Finally, the Employer members noted the reference by the Government representative to a new bill that was shortly to be enacted. They therefore called on the Government to transmit the new legislation to the Committee of Experts for its consideration once it had been adopted.

The Worker members recalled the different points raised by the Committee of Experts in its last observation. Concerning the implementation of Articles 1 and 2 of the Committee of Experts, the Worker members noted with satisfaction that the Government had taken measures to remedy the absence of protection and of sufficiently effective and dissuasive sanctions against anti-union discrimination, especially at the time of taking up employment and in the event of prejudicial acts against workers and trade union leaders. They nevertheless regretted that the law did not provide sanctions against acts of interference by employers and asked the Government to remedy this situation quickly taking into account the international standards to which it had subscribed. The Worker members supported the request of the Committee of Experts and the Committee on Freedom of Association relative to the excessively slow judicial procedures with a view to guaranteeing adequate protection for workers and their organizations against discrimination. Concerning the application of Article 4, the Worker members recalled the recommendations made by the Committee on Freedom of Association in Case No. 1906 in which it had requested, just like the Committee of Experts, the elimination of the double requirement so that the parties were able to determine freely the level at which they wished to negotiate. In this respect, the Worker members insisted that the right of organizations to collective bargaining be clearly established in case their representation rate did not reach 50 per cent. The Worker members asked the Government to urgently take all necessary measures to abrogate the provisions which enabled employers to modify unilaterally the content of collective agreements. These provisions in fact flagrantly contradicted the principles of the Convention. They expressed the hope that the new Government would take account of their requests as well as those of the Committee of Experts relative to the non-conformity of some provisions of the new draft bill of 31 July 2000 and that the next Government report would allow an ascertainment not only of the good will of the Government but also of the real progress made in bringing in conformity with the Convention the national legislation and practice in the area of collective bargaining.

The Worker member of Peru said that there had been major changes in his country with the return to democracy after ten years of a dictatorship which had introduced a free market economic model and a labour flexibility which had resulted in total deregulation of labour relations. The interim transitional Government had been playing an important role in the task of democratization. He highlighted the constructive participation of the current Minister of Labour who had convened the National Labour Council in a major project to develop social dialogue and consultation. He indicated the importance of the Inspections Act and the Minimum Age Act and the Collective Relations Bill. However, although there had been a degree of progress, and the Government should be commended on that account, there was still much to be done. Workers were constantly threatened by the possibility of "arbitrary dismissal", as it was called in Legislative Decree No. 7290, which had resulted in the last ten years in over 1.5 million workers losing their jobs. Workers subcontracted through service companies and cooperatives and workers in youth vocational training or work experience programmes were not allowed to form trade unions. Trade unions in the public sector, which comprised over 600,000 workers, and were very active in practice, were not recognized. Collective bargaining had fallen to one-quarter over the last ten years. In sectors such as civil engineering, banking and mining, inter alia, there had been no collective agreements for over six years. The working day had been totally altered, based on the fact that the Act referred to a 48-hour working week but did not specify that it must be eight hours a day, so that many companies required their workers to work for over 12 hours a day. The new Peruvian Government should, therefore, continue to be urged to comply fully with the ILO Conventions in order to restore trampled labour rights.

The Worker member of the United States pointed out that while the report of the Committee of Experts had identified some of the discrepancies between national legislation and the Convention, he wished to complete this report by describing the general, chronic and systemic violations of the Convention in Peru's labour law regime. The Committee of Experts had noted that Act No. 27270 of May 2000 had incorporated provisions prohibiting discrimination in the Penal Code. However, it had also noted that there was no mechanism to remedy acts of interference by employers in trade union organizations, as guaranteed by Article 2 of the Convention. The labour law still failed to deal with anti-union discrimination at recruitment. Moreover, the 1995 Employment Promotion Act allowed employers to alter limited financial compensation in lieu of both reinstatement and back pay to the victims of anti-union dismissals. Privatization had been used as an effective tool to carry out acts of anti-union discrimination. In the process of privatizing the telecommunications and railway industries in 1999, workers had been dismissed from their employment and offered jobs in newly created subsidiaries with different conditions of employment, lower pay and no union representation. Moreover, they had been told to wait three months before they could join a union. They also needed to attain one year seniority in the new company before being able to participate directly in collective bargaining and the absolute majority requirement for both workers and enterprises in order to create industrial-sectorial union and bargaining structures is prohibitive, clashing with Convention No. 98. Finally, Peruvian law permitted employers to introduce unilateral changes in hours and other terms and conditions of employment. The premise of the Government's argument was that if the matter was not dealt with by a collective agreement, then the employer was legally entitled to unilaterally alter any individual employee's employment conditions. Moreover, the employer was legally allowed to unilaterally alter terms and conditions of employment of individual employees in a first collective contract bargaining situation without having reached an impasse. Moreover, the speaker had been informed by his colleagues from the Peruvian labour movement that the threat of arbitrary dismissal empowered employers to make these unilateral changes with impunity. The provisions of section 1 of the Convention are also undermined by the application of the secret ballot requirement for strike votes. A full list of the workers who attend the meetings in which the secret ballots are taken are submitted to management. Moreover, Peruvian labour law continues to harbour an overly broad definition of the essential services prohibition on strike action, collective action which is the device workers have to guarantee respect for the Convention. Hence, this Committee needed to continue to monitor the application of Convention No. 98 in Peru.

The Worker member of Brazil said that in the last ten years, during which Peru had been the subject of observations by the Committee of Experts, there had been numerous violations of human rights in general and freedom of association in particular. Trade union legislation in Peru clearly had authoritarian aims and placed trade unions in a constant position of insecurity. Referring to the right to strike, he indicated that the right to strike was severely restricted by the law, taking into account the requirement for a secret ballot imposed by it. He recalled that the Committee of Experts had indicated for years that the requirement for an absolute majority of

workers and companies in order to conclude collective agreements (articles 9 and 46 of the Industrial Relations Act) was contrary to Article 4 of the Convention. That requirement was excessive and clearly designed to inhibit free negotiations between trade unions and employers. Collective agreements were nothing more than a legal fiction in Peru. In fact, the law allowed an employer to unilaterally alter what had been agreed with a trade union, which amounted to a clear attack on the trade union's good faith and the exercise of collective autonomy. The judicial procedures protecting against acts of anti-union discrimination, set out in the 1992 Act, were excessively slow and ineffective. In that regard the Committee of Experts had recommended amendments to ensure the effective application of Articles 1 and 2 of the Convention. Legal protection of trade union activity without an expeditious judicial process was worthless in practice. Finally, he supported the proposal by the spokesperson for the Worker members and suggested that the Committee's conclusions should be emphatic so that they were clearly heard, not only by the present Government, but by the future President of Peru.

The Government representative took note of the discussion that had taken place and the interesting and constructive views that had been expressed by the various groups. He would give a full report to his Government and it would be taken into consideration in fulfilling the Convention. As indicated by some of the workers, the present Government had taken significant steps towards the reconstruction of democracy. He highlighted the importance of the National Labour Council which was a guarantee of social dialogue and was regarded as an essential factor for change in labour issues. He pointed out that he could not guarantee what the new Government, which would take office shortly, would do, but he was confident that it would continue to strengthen social dialogue.

The Worker members underlined that the Government should make the necessary modifications to the bill of 31 July 2000 so that the right to collective bargaining could be exercised in law and practice in conformity with the Convention.

The Committee took note of the oral information supplied by the Government representative and the subsequent debate. The Committee underlined its concern that the Committee of Experts and the Committee on Freedom of Association had found serious discrepancies between national legislation and practice and the Convention with respect to: inadequate protection against interference in trade union affairs, delays in judicial proceedings relating to acts of anti-union discrimination or interference, and restrictions on collective bargaining both in the private and public sectors. Nevertheless, the committee welcomed Act No. 27270 which reinforced protection against acts of anti-union discrimination. The Committee noted the Government's statements that it had drafted a bill which would cover those issues and which would be discussed with the social partners. The Committee urged the Government to take all necessary measures, as soon as possible, to bring national legislation and practice into full conformity with the provisions and requirements of the Convention, following consultation with the employers' and workers' organizations. The Committee expressed the firm hope that in the very near future, it would be in a position to observe real progress in the application of the Convention. The Committee requested the Government to submit a detailed report to be examined at the next meeting of the Committee of Experts for the purpose of evaluating developments.

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

Islamic Republic of Iran (ratification: 1964). **A Government representative**, while recalling that the case had been discussed by this Committee on several occasions in recent years, emphasized the positive developments which had occurred in his country in the field of equality and deeply regretted that the Committee had decided to examine the case once again. The continued examination of the case by the Committee was disheartening and made those involved wonder what they had to do to prove their determination to fulfil their country's commitments to the ILO and comply with the Convention. The re-examination of the case was particularly surprising at a time when the re-election of President Khatami should instead be giving rise to congratulations on the progress that was being made towards democracy. Moreover, the deep commitment of the Iranian Government to eradicating discrimination had been shown by the meeting that it had hosted in August the previous year for Asian countries on the subject of combating discrimination and racism. His country had also invited the Secretaries-General of the International Organisation of Employers (IOE) and the International Confederation of Free Trade Unions (ICFTU) to attend the second tripartite forum with a view to providing them with an opportunity to exchange views with their counterparts and seek any information that they might require on the situation in the Islamic Republic of Iran and the developments which had occurred over the past year. These developments included the election of the Secretary-General of the Workers' House to Parliament. He also referred to a report, of which copies were available to the members of the Committee, covering women's activities in all fields. He recalled that his country had only been a democracy for 20 years. It was therefore particularly to be regretted that the question of compliance with the Convention continued to be examined by the Committee, especially since no discrimination was allowed by Iranian legislation. He nevertheless offered to provide anyone who so requested with full information on the situation relating to equality in his country.

Another Government representative welcomed the efforts of the Committee of Experts and the Conference Committee to enhance labour rights and improve conditions of work by monitoring and supervising the implementation of the provisions of international labour standards and providing constructive recommendations. She reiterated the commitment of the Government to the obligations deriving from its membership of the ILO and the ratification of the Convention. She said that her country was committed to the application of the Convention, whose provisions were in line with the principles, values and objectives of her country. Upholding the labour rights was one of the fundamental principles of her Government and its reports on the Convention over the past years provided a clear indication of the intention and attempts made to fulfil its obligations, both at the national level and in accordance with the relevant ILO principles. The Committee of Experts' observations on the implementation of the Convention in the Islamic Republic of Iran had received due consideration and she shared its comments on continuing dialogue and collaboration between the Iranian Government and the Office. She expressed a willingness to further expand fruitful interaction with the ILO. In its report the Committee of Experts noted positively several developments in the Islamic Republic of Iran, particularly regarding women and religious minorities, while requesting further and more detailed information. A total of nine of its paragraphs focused on women. She greatly regretted that the real image and true status of Iranian women was not fully known to the world. The Government's efforts to promote the rights of Iranian women, combined with the views of open-minded individuals and officials on women's rights, had greatly elevated the status of Iranian women. The presence of women in the Cabinet, the Islamic Consultative Assembly (Parliament), universities, city councils and other areas of social life were clear examples of the level that had been achieved in the recognition of women's rights. Decision-makers in the Islamic Republic of Iran focused on women's empowerment and their participation in all spheres of life as fundamental aspects of the development of society. The Government had adopted several important measures to promote the status of women and facilitate their full participation in decision-making. In the parliamentary elections in February 2000, of a total 6,089 candidates, 513 were women. The number of women candidates in these elections were substantially higher than in the previous two parliamentary elections. She described a number of the measures taken to promote women's rights, including the incorporation of a gender perspective in macro policies and programmes, for example through the allocation of a special budget for women's affairs in the national annual budget, which had increased by more than 10 per cent in 2000-01 compared with the previous year. A national plan of action for the advancement of women had been formulated, with emphasis on strengthening institutional mechanisms, women's human rights and the mass media. Special attention had been paid to women's affairs in the third Five-Year Development Plan 2001-05, with particular emphasis on social affairs. The action taken also included reviewing and amending the relevant legislation and improving the legal practices, and the development of national machinery for the advancement of women, and particularly the establishment of special commissions in governmental organizations and special commissions on women's affairs and the family in the Parliament. On the issue of the promotion of women's rights, she recalled the acknowledgement in the Committee of Experts' report that some progress had been made in women's participation in various sectors of wage and non-wage employment from 1991 to 1996 and that the improvement in their situation had continued up to the present. There were no restrictions on the areas in which women could study. With a view to increasing the rate of women's participation in the labour market, the Government, in accordance with section 158(B) of the Economic Development Plan on job opportunity development for women, had allocated and spent 200 billion rials and had approved all the necessary regulations in this regard. She added that the number of women's NGOs had risen to 248 in 2001, compared with 139 in 1999. Indeed, there had been a

400 per cent rise in NGOs over the past four years. One of the policy objectives of the Government was to empower women to participate in all political, economic and social fields. It was notable that in the sixth parliamentary election, held in the year 1999, over ten women had been elected, one of whom was the nominee of the Iranian "Labour-House", who had been the first woman to be elected to the Parliament's Presiding Board. The number of women in managerial posts had risen from 908 in 1997 to 2,856 in 1999, a rate of increase of 300 per cent. The rate of women's participation in the labour market had reached 11.7 per cent, compared with 10 per cent two years ago. Great importance had been given in the third Five-Year Development Plan to the development of women's cooperative enterprises. According to the law adopted recently, the Government would finance the total investment for enterprises which were 70-per-cent-owned by women. Moreover, a notable feature of the budget plan under the approved law was the allocation of a special budget for women householders under the Protection of Job Opportunities Fund. She emphasized that the promotional trend in the Islamic Republic of Iran should be taken very seriously, as it would speed up the process of the elimination of discrimination against all Iranian citizens. In 1999, the number of employed women in managerial and supervisory posts had risen to 3,029. In the same year, some 30.3 per cent of state employees had been women of whom 53 per cent were university graduates. The number of literate women in urban and rural regions in the country had risen respectively to 83 per cent and 73 per cent in 2000. Moreover, some 60 per cent of university students accepted through the university entrance exam for the academic year 1999-2000 were women.

She therefore concluded that the presence and struggle of Iranian women during the revolution and their active involvement in all social and political fields, their membership of the Cabinet, Parliament, universities, city councils and other fields of social life were clear examples of the level that had been achieved in the institutional recognition of women's rights over the past 20 years since the establishment of democracy in her country. Although it could be seen that in many countries women were deprived of the full political right of participation in elections, in the Islamic Republic of Iran all women enjoyed the right of free participation in the political field and peacefully cast their votes, as well as standing for election. Women had played a considerable role in the period of political development. Indeed, the beginning of that period had been characterized by massive participation especially by youth and women in the two presidential elections in 1997 and 2001. Great emphasis was placed on the advancement of women in the Five-Year Development Plan with a view to increasing their participation.

With regard to the mechanisms for the promotion of human rights, the Committee of Experts had noted the establishment and functioning of the Islamic Human Rights Commission, which acted independently from the Government and the judiciary. The Committee had also requested the Government to continue supplying general information on the activities of this institution. She indicated that the Islamic Human Rights Commission had been established in 1994 as a national institution at the initiative of a number of independent jurists. Members of Parliament, the judiciary branch and judges, along with the representatives of relevant non-governmental organizations, were members of the Commission. The head of the judiciary was one of the members of the High Council of the Commission. Over the past year, the Commission had organized several seminars and workshops on the situation of human rights in the Islamic Republic of Iran. In relation to cases of human rights violations in the Islamic Republic of Iran, over the past eight months the Commission's observers had attended the court hearings in a number of cases. Recommendations and proposed measures had been adopted and issued by the Commission based on a close observation of the circumstances of the cases. She specified that the Islamic Human Rights Commission intended to develop a human rights defenders network in the various provinces of the country, with the objectives and functions of: facilitating and stabilizing public participation in various social activities for the furtherance of human rights; the promotion of public awareness in this field and the prevention of violations of human rights; developing individual knowledge and social tolerance in relation to human rights and freedoms; and preparing an organized structure of provincial branches of the Islamic Human Rights Commission throughout the country. In addition, more Iranian NGOs active in political, economic and cultural fields had been established in recent years, some of which now enjoyed consultative status with ECOSOC. Moreover, the number of NGOs dealing with women's issues had increased to 113, around 20 of which were active in the field of poverty eradication for women and the promotion of women's economic independence and self-employment. On the subject of official policy for the protection of the human rights of all citizens, the Interior Ministry had established a special committee to consider and solve the problems of religious minorities, with the participation of high-ranking representatives of the relevant governmental institutions, the leaders of the religious minorities and relevant NGOs. In addition, over the past year, 11 Zoroastrian associations and eight Assyrian associations had received permission to operate. The Government was sparing no effort for the elimination of any formal and de facto discrimination against religious minorities. In line with the determination of the Government to foster tolerance and respect in society for all religious groups, a second annual national seminar had been held in Tehran in 1999, with the participation of religious minorities, on the subject of the Constitution and rights. Its objective had been to promote public knowledge and negotiation on the rights of religious minorities. Articles 22, 28, 29, 30 and 31 of the Constitution provided for equal rights for all Iranian citizens. The rate of unemployment among the religious minorities was lower than the average unemployment rate at national level and their living standards were higher than the national average. The labour market participation rate of religious minorities in relation to their population was also higher than the national average. She hoped to be able to provide the Committee of Experts with new statistics on the status of religious minorities when the information became available.

She emphasized the belief that international monitoring mechanisms were not the sole solution and that human rights needed to be institutionalized, which could not be possible until and unless national institutions were given a chance to take the lead. A constructive approach to the issue would require the close collaboration of the Government with international organizations, and particularly the ILO, through technical cooperation projects. In accordance with section 6 of the Labour Code and sections 43(4), 2(6) and 19, 20 and 28 of the Constitution, forced labour and the exploitation of others were prohibited. Iranians, irrespective of their tribe or ethnic group, enjoyed equal rights, and colour, race and language, inter alia, did not constitute a source of privileges. All individuals, whether men or women, were equally protected under the law and every person had the right to freely choose an occupation. Turning to article 1117 of the Iranian Civil Code, she reiterated that article 18 of the Family Protection Law provided for exactly the same rights for women. Article 1117 of the Civil Code should be considered as being fully in line with article 18 of the Family Protection Law. Indeed, the Family Protection Law, which was more recent, provided for the same rights for both husbands and wives. With the integration of a gender perspective in the third Five-Year Development Plan, employment had been given the top priority for both men and women. To address this issue, a Supreme Council of Employment, with a tripartite structure and headed by the President, had been set up. The representatives of the Government, employers and workers actively participated in its regular meetings and the trend of social dialogue was quite encouraging. She indicated that in the previous month, the second National Tripartite Labour Forum had been held in Tehran with broad participation and close interaction of the social partners. The forum adopted a final resolution, two items of which were related to fundamental international labour standards. The first requested Parliament to accelerate the process of ratification of Convention No. 182, and the decision to ratify the Convention had now been approved by the Council of Ministers and submitted to Parliament for final approval. The secretariat of the forum had also been requested to set up a specialized committee to examine the ratification of Convention No. 87. She recalled that the Committee of Experts had on many occasions confirmed in its report the positive steps taken by the Government. However, she was sure that the Committee would agree that positive positions and developments in societies required prolonged periods of time and that there was no successful way of rushing matters, particularly in relation to social and cultural tolerance, the amendment of provisions of laws and regulations and their application in practice. This process demanded comprehensive expert studies and gradual achievements. She also informed the Committee that a tripartite training workshop on ILO fundamental Conventions had been held earlier in the year with support from the ILO. The seminar had covered Convention No. 111 and other fundamental Conventions. She expressed her appreciation to the ILO for the valuable seminar. Alongside the seminar, several discussions had taken place between the social partners and ILO experts on the promotion of women's employment and non-discrimination issues. She looked forward to the implementation of a technical project in certain regions to enhance equality, with emphasis on the employment status of women heads of households. She recalled the issues raised by the Iranian Worker member of the Committee the previous year and informed the Committee that the Ministry of Labour and Social Affairs had opposed the adoption of an Act to exempt from the application of the Labour Code workplaces and businesses with five or fewer employees, as well as making efforts to prevent the implementation of

the Act. These efforts included the submission of a new Bill to Parliament and consultation with newly elected deputies to protect women and minorities against discrimination in employment in such workplaces. In this respect, it was noted that, following the recent National Tripartite Labour Forum, an agreement with 32 articles on employment and social protection in workplaces with five or fewer employees, had been concluded by the social partners. The Persian version of the agreement was now available. Over the recent years the Islamic Republic of Iran had on many occasions clearly declared its deep desire to develop and maintain good relations with the ILO. The principal criterion in all instances had been mutual respect and trust, while bearing in mind the cultural, historical and ideological differences which might exist between countries. However, differences should not prevent a good working relationship. In conclusion, she recalled that the eighth Iranian Presidential election had been held in Tehran two days ago, based on a democratic process in which men and women had actively participated, and that President Khatami had been re-elected in a landslide victory with 77.88 per cent of the vote. She was therefore convinced that reform and the further promotion of labour standards in the Islamic Republic of Iran was an irreversible trend. She expressed appreciation to the Committee for its understanding and expressed her willingness to build a partnership based on mutual respect and cooperation.

The Worker members thanked the Government representatives for the long and detailed introduction which they had provided to the case. With reference to the comments of the Government concerning the inclusion of the case of the Islamic Republic of Iran on the list of individual cases, once again, they referred to the criteria used by the Worker members for the selection of cases as mentioned in the report of the Conference Committee for the previous year. These included the content of cases, their relation to basic human rights Conventions, the conclusions adopted by the Conference Committee the previous year, as well as comments made by the Employer and Worker members the previous year. It had only been after close consideration that the Worker members had decided to call for the case to be included on the list once again this year. They also reminded the Government representatives that the Conference Committee was not a tribunal and that its role could well be described as helping member States to overcome difficulties that they might experience in complying with the Conventions that they had ratified. The basis for the discussions of the Conference Committee consisted of the independent, impartial and objective reports made by an eminent group of specialists in labour law. One of the ways in which the Committee of Experts differed from such bodies as the United Nations Commission on Human Rights was that the experts on the latter body were handpicked by governments, whereas the ILO's experts were independent. Finally, they added that the examination of a case by the Conference Committee was not a punishment and that the Committee was always ready to welcome improvements.

Referring to the comments of the Experts on the general human rights situation, the Worker members drew attention to the qualified optimism expressed in many quarters concerning recent developments in the Islamic Republic of Iran, both as regards the human rights situation and the outcome of the recent presidential election, in which President Khatami had won a landslide victory over the conservative camp. However, there were those who called for caution on the grounds that it was unclear where the reformers were heading and how far they wished to or were able to go. The positive indications included the fact that new newspapers had been allowed to be published and that there appeared to be greater freedom of expression. Nevertheless, a large number of newspapers had also been closed down and journalists imprisoned because they had expressed views which had not been approved by the authorities. In the view of the Special Representative of the United Nations Commission on Human Rights, there had been tangible progress in some areas, but stagnation and even backsliding in others. Indeed, many commentators had suggested that the people had not voted for the reformists, but against the conservatives. The Worker members recalled that the conservative camp still had a strong hold on the judiciary, the security forces, the most important media and the legislation. The Committee of Experts had described the relevant developments in the country with regard to the observance of fundamental political and civil rights. In so doing, reference had been made to the report of the Special Representative of the United Nations Commission on Human Rights (UNCHR). The Worker members welcomed such cross references and believed that more should also be done to encourage the Commission on Human Rights to refer to the work of the ILO. Against this background, which the Committee of Experts probably had sketched so as to give their comments with regard to the Convention more depth and credibility, the general conclusion was that although progress had been made, there remained a number of shortcomings, and even serious weaknesses in compliance with the Convention. The Committee of Experts, quoting the Special Representative of the UNCHR, had also referred to the prospect of substantial and far-reaching change. However, the Worker members believed that mere prospects for change were not a very solid foundation for examining the situation relating to the application of the Convention. Progress would only be convincing if demonstrated by facts related to the implementation of the Convention in practice. By way of illustration, the Worker members referred to one of the original issues that had been raised concerning the application of the Convention, namely the discrimination against the Baha'is. Only one new development had been reported by the Committee of Experts, namely that it was no longer necessary to provide a declaration of religion in order to register for marriage. Although positive in itself, this measure was not, strictly speaking, relevant under the Convention and did not demonstrate widespread improvement. Indeed, the Worker members believed that the message contained in the report of the Special Representative of the UNCHR was that, even though in general prospects were good, the situation of the Baha'is had not improved significantly in practice. Discrimination continued in the fields of education, employment, travel and cultural activities. A number of Baha'is had been imprisoned for acts which would not be considered to be of a criminal nature in most countries, and two of them were facing the death penalty. The picture became worse when the position of other minorities recognized by the Government was also taken into account, such as the Jews, against whom appalling acts of discrimination had been perpetrated, as well as the Christians and Sunnites.

Several of the points of progress mentioned in the current report of the Committee of Experts, and which were welcomed by the Worker members, had also been covered in the previous year's report. Indeed, a large amount of the information provided by the Committee of Experts was not new. This was unfortunate in view of the request that had been made during the discussion of the case the previous year for more information and in particular facts to document the progress that had been made. Without such evidence, there was a danger that the situation might be slipping backwards. The previous year, the Worker members had welcomed the mission which had visited the country. However, they had warned that the mission would be most effective if it involved careful fact-finding and investigation into cases where real progress had been made in law and practice, as well as registering continuing, and new shortcomings. They had also emphasized that such a mission, important though it might be, was just a tool and that the only thing that counted was results. They recalled that the previous year they had raised a series of questions concerning the situation with regard to the application of the Convention. They referred the Committee back to these same questions, which principally concerned the issues of the precise and balanced monitoring of relevant developments with regard to the points which had been under discussion for many years. With reference to some of these questions, the Worker members had understood that answers were available: the report of the 1999 mission as well as the list of contacts that the mission had had. However, other points raised in their questions were still of relevance. The Worker members emphasized the importance of the fact that the Committee had progressed from a most unpleasant and unproductive relationship with the Government, through a stage of relatively normal exchanges of views and debate, to a stage of dialogue. This dialogue concerned progress, slow progress, and how it could be maintained and its pace increased. It concerned the many difficult questions with regard to continuing violations of the Convention, which they recalled was one of the basic human rights Conventions of the ILO. The Worker members had the impression that the Government was keen to continue this dialogue. They therefore reiterated the hope that the first mission could be repeated. Whatever name was given to it, it was important that it should provide answers to the questions raised the previous year, and that these answers should be more than mere repetitions of the information that was already available. Facts needed to be provided on the implementation of the Convention in both law and practice. The Worker members were convinced that such a mission would support and stimulate whatever real progress was being made in the country and that, by facilitating the work of the Committee of Experts and the Conference Committee, it could make a significant contribution to the full implementation of the Convention.

The Employer members expressed the belief that the complaints made by the Government representative concerning the re-examination of the case of the Islamic Republic of Iran by the Committee were somewhat exaggerated. They pointed out that the Islamic Republic of Iran was not the only country to come before the Committee repeatedly and that too many complaints might encourage the Committee to continue its dialogue in the future. The

Employer members recalled that the case had been examined on many occasions by the Committee and that the historical reasons for this were still of relevance. They noted that the report of the Committee of Experts had made use of information from the United Nations Commission on Human Rights and its Special Representative on the Situation of Human Rights in the Islamic Republic of Iran. They also observed that the Committee of Experts had noted certain improvements with regard to the status of women in the country and in terms of freedom of expression, although there had been retrogressive steps with regard to the freedom of the press and the situation of the Baha'is. The situation with regard to the application of the Convention was therefore contrasted. The Employer members noted that the Committee of Experts had requested further information on the situation in the country with regard to equality of opportunity and treatment. One of the questions raised was the treatment of complaints concerning discrimination, and particularly the role of the Islamic Human Rights Commission in this respect. What was the competence and capacity of the Commission, could it receive complaints and, if so, how did it handle them? Although the Government representative had provided further information, the questions that still needed to be answered related to the action that the Islamic Human Rights Commission could take, in view of its advisory role.

The Employer members recalled that the basic questions arising concerning the application of the Convention related to the existence of discrimination on the basis of both gender and religion. Gender discrimination had existed for many years and affected the opportunities of women to gain employment and access to the various occupations. The interaction between the labour market and social issues meant that when women did not have opportunities on the labour market, their situation in society would not improve. The Committee of Experts had observed some improvement between 1991 and 1996 in such areas as wages, education and access to universities. However, less progress had been achieved in the labour market. Figures had been provided concerning the participation of women in higher level and managerial jobs. In this respect, the Government had explained that there had been a certain deterioration in the situation on the labour market due to a rise in unemployment. Another field in which women's opportunities were limited was in the judiciary, where they could only occupy advisory functions, but not become judges. The Employer members pointed out that the judiciary was not large in numerical terms, but the admission of women would have a considerable symbolic value in the field of equality. The question therefore arose as to why the necessary changes could not be made. They also considered that the obligatory dress code for women, which was accompanied by sanctions, constituted an obstacle to equality. Although the Government had indicated that women were not dismissed from their jobs on this ground, it nevertheless constituted a visible discriminatory measure. In this connection, even though the Committee of Experts had requested the Government to provide a complete copy of the Act on Administrative Infringements, the Government representative had not mentioned the subject. Information was therefore required to clarify whether the Government was ready to make changes in this respect. The Committee of Experts had once again raised the issue of the rights of husbands concerning the performance of work by women, and particularly their right to prevent them from taking certain jobs. Such a measure was clearly to the detriment of women. It was not clear, particularly in view of the indication that legislation on equality had been adopted more recently, why section 1117 of the Civil Code had not been amended or deleted. With reference to the National Plan of Action for Women, the Employer members requested information on whether and to what extent collaboration had been established between the representatives of employers and workers in the implementation and amendment of the Plan. They added that they doubted that the Plan could be successfully implemented without such collaboration.

Turning to the question of discrimination on the basis of religion, which had always been an important issue in the past, the Employer members recalled that there was no difference in the situation with regard to the recognized religious minorities, even though a preference had been noted for Muslims in hiring practices. However, too little information was available on the situation of the Baha'is, who had always suffered from discrimination and a negative opinion among the population as a whole. The situation of the Baha'is had been examined by the Conference Committee in its previous examinations of the case and previous Government representatives had admitted, for example, that the Baha'is were considered to be spies. Although this argument no longer appeared to be used, no other information had been provided on this subject. On previous occasions, the Conference Committee had also raised the issue of the Act to exempt from the application of the Labour Code workplaces and businesses with five or fewer employees. The effect of the Act was that labour legislation was not applicable to such workplaces, which placed women in an unfavourable situation in view of the fact that they were no longer protected by the equality provisions.

The Employer members recalled in this respect that, on all of the questions raised, tripartite discussion was of great importance for the practical implication of measures in the world of work. They therefore asked the Government to provide information on the situation in this respect, and looked forward to the comments of Employer and Worker members. Although the report of the Committee of Experts had reported a slight improvement in the situation in a number of areas, this was not the case in all fields. In this respect, the Government representative and the Worker members had called for the political situation to be taken into account. The Employer members believed that, although the political situation was not in practice easy, it was not the ILO's mandate to discuss this issue. Nevertheless, they admitted that the overall political environment was a decisive factor in the world of work. Finally, the Employer members drew attention to the fact that one-half of the population in the Islamic Republic of Iran was under the age of 18. They called upon the Government to take this fact into account and to be careful not to lose contact with the majority of the population. They warned that young people were now developing new ideas and attitudes and believed that the Government would be well advised in its own interests to take action rapidly and in a consistent manner so that it met the expectations of this important part of the population. They therefore called upon the Government to reply orally and in writing to all the questions raised by the Committee of Experts and the Conference Committee as a necessary premise for a constructive dialogue. While no one was completely denying the existence of problems in the application of the Convention, the Employer members emphasized that dialogue would need to lead to change and that such change should be more rapid in the future.

The Worker member of Greece noted that it would be desirable for the Committee to reflect on its working methods in order to avoid losing time in the beginning of its work on issues that, if not altogether futile, were nevertheless not as serious as the examination of individual cases. He thanked the Government for the information provided and recalled that the Committee was not the enemy of the Iranian Government or people. It was obvious that there had been an improvement in the situation when compared to the times when members of the Baha'i faith were considered spies, or when women lacked any right, or when the Committee was called every name under the sun by the entire Iranian delegation. The Government representative had cited an entire list of facts which were covered in the Committee of Experts' report. A fruitful dialogue could not take place if the Government representatives only repeated the information already contained in the observations of the Committee of Experts and welcomed the slightest progress accomplished. He added that according to the information he had, in the last four years there had been 600,000 prisoners in the Islamic Republic of Iran and 4,000 executions, of which 103 had occurred since January 2001. There were Iranian citizens still living in exile due to their religious and political beliefs. He had heard many figures and would not bring up any others, but he wished to ask a number of very specific questions. Was it true that a girl could marry at the age of nine but that with medical authorization this age could be lowered? That if a man killed his wife in a crime of passion he would not be punished? That as long as girls were virgins they could not marry unless they had the authorization of their father, even if they were 60 years old? That divorce was a right that belonged exclusively to men? That adult women did not have the right to study abroad without the consent of their guardian? That 9-year-old girls were considered, from the point of view of criminal law, to be as responsible as adults and, consequently, could receive the same punishment (stoning, flagellation, etc.)? The speaker noted that the Government representative had asserted that an improvement in the situation of women had occurred and that a number of them had been candidates and elected to government positions. Nevertheless, he expressed the wish to know the exact nature of these posts and the number of women occupying them. He proposed that a direct contacts mission be sent and stated that he would have liked to recommend the introduction of a special paragraph congratulating countries for their accomplishments. However, this was not possible at present, as long as the role of the Islamic Committee on Human Rights was not clearly distinct from the one of the Supervisory Committee on the Application of the Constitution, and especially as long as the rule of law was not established for all citizens.

The Worker member of Romania noted that the Committee had examined on several occasions the case of the Islamic Republic of Iran in previous years with regard to non-respect of Convention No. 111. Despite these discussions and a number of positive conclusions made by the technical advisory mission, violations to the Convention continued to exist in the Islamic Republic of Iran. Accord-

ing to the Committee of Experts' report, discrimination on the basis of sex persisted both in law and in everyday practice, and was an indication of the low rate of participation of women in the labour market. Women's role in the judiciary remained purely advisory and was an example of discrimination based on sex. Another important element that bore consideration was the continuing compulsory dress code which had a negative impact on the access to security of employment in the public sector for women of non-Islamic faith; or even section 1117 of the Civil Code, which had not been repealed and under which a husband could bring a legal action in order to prevent his spouse from taking up a profession or job. Concerning discrimination on the basis of religion, there was no new information on the situation of recognized religious minorities, male or female, regarding their participation in the labour market and their employment levels in the public and private sector. However, formal restrictions on the hiring of members of the Baha'i faith in the public sector still existed. He concluded by drawing attention to the fact that all these points reflected serious violations of the Convention and he suggested that a direct contacts mission with a detailed mandate be sent in order to complete the mandate of the technical advisory mission which took place in 1999.

The Worker member of Colombia thanked the Government representative for the information provided. He indicated that despite of the Government's information on cases of progress, there were internal sources in the country that highlighted that the situation of women, in particular with regard to discrimination in employment on the basis of sex, was very far from acceptable levels of equality. In respect of women's access to senior posts, he mentioned as an example, the judiciary, where women had only advisory functions and could not issue judicial verdicts. He questioned whether the artificial numbers given, albeit distorted, of the growth of women's participation in educational centres (reaching more than 40 per cent, according to the information contained in the report of the Committee of Experts) was compatible with the low participation rate of women in the labour market. He deplored the fact that the technical advisory mission which visited the country could not have access to statistical offices nor were they able to interview the authorities in charge of such offices. He equally deplored the fact that discrimination continued with regard to women and religious minorities. With respect to the profound changes invoked by the Government, he stressed that, out of two million persons who were employed in the public service, according to authoritative information made available to the speaker, only 13 per cent were women. He urged the Government representative to indicate clearly the legal age for getting married (officially, 14 years for girls) and questioned whether the practice of marrying children of 9 years of age continued. Even if the Iranian culture were to be respected, from the point of view of the speaker, the above practice was barbaric. Without doubt, the case merited being dealt with in a specific paragraph.

The Worker member of Pakistan stated that he was compelled to comment on the case of the Islamic Republic of Iran's application of the Convention since Pakistan shared a common culture and enjoyed a close relationship with that country. Having been a member of the Conference Committee for ten years, he had observed positive changes in the position taken by the Government. He recalled that, after the Islamic revolution, the Conference Committee had attempted to establish a dialogue with the Islamic Republic of Iran, but the Government had declined to listen and had adopted an inflexible attitude. He now saw a very different and positive approach, with the Government welcoming a dialogue with the ILO and accepting ILO missions to the country. Some of these positive developments had been highlighted by the Committee of Experts as well as by the United Nations Commission on Human Rights with regard to the situation of the Baha'is. He also noted the positive developments that had taken place with regard to the situation of women, as noted in the comments of the Committee of Experts in paragraph 6 of its report, where the Committee of Experts had noted progress in the increase of women's participation in various sectors of wage and non-wage employment, as well as progress in education for girls and women. Stressing that the Conference Committee and the Government apparently shared the same ideals, particularly with regard to the issue of human rights, he appreciated the time taken by the Government representative to explain the situation in the Islamic Republic of Iran to the Conference Committee. However, he noted that there were certain grey areas that remained, referring to the points raised by the Committee of Experts in paragraphs 16, 17 and 20 of its report. Regarding the issue of the Islamic Republic of Iran's treatment of minorities, the Committee of Experts had noted progress, but still saw discrimination against minorities in the public sector. He therefore asked the Government to explain these discrepancies between the provisions of the Convention and the national legislation and urged the Government to bring its laws into conformity with that instrument. He looked forward to additional positive developments as well as to the Government's fulfilment of its undertaking to fully implement the Convention.

The Employer member of the Islamic Republic of Iran noted that the various speakers had raised so many questions that it would take the Government representative hours to answer them. While he did not intend to speak for the representative with regard to the issue of discrimination against women, he drew attention to the positive developments already mentioned by the Government representative, stating that the recent elections in the Islamic Republic of Iran spoke for themselves. He considered that the best proof of the non-existence of discrimination was seen in the enthusiasm shown by Iranian women for the election candidates. Their active participation was, in his view, proof that Iranian women were using their intelligence deliberately to choose freely what was in their best interests. He added that the Iranian people had a long history which went back several thousand years. The Iranian culture had produced great thinkers at different times who all had just one thing in common — they recognized the need to strike a balance between differing views. He stressed that this balance should also be sought in the Committee's examination of this case.

The Government representative expressed his appreciation of the valuable comments made by members of the Committee. Although he might disagree with some of the statements made, he noted their constructive intent. This constructive atmosphere was what the Government had expected from the ILO. However, he did not consider that the Employer members had been altogether fair in assessing this case. He considered that one of the problems was that the statistical information given today should have been provided to the Office long before the Committee's session. He did not doubt the good intentions of the Worker members of Greece, Romania and Colombia and other speakers and invited them to keep in touch with the Government regarding any doubts they might have regarding the situation in the Islamic Republic of Iran. With regard to the comments concerning the minimum age for marriage, he pointed out that this formed a part of the religious beliefs in the country. However, the Government considered this an important issue and a bill was introduced and approved by the Parliament which raised the marriage age of girls to 14 and that of boys to 17. He explained that, when matters were uncertain, they are submitted to the Expediency Council, composed of six religious and six secular members that examined the issue and determined the appropriate measures to be taken. The speaker noted that, with regard to discrimination on the basis of religion, the Constitution, which was approved by 98 per cent of the Iranian people following the Islamic revolution, recognized a number of religious minorities, Christians, Jews, Zoroastrias and, of course, Islam. The Government was bound by the Constitution. Whilst the Baha'i were not a recognized religious minority, the Expediency Council took the decision to give this group all civil rights enjoyed by Iranians. The Committee of Experts had noted this issue as a social problem in the Islamic Republic of Iran but, it had now been addressed in the Expediency Council and laws now existed to remedy this problem. The Worker member of Greece had apparently overlooked that, with regard to section 1117 of the Civil Code, under which a husband could bring a court action to object to his wife's taking up a profession, section 18 of the Protection of Family Act, 1975, extended to wives as well as husbands the same right to object to the spouse's employment. Accordingly, this was a new development in that men and women now enjoyed the same rights in this area. The Government representative stressed that the Iranian Ambassador and the staff of the Permanent Mission of the Islamic Republic of Iran in Geneva remained available to members of the Conference Committee. They should not hesitate to contact the Mission staff if they had any doubts about the situation in the Islamic Republic of Iran, as the Mission would provide them with full information to clarify their doubts. Additionally, he noted that his Government had cooperated fully with the recent ILO direct contacts mission to the Islamic Republic of Iran and he stressed that the mission team had had no restrictions placed upon their activities and contacts. He urged the Committee, however, not to mix the labour standards issue with political issues. This was why his Government would not permit the Special Rapporteur of the United Nations Commission on Human Rights to visit the country. However, his Government had given him full authority to invite the ILO to visit the Islamic Republic of Iran, and he included both workers' and employers' groups in this invitation. While it was important not to mix human rights issues with ILO issues, he fully acknowledged that there were weaknesses in some aspects of application of the Convention, as noted by the Committee of Experts. He welcomed the Committee's valuable suggestions and recommendations intended to improve upon these weaknesses.

The Worker members, responding to the statements made by the spokesperson for the Ministry of Labour and Social Affairs of the Islamic Republic of Iran, expressed their understanding of the

fact that this was a long-term process of change for the country. They nevertheless considered that it was important for the Government to set concrete goals and implement them. The Worker members were in full agreement with the Employer members that is was necessary for the Government to set priorities and make efforts to accelerate the process. It was also important to emphasize that the ILO stood ready to assist the Government in its endeavours. The Worker members wished to respond to the second point made by the spokesperson for the Ministry of Labour and Social Affairs, which dealt with the central issue before the Committee. The spokesperson had indicated that the Committee should take into account the Islamic Republic of Iran's culture, history, and other factors. The Worker member of Pakistan had also mentioned this. The Worker members pointed out that, although the Committee had great respect for cultural differences, they considered that when dealing with fundamental human rights Conventions, these were minimum standards which were universal and could not be interpreted taking such differences into account. They therefore considered that there could be no flexibility in the interpretations or the application of ILO fundamental standards on human rights and no exemptions from the application of the Convention based on cultural or other particularities. The Worker members noted that according to the concluding statements of the Government representative, the Government had established new rules concerning the issue of Baha'i and this problem had been resolved. They considered, however, that the mere establishment of a rule would not necessarily eliminate the problems for the reasons stated by the Government representative himself, namely that in-built prejudices remained. While it was a difficult task, the Government must nevertheless make every effort to ensure that these new rules were implemented in practice and they expected the ILO to follow up and verify this. Responding to the Government's statement that the Committee should not mix ILO issues and human rights issues, the Worker members noted that the Convention addressed discrimination in employment and occupation and therefore concerned an aspect of human rights. The Worker members also considered it embarrassing that the findings of the Special Rapporteur of the United Nations Commission on Human Rights continued to differ from those made by the ILO. A serious effort should be made to sort this problem out. The Worker members noted that, even if the Government were making efforts to achieve change on the points raised by the Committee of Experts, as the Government representative had stated, the ILO should keep in mind that conservatives in the country still wielded power in the judiciary, in security matters, the armed forces and the press. Therefore, they cautioned that the Office should not be complacent and assume that the process of change in the Islamic Republic of Iran was irreversible. In this regard, they suggested that the 1999 direct contacts mission be followed up by another mission which should have three terms of reference. First, the follow-up mission should continue to monitor the Islamic Republic of Iran's movement toward full implementation of the Convention in law and practice. This would be the mission's main task. Second, the mission should develop and discuss with the Government practical measures to implement the provisions of the Convention. Finally, it should determine, jointly with the Government, what assistance might be necessary to facilitate the drafting of legislation to bring the national laws into conformity with the Convention.

The Employer members, in response to the concluding statements of the Government representative, noted that the Government had indicated that the Conference Committee should not mix the issue of human rights with the observations on the application of the Convention. However, they drew the Government's attention to the fact that the Convention contained anti-discrimination provisions which protected human rights. With regard to the issue of discrimination against women, they considered that two issues had not been addressed sufficiently by the Government representative. One was the dress code for women and the other was section 1117 of the Civil Code, under which a husband could bring a court action to object to his wife's taking up a profession or job contrary to the interests of the family or to his or his wife's prestige. This provision was apparently in contradiction to the provision of the Protection of the Family Act, 1975, which extended to wives and husbands the same right to object to the spouse's employment. The Employer members considered that this section of the Civil Code should be amended if it conflicted with the Family Act provision. The Employer members noted that the Islamic Republic of Iran had made considerable progress. They considered that, while the pace of progress might be slow, it was certainly better than no progress. However, the Employer members trusted that the Government would make more progress in the future and that the country would utilize the great resource represented by its youth effectively and without discrimination.

The Committee noted the statements by the Government representatives and the discussion which followed. It recalled that this case had been discussed in this Committee on many occasions. The Committee had noted last year that a technical advisory mission had been carried out in November 1999, and that the report of the mission was reflected in the Committee of Experts' observations last year and this year. The Committee noted with concern the legal restrictions on the employment of women (section 1117 of the Civil Code, and the fact that women judges were not empowered to issue verdicts) to which reference had been made for several years. The Committee also noted the progress that had been achieved in the participation of women in education and in vocational training, as well as the other measures which had been reported. Though the participation of women in the labour force had risen, it remained very low. The Committee continued to be concerned over the difference between the Government's stated intentions and the measures which had actually been taken to eliminate discrimination in employment and occupation. It also noted that the Government was continuing to examine measures to eliminate the formal obstacles to employment of women, and was working to overcome the social obstacles which restricted the participation of women in the economy and in the labour market. In addition, the Committee noted the efforts made by the Government in relation to recognized religious minorities, but recalled that it should continue taking additional measures for all the religious and ethnic minorities in the country. It urged the Government to take initiatives to transform its objectives and stated intentions into concrete measures which would promote the full application of the Convention in law and in practice, including greater tolerance for all groups in the country, and the prohibition of discriminatory practices on all the aspects covered by the Convention. The Committee requested the Government to communicate detailed information to the Committee of Experts on the measures taken to address the questions raised, including detailed statistical information and analysis of the participation rates of men, women and minorities in the labour market, in both the public and private sectors. It expressed the hope that the Office would provide the technical assistance that had been requested, and that this would result in an improvement in the application of the Convention. The Committee noted with interest the developing dialogue between the Government and the ILO, which should include a new mission by the Office to monitor the application of the Convention, joint efforts to implement it in practice and assistance for the development of relevant legislation. The Committee expressed the firm hope that the Government would give priority to the outstanding questions and that it would very shortly be in a position to report progress on the questions which were preventing the full application of the Convention.

The Government representative stated that it was difficult to challenge the Committee's conclusions, although there was no doubt that the Government was not happy with them. However, on a positive note, he welcomed the careful consideration given by the Worker members to the wording of the Committee's conclusions, pointing out that the Worker members were correct to do so, as well as the Worker members' statement that they did not care about the name or title of the ILO mission, as long as a mission could take place. The Islamic Republic of Iran had already had technical cooperation missions and technical cooperation projects and these were acceptable to the Government. Accordingly, within this more flexible framework, at least the Permanent Mission of the Islamic Republic of Iran in Geneva and the Department of Labour could facilitate any missions sent and make sure that they took place. The same consideration extended to the issue of recognized and unrecognized religious minorities since the wording on that point could also pose some difficulties. Regarding the implementation of the new provisions extending full civil rights to the Baha'i, he pointed out that, immediately after the Expediency Council adopted these provisions, the Government would give explicit instructions for their implementation. He therefore agreed with the Worker members that, if a law was enacted, it should be implemented and he assured the Committee that this was also President Khatami's intention.

Convention No. 122: Employment Policy, 1964

Portugal (ratification: 1981). **A Government representative** welcomed the opportunity to provide additional information on a number of aspects of the labour market and employment policy in his country. In the first place, he referred to the questions on which the Committee of Experts had requested additional information. With regard to the general level of education and training of the active population, the Committee of Experts had requested more information on the measures adopted to improve these aspects and

match the supply and demand of employment. The Government's report had indicated that the skills level of the population as a whole was low, and particularly among adults. The school attendance rate of young persons was around average for the European Union. Nevertheless, a significant proportion of young persons only completed more than the nine years of compulsory schooling. There were also a considerable number of young persons who did not complete their compulsory schooling and entered the labour market prematurely.

Since 1997, the European Union had given high priority to employment policy, which had been strengthened during the Portuguese presidency of the Union. In the first half of 2000, the European Council had made commitments relating to global strategies for the achievement of full employment and social cohesion, which emphasized the importance of continued training and the role of the social partners in modernizing the organization of work, in continuing training and in the promotion of employment. The European employment strategy was based on these political undertakings adopted at the highest level.

The Director-General of the ILO, in his Report entitled *Reducing the decent work deficit* this year, had indicated that the European employment strategy provided a good example of the manner in which a global employment strategy could successfully be launched.

In relation to this strategy, Portugal had developed a National Employment Plan, which had been revised for 2001, and which took into account certain of the recommendations adopted by the European Union following the implementation of the plan the previous year. In particular, the recommendations which had been taken into account included those of continuing training, the problem of young persons leaving school early, the quality of education and training and the contribution of the social partners to the modernization of the organization of work and the adaptation of industrial relations and continuing training.

He added that the Government and the social partners had welcomed these recommendations and had, at the beginning of the year, concluded an agreement on employment policy, the labour market, education and training, which had included training measures for young persons and adults in the National Employment Plan for 2001. The latter Plan included measures to improve employability, particularly for the categories experiencing the greatest difficulties in entering the labour market, such as young persons, women and the long-term unemployed. The Plan also contained many measures on the education and training of children and young persons, including: (a) the strengthening of pre-school education; (b) the continuation of the existing programme to combat exclusion from school and social exclusion in basic education, including alternative programmes for children and young persons with behavioural and learning difficulties; (c) a system to ensure young persons under 18 years of age entering or attempting to enter the labour market would complete the ninth year of basic schooling, if they had not yet done so, or would participate in vocational training, consisting of at least 1,000 hours. In the case of young persons in work, 40 per cent of the hours of full-time work would be devoted to training, in which case subsidies would be provided to enterprises in compensation for the wages paid for training time; (d) the establishment in the short term of a system providing that young persons who left school at the age of 15, in view of the fact that Portuguese legislation established the minimum age for admission to employment at 16 years, would have access to a tenth year of professional training in cases in which they had finished their ninth year at school and did not intend to complete their studies, with the tenth year of training to be generalized in future to all young persons who had completed their ninth year of schooling and did not intend to continue their studies; (e) the familiarization of young persons with new information and communication technologies, with all schools being connected to the Internet this year; and (f) the existence of skills teaching and courses to facilitate the transition to work for young persons completing secondary or higher education.

With regard to the promotion of education and training for the adult active population, he referred, among the measures adopted, to the developments in the adult education system, both through extramural education and continuing training, including for the most underprivileged groups. He indicated that, as from the next year, at least 10 per cent of the workers in each enterprise would participate in continuing training, which would mean that by 2003 all workers would have completed a minimum of 20 hours of certified training, and that by 2006 this figure would have reached 35 hours. The objective was to generalize access to information and communication technologies throughout the population and for at least half of continuing training to cover this subject.

With regard to the second point raised by the Committee of Experts, he indicated that due to lack of time, he would merely refer to the report which would be sent to the Committee of Experts.

With regard to the structure of employment by skills levels and unemployment rates by educational attainment, the Committee of Experts had requested information on the results of the Government's policy on these issues, and particularly on strategies for the implementation of new information and communication technologies. He indicated that this information would be sent in the next report. By way of illustration, he said that an inter-ministerial programme on innovation in new technologies had recently been undertaken for the implementation of information and communication technologies in public services and enterprises. On the subject of the improvement of conditions of work in relation to occupational safety and health, he informed the Committee that the Government and the social partners had concluded an agreement this year on conditions of work, occupational safety and health and combating employment accidents. This agreement envisaged state support for the training and recruitment of occupational safety and health technicians, physicians and nurses. He added that the greatest possibilities for creating new jobs lay in the services sector. He expressed the hope that new skilled jobs, notably in pre-school teaching, as well as in tourism and the development of cultural policy.

Turning to the manner in which the National Employment Plan addressed the relationship between social protection and employment policy, the improvement of social dialogue, the development of partnership and the reduction in inequalities between men and women, he indicated that the Government's next report would also contain full information on these matters. He also emphasized that the issue of social protection influenced employment policy. He described three examples of recent measures: (a) the creation of a minimum income for families and persons on a low income, in exchange for which beneficiaries undertook to participate in training and accept suitable jobs with a view to their entry into the labour market; (b) the maintenance of unemployment benefits at a lower rate for the unemployed who took up part-time work; and (c) exemption from social security contributions for three years, without any reduction in the protection of the workers concerned, for employers who recruited young persons for their first job and the long-term unemployed.

Turning to social dialogue, initiatives had been taken in that area and two agreements had been concluded concerning employment, the labour market, education, training, occupational safety and health and measures to combat employment accidents. These agreements had been signed by all the trade union and employers' confederations which participated in social dialogue at the highest level. Negotiations had continued on the organization of work, productivity, wages and improvements to social protection. The National Employment Plan also focused on policies for equality of opportunities and measures to reconcile working and family life. He indicated that the Government would provide information on their results in future reports.

He said that the National Employment Plan was part of the inter-ministerial initiative to promote employment at the regional and national levels. The Plan was supplemented by regional plans adapting the measures to the specific features of the regions. Although Portugal was a country with a small territory, there were currently five regional plans, with a sixth envisaged during the course of the year.

Finally, with reference to methods for the evaluation of employment policy measures, their outcome and follow-up, he indicated that the implementation of the National Employment Plan was evaluated at the level of the European Community, which made it possible to identify any problems in the field of employment policy and to recommend to Member States the necessary measures to be adopted in subsequent years. At the national level, he stated that the implementation of the Plan envisaged its evaluation every six months by a permanent social dialogue commission on which the social partners were represented. One of the recent agreements on social dialogue included two measures to strengthen the relevant machinery: the existing Employment and Vocational Training Observatory, which was tripartite in composition, would be transferred to the authority of the Permanent Social Dialogue Commission, in which social dialogue agreements were negotiated and would strengthen the role of the Commission in evaluation and monitoring of the National Employment Plan; and a National Advisory Council for Vocational Training, also of tripartite composition, would be established and would undertake a global evaluation of vocational training, the structures which provided training and its follow-up. This body would also come under the Permanent Social Dialogue Commission.

He hoped that the information that he had provided clarified the aspects raised by the Committee of Experts concerning employment policy. He added that he had not provided statistical data, which would have been difficult without the necessary modern information technology in the room. Statistical data would be pro-

vided in the next report on the Convention. He expressed his willingness to provide the Committee with information on other aspects.

The Employer members thanked the Government representative for the information provided. They indicated that Convention No. 122 was a promotional Convention which had more to do with economic and labour market policies than with legal issues. For the benefit of the Committee of Experts, the Employer members prefaced their comments by indicating that they considered that there was a slight difference between the situation as described in the report and the information provided to the Committee by the Government. They hoped that this could be clarified in the future.

Portugal had ratified Convention No. 122 in 1981 and the Committee of Experts had made observations regarding Portugal's application of the Convention at least six times, primarily with regard to Article 1 of the Convention, whose objective of full employment was to be achieved through sustained economic growth. This goal remained valid today. The Government appeared to indicate that some progress had been made in this area and the Employer members noted that the Committee of Experts had also pointed to positive trends, such as employment growth, increased participation and a fall in unemployment for many categories of workers, as well as an improvement in the general state of the economy. It was clear, however, that changes in the structure of employment in terms of what constituted full, productive and freely chosen employment needed to be understood. These structural changes included new forms of flexible employment, a higher turnover of jobs and a growing trend towards shorter hours and flexible working time. The Employer members considered that part-time and temporary work was not a bad thing. These types of employment permitted low unemployment rates and low inflation to occur at the same time, while meeting the needs of the workforce in terms of accommodating the skill levels and lifestyle preferences of workers.

As was the case in most economies, there was a mismatch in the Portuguese labour market between the requirements of available jobs and the skills of available workers. The Government had indicated that the problem was the low level of education and training in the country, while the central trade union had indicated that the problem was underemployment. In the absence of a factual finding and in view of the Committee of Experts' request for additional information, the Employer members were puzzled that the Committee of Experts seemed to give credence to the unions' views. In fact, the Government had indicated that the overall skills base was skewing production towards low productivity and labour-intensive technologies. It was clear that the Government needed to supply additional information, but it was also clear that Portugal's path to full, productive and freely chosen employment involved measures such as a reduction of interest rates and fiscal deficits, as well as investment incentives to create more high-wage industries and full-time employment. The Government needed to develop investment policies that created higher wage jobs and skill development policies that included adapting training and education systems to improve the supply response to skill needs. The Government had talked of improvements to the education system and the development of a certified training system, but it also needed to be able to ascertain what skills would be needed on the labour market in the future, since there was often a lag between the skills needed and the jobs available.

With regard to the Committee of Experts' point concerning the National Action Plan for Employment, the Employer members considered that the Government had responded to some points, but not all. The Plan sought to improve the linkages between social protection and employment policies, social dialogue, partnerships with local development organizations and the promotion of gender equality. The Employer members considered that the Government's strategy lacked measures to improve the economic environment and competitiveness through tax policies, labour market flexibility and the reduction of costs. They therefore requested the Government to indicate the manner in which these factors had been taken into account.

With respect to Article 1 of the Convention, the Employer members nevertheless commended the Government's multidisciplinary approach in engaging a cross-section of agencies to promote national and regional employment strategies. Turning to Article 2 of the Convention, the Employer members noted that the Government had changed its statistical indicators from expenditures to actual results, and noted that this was a positive move. Up-to-date statistical data was essential for effective and timely adjustment of labour market policies. In conclusion, the Employer members considered that the Government was on the right track. Nevertheless, it needed to take those measures that led to economic growth, the creation of higher wage jobs and the upgrading of workers' skills.

The Worker members noted that this was the first time that Portugal had appeared before the Conference Committee and that the Government's regular compliance with its reporting obligations had allowed the Committee of Experts to make comments in a sustained manner since 1990, allowing the Conference Committee in turn to note the interesting developments made in regard to the application of this Convention, and to appreciate the efforts made by the Government in this respect. This year, the Committee of Experts had drawn attention to the application of Articles 1 and 2 of the Convention. While appreciating the Government's efforts and noting the positive influence of the economic situation, it had to be noted that the active employment policy had resulted for the large part in a rapid increase in the number of fixed-term contracts. This was not an isolated phenomenon and reflected present trends in the labour market, whereby the only value of employment was its immediate economic utility. This made it subject to the extreme demands of profitability. Well-known examples included the so-called "hamburger jobs", widespread in an increasing number of sectors in the United States and elsewhere, the use of contracts which were more than just flexible (which were in effect non-contracts) and, in view of the requirement for permanent availability, were akin to a modern version of slavery.

There had been a period in the past when this practice had been justified as a temporary measure, especially to allow disadvantaged younger workers to have access to employment. Today, and as the Worker members had always emphasized, the perverse risk of such a policy was that it not only affected young persons, but entire sectors of the active population. The generalized increase in flexible contracts had resulted in a growing precariousness of employment and especially in the social status of the workers involved, who were often women. Indeed, precarious work immediately made one think of precarious income and working hours, which were out of the control of workers and their families, as well as precarious social protection in terms of social security.

So-called "flexible" work was more aptly defined as "precarious" work, which had become a new scourge to modern society creating a duality in the labour market with, on the one hand, workers who often had to take on two jobs in order to survive, sometimes working for 15 or more hours per day, and, on the other hand, workers with stable and well-remunerated jobs. The Director-General's Report to the Conference examined the question of reducing the decent work deficit and emphasized in particular that "Access to work is the surest way out of poverty, …". The trend towards more precarious employment was diametrically opposed to the legitimate aspiration to overcome poverty and gain access to dignity through employment. Moreover, it was necessary to measure the impact of precarity and its social and economic cost. Greater flexibility had resulted in society as a whole, and particularly workers, paying for the deficit in social protection, all in the name of so-called economic efficiency. The Worker members emphasized, as stated in the General Report of the Committee of Experts, the importance of the debate concerning Convention No. 122, which allowed fundamental questions to be addressed and new methods and policies in the field of employment to be identified. This debate should also allow the Committee to see the perverse effects of certain developments. Just as the trade unions in Portugal had stated in their observations to the Committee of Experts, the Worker members emphasized the importance of the question of the growing precariousness of labour which, on the one hand, appeared to be in contradiction with the terms of Article 1 of the Convention to promote "full, productive and freely chosen employment" and, on the other hand, did not correspond with the objectives of decent work as defined by the ILO in its current policy.

The Worker members requested the Government, in addition to the policies announced in the field of employment and vocational training policies, to provide information on the measures that it intended to take to combat precarious employment in the light of current labour market developments and to evaluate the impact of the policies, pursued.

The Worker member of Portugal referred to the relationship between employment promotion and social protection, which was of great importance for the General Confederation of Portuguese Workers. He added that the tripartite agreement concluded between the Government, employers and trade unions constituted a positive development for the labour market through the creation of structures to improve education and training. These measures made up for existing shortcomings. With reference to the revised National Employment Plan for 2001, his organization welcomed the improvements in relation to social protection. He considered that all of these agreements constituted considerable progress, even though frustrating deficiencies still existed. They were therefore only a first step. He emphasized that, when speaking of employment, the discussion should not be confined to standards-related

policies, but should also take into account social issues such as protection in the workplace and working conditions, which were all essential factors in the life of workers. From this point of view, the situation in his country had worsened. One in every four workers was in precarious employment, with men over the age of 50, women and large numbers of young persons being principally affected. Many people were engaged in clandestine work, which provided no protection. He said that the Portuguese GDP of 2.2 per cent was the lowest in Europe, which meant that economic growth was not high enough to increase employment. In conclusion, he added that the CGTP was working intensively to achieve stable and well-paid employment and that its efforts in that field would continue.

The Worker member of France agreed with the statements made by the Worker members. He noted that Convention No. 122 was a very important Convention for workers, since paid employment was the only way for a worker to ensure decent living conditions for himself and his family. He indicated that the framework agreement concluded between the employers' and workers' organizations of the European Union regarding part-time work explicitly recognized that fixed-term, full-time and freely chosen contracts were the normal form of work. In relation to this, he noted that the Portuguese Government itself had recognized that, as emphasized by the CGTP, precarious employment was only growing when compared to permanent employment, and that it particularly affected women, young workers and part-time workers. This situation could be considered a form of discrimination in employment against these various categories of men and women workers.

He emphasized that Portugal was not a country where the rate of unemployment was particularly high. It was even fairly low when compared to other countries in the European Union. Nevertheless, the quality of jobs and the recognition of knowledge and skills were also important components of employment policy, if it was wished to motivate an increasingly skilled, but underutilized and underpaid, workforce. This situation did not encourage the improvement of skills, which Portuguese society and the economy desperately needed. It would only encourage young workers, notably the best qualified, to go to other countries in search of better recognition of their skills, thereby denying Portugal the indispensable human capital necessary for its development. Moreover, governments, as well as employers' and workers' organizations, had signed last February a tripartite agreement on education, training and employment. The objective, as the Government representative of Portugal had emphasized, was to develop a programme of action. He considered that bringing young persons and all workers in general up to the required level of training was a long-term task which required the necessary means. The recognition of qualifications and skills, and the quality of employment also needed to be taken into consideration in evaluating employment policy. Employment services should be fully and continuously involved in employment policy, taking into account all the parameters emphasized by the CGTP.

The National Action Plan for Employment in Portugal had been adopted within the context of the "Luxembourg" process, following which all the Member States of the European Union had agreed to adopt the National Action Plan with, among other objectives, the aim of harmonizing the different employment policies and exchanging information on good practices. It was necessary to encourage and to hope that laudable intentions of governments would soon be put into effect. He concluded by emphasizing that the majority of the governments of the European Union faced similar problems, some of them even more serious than those experienced by Portugal, and that these could be examined by the Committee.

The Government representative welcomed the statements made by the Worker and Employer members. He stated that he wished to make three observations. First, he confirmed the fact that his Government had sent the requested information within the appropriate deadlines. Second, with regard to the observations made by the Employer members, he indicated that his Government was aware that economic policy was an essential condition for sustainable employment. He noted that in his previous statement he had limited himself to referring to the aspects raised by the Committee of Experts and that he had not commented on Portugal's economic policy, since he considered that it was not appropriate to address it during the discussion. Third, he considered that precarious employment was an important issue but had considered that he should only respond to the issues raised by the Committee of Experts, which had made no reference whatsoever to precarity. He added that the Committee had not shared the criticisms made by the Central Union of Portuguese Workers (CGTP) on this issue; he added that figures and statistics would not be appropriate on this occasion.

Regarding workers and employment relations, he said that it would be necessary to undertake a critical evaluation of the difference between fixed-term and part-time contracts. He pointed out that the latter were not necessarily precarious. He added that it was important to take into account the difference between practice and the law. Portuguese law covered both short- and long-term contracts. This was in conformity with European Union guidelines and ILO standards. In relation to fixed-term contracts, he considered that Portuguese legislation addressed three forms of protection contained in the Termination of Employment Recommendation, 1982 (No. 166). He acknowledged that, in reality, transgressions existed, and that, according to the analysis made by the Government and the social partners, it was one of the aspects that made it necessary to promote the quality of employment. For this purpose, it would be necessary to strengthen monitoring to prevent abusive and illegal practices related to fixed-term contracts. Efforts should be continued to bring practice into conformity with reality.

He reiterated that part-time contracts were not necessarily precarious, but were voluntarily concluded between individuals in accordance with the current economic situation. He expressed his disagreement with the CGTP's view that individuals who accepted any form of working conditions did so to avoid unemployment. He did not deny that this could be true in certain situations, but added that part-time contracts were in conformity with Portuguese and European Union law, even if they were not widely used in Portugal, and despite the country having the lowest rates of part-time work in Europe. He stated that, at the level of the European Union, there were framework agreements on fixed-term contracts and part-time contracts, and that the Portuguese labour system was in conformity with the above system. He concluded by indicating that Portugal would send detailed information in due course.

The Worker members thanked the Government representative and urged the Government to provide information on the measures taken to evaluate trends related to precarious employment, and the measures that it proposed to take to rectify this harmful trend on the labour market.

The Employer members thanked the Government representative for his closing statement, highlighting that Convention No. 122 was about economics, not legal rules. They pointed out that, when this instrument was adopted by the ILO in 1964, the global economy had not yet arrived. Since that time, there had been unacceptable levels of unemployment and underemployment in labour markets in all regions. These problems had occurred against a background of rapid technological change and a growing integration of the world economy. As a consequence, the structure of work had changed and the job skills required no longer remained the same over a worker's lifetime. This new structure had led to higher personnel turnover, reduced working hours, flexible working hours and short-term contracts. This issue had been characterized by the Committee of Experts as one of precarious employment. However, the Employer members considered this to be a positive change, an opinion with which the Worker members disagreed. Nevertheless, given that the term "precarious employment" was perceived as a pejorative term, the Employer members requested that it not be used in the Committee's conclusions.

The Committee noted the information provided orally by the Government representative and the subsequent debate. The Committee requested the Government to continue making efforts, in consultation with the social partners, to improve the general level of training for employment and to improve the match between workers' skills and the jobs available. The Committee also noted the information provided on the changes in the structure of the labour market and the measures taken to promote employment and to improve the quality of certain categories of contracts. The Committee requested the Government to provide a detailed report for examination at the next session of the Committee of Experts to facilitate its assessment of developments in the situation.

Convention No. 138: Minimum Age, 1973

Kenya (ratification: 1979). **A Government representative** said that his Government had taken very careful note of the comments made by the Committee of Experts regarding the practical application of the Convention. He indicated that it was now planned to undertake a complete revision of both the Employment Act (Chapter 226) and the Employment Act (Children) Rules of 1977 within the framework of the general revision of the labour legislation. In May 2001, the Attorney-General had appointed a Task Force consisting of the various stakeholders (the Government, employers, workers and other interested parties) to undertake a comprehensive review of 23 chapters of the labour laws, with the assistance of ILO experts, to harmonize the domestic legislation and the various Conventions which Kenya had ratified. The Government had directed the Task Force to complete its work not later than December 2001.

With regard to the Bill on Children's Rights, a report had been submitted to Parliament in 2000, but had been referred back to the

Task Force to undergo further detailed drafting in order to ensure an improved protection of children's rights. The Government sincerely hoped that the task force would be able to complete its work of reviewing the Bill very soon and indicated that it would be transmitted to the Committee of Experts. It should also be noted that Parliament was also very concerned to ensure that a very comprehensive Bill for the protection of children's rights in Kenya was in place in the very near future.

With regard to the application of Article 2 of the Convention, he said that the Government had taken very careful note of the Committee of Experts' comments concerning its intention to amend section 2 of the Employment Act so as to define a "child" as a person under 15 years instead of a person of 16 years of age, which would have the result of lowering the minimum age for employment or work under the Employment Act to 15 years. The Government representative recalled that his country had specified 16 years as the minimum age for admission to employment when registering the ratification of the Convention in 1979. In the light of the comments of the Committee of Experts on this point, the Government had decided not to effect any amendments in order to remain in compliance with this Article of the Convention.

With regard to the extension of the minimum age for admission to employment or work beyond industrial enterprises, he said that the Task Force would take careful note and would be guided by the Committee of Experts' comments.

With reference to the application of Article 3 of the Convention he indicated that the Government had taken a careful note of the comments made by the Committee of Experts on the need to consult the organizations of employers and workers during the deliberations by the Task Force in order to review the labour laws when determining the types of work to be prohibited for minors under the age of 18 because of the harm to their health, security or morals. Indeed, the tripartite members of the Task Force had recently been appointed under the chairmanship of one of the longest serving and most experienced industrial court judges in Kenya. The Government hoped that the present Task Force would develop appropriate protection legislation aimed at ensuring that minors' physical abilities and other relevant moral considerations were taken into account.

On the application of Article 7 of the Convention, he confirmed that the Government had taken careful note of the comments of the Committee of Experts regarding its previous report in which it had indicated that it was not yet considered to be the time to adopt legislation on the employment of children under 15 years of age on light work. It should be noted, however, that section 3 of the Employment Act (Children) Rules of 1997 allowed the employment of children with the prior written permission of an authorized officer, depending on the circumstances in which such light work was to be performed, bearing in mind the need to protect the children involved. In light of the various comments made by the Committee of Experts, this section of the Employment Act would be carefully re-examined by the newly appointed Task Force with a view to bringing the law into harmony with the relevant sections of the Convention.

With regard to Article 1 of the Convention, in conjunction with the relevant part of the report form, he said that, with the assistance of the International Programme on the Elimination of Child Labour (IPEC), the Government had just completed the draft child labour policy document. A copy of the above document would be transmitted to the Office before the end of June 2001. The draft child labour policy document also contained the national action plan, as envisaged in the context of the IPEC programme.

With regard to the activities of the Ministry of Education in cooperation with UNICEF, he reported that the measures taken to improve the provision of free and compulsory primary education included the school feeding programme carried out by the Government and the World Food Programme, with emphasis on the sustainability of the feeding programme through community activities in such areas as irrigation and cattle rearing. User charges had been regulated to reduce contributions by households as much as possible, and some scholarships had been awarded to girl children in the upper primary school and would continue to be granted.

Scholarships were also awarded to needy and deserving students in all public secondary schools amounting to 536 million Kenyan shillings for the year 2000-01. Textbooks had been provided to all primary schools in Kenya in key subjects through funds provided by, among other sources, the Netherlands Government and the World Bank through the STEPS project (Strengthening of Education at the Primary and Secondary Levels). Much guidance and counselling had also been provided with a view to reducing teenage pregnancies and the Government had taken measures to stop early marriages. A gender unit had been set up in the Ministry of Education, Science and Technology to ensure parity in school enrolments for both boys and girls, with assistance from the Forum for African Women Educationalists (FAWE), Kenya Chapter. Boarding schools had been set up in hardship areas, as well as mobile schools in nomadic areas, with a flexible curriculum to facilitate the participation by pastoralists and other nomadic tribes in cattle grazing and other economic activities before or after school. Curricula had been reviewed to reduce the number of subjects and the cost of teaching and learning aids, as well as to ensure in-service training for teachers. Measures had been taken to identify the persons with disability to ensure attendance at school by all children including the creation of more assessment centres throughout the country. Non-formal schools had been established where it was not necessary to complete the same number of years of study as in the formal system, and where there were no uniform or user charge requirements, with a view to improving overall enrolment rates. He added that Kenya was set to achieve universal primary education by the year 2005, which was within the Government's schedule to achieve education for all by 2015. Finally, action had also been taken for the integration of Madarassas (Islamic schools) into the normal formal education system, with a view to ensuring that no children were delayed in their education for reasons of religious belief.

With regard to the request by the Committee of Experts for information concerning the functioning of the Child Labour Unit, established in the Ministry of Labour and Human Resources Development, he indicated that it had been created in 1992 to ensure that child labour issues were taken into account in all government policies and programmes. It also coordinated all awareness-raising campaigns on the need to bring to an end to all forms of child labour, as well as to conducting workshops, seminars and other forms of media campaigns on the various ways of combating child labour. The unit had succeeded in elevating child labour issues into the national agenda in Kenya. It also coordinated the collection of data and devised ways of detecting clandestine child labour. It coordinated the activities of other stakeholders, such as the Federation of Kenya Employers and the Central Organization of Trade Unions for the elimination of child labour. Finally, the Unit had been established to continue with the implementation of the various national action programmes for the elimination of child labour once the IPEC programme had come to an end.

With regard to the national action plans adopted by the inspection system to improve controls over child labour, he undertook to continue the same course of action with the aim of identifying children working in dangerous occupations and taking the necessary remedial action. The Government would continue to furnish the results of such studies and of inspection visits to the Committee of Experts.

Finally, in response to the request made by the Committee of Experts for information on the collection of data on child labour, he confirmed that an inquiry on the current state of child labour throughout the country had just been completed by the Central Bureau of Statistics and that the final report would be published in April 2001. The Government undertook to transmit the results of the inquiry carried out by the Bureau to the Office by the end of June 2001.

In conclusion, he reiterated his Government's continued commitment to eradicate all forms of child labour in Kenya within the shortest possible time. The political will to accomplish this goal remained beyond question.

The Employer members thanked the Government representative for his detailed statement. Although the Committee of Experts had made comments on the case in 1995, 1997 and 1998, this was the first occasion on which it had been discussed by the Conference Committee.

They recalled that the Government had already announced in a previous report that a general revision of the labour legislation would be undertaken in the near future with the assistance of the ILO and in consultation with the social partners. The Government representative had stated that a Bill on children had been submitted to Parliament and was currently under examination. In this respect, the Committee of Experts had also noted that a change had been proposed in the definition of the term of "child", through an amendment to section 2 of the Employment Act, lowering the minimum age for employment or work. A child would now be defined as a person under 15 years of age, instead of 16. When ratifying the Convention, the Government had specified the age of 16 as the minimum age for admission to employment or work, in accordance with Article 2, paragraph 1, of the Convention. Kenya was therefore bound by that definition. However, the Employer members were not quite clear whether the amendments announced by the Government representative would be made under the Bill or in the context of the general revision of the labour legislation.

They recalled the observation by the Committee of Experts that the minimum age established by the Employment Act only applied

to industrial enterprises, which constituted a clear shortcoming in the law. A similar situation pertained with regard to harmful work, which was prohibited for young persons under 18 years of age in accordance with Article 3 of the Convention. With reference to the conditions under which light work was permitted, they recalled that, according to Article 7 of the Convention, admission to light work was only permitted for persons over 13 years of age and only when the work was not such as to be harmful to their health or development or to jeopardize their school attendance. Moreover, the number of hours of such work were limited. Kenyan legislation contained no legal provisions on these matters.

They therefore called upon the Government representative to indicate whether all the points raised by the Committee of Experts were covered by the new legislation. Clarification would also be needed on the legislation which would cover the above issues. Would it be the new Bill or the revised labour legislation? Finally, the Government representative should indicate the schedule within which the legislative work would be completed.

With reference to the policy on child labour developed within the context of the IPEC programme, the Employer members noted the action plan developed in cooperation with UNICEF and the studies undertaken on the education system. They emphasized the positive intentions shown by the action plan and hoped that it would be implemented in large part. However, they also noted the estimates that some 3.5 million children between the ages of 6 and 14 did not attend school. While welcoming the statement by the Government representative that a study would be carried out on this issue and the respective data provided to the Committee of Experts, they expressed the fear that this signified that no studies of the issue had yet been carried out. They also noted that a reform had been undertaken of the inspection system within the framework of the action plan with a view to improving controls over child labour. They emphazised that such controls, carried out in a professional manner, were important in improving the situation of the children concerned. In conclusion, the Employer members said that precise information was still required. Up to now, the Government had only expressed its general intention of taking the necessary action.

The Worker members thanked the Government representative for the interesting information that he had provided to the Committee regarding the efforts and commitments undertaken by his Government. They noted that this was the first time that the Committee had examined problems relating to the application of Convention No. 138 in Kenya, ratified in 1979, and they noted with satisfaction that Kenya had also recently ratified the Worst Forms of Child Labour Convention, 1999 (No. 182). The latter was the ILO Convention which had registered the most ratifications in a short period of time. This clearly showed the broad consensus which existed worldwide regarding the need to take steps to not only diminish, but totally eradicate the scourge of child labour.

They wished to remind the Committee that, if ratification was a good thing, effective application of ratified Conventions was even better. In fact, while it was to be hoped that ratification was the fruit of a State's political will to set things in motion, the progress that interested this Committee the most involved the actual situation in the country. The objective of Convention No. 138 was for governments to take measures in law as well as practice to ensure respect for the minimum age for admission to employment.

The Committee of Experts' observations concerned a number of points. The first point raised by the Experts concerned the Employment Act. The Worker members noted that this Act was in the process of being revised and that discussions were currently taking place regarding the substance of the amendments to be made. They pointed out that the Committee of Experts had asked the Government to take into account two current legal provisions which were contrary to Article 2 of Convention No. 138. First, in the ratification instruments, the Government of Kenya had specified 16 years as the minimum age for admission to employment or work. It would now be appropriate to incorporate this commitment into the national legislation, which currently sets the minimum age for admission to employment for work at 15 years. Second, the Worker members noted that, for many years, the Committee of Experts had drawn the Government's attention to the fact that, under Kenyan legislation, the minimum age for admission to employment or work applied only to industrial enterprises. The Worker members stated that, in order to conform the legislation to the provisions of the Convention, the principle of a minimum age for admission to employment or work should be extended to all sectors of the economy. Nevertheless, despite the numerous observations made by the Committee of Experts regarding the incompatibility of this provision with the Convention, the Government had apparently failed to change the situation.

The second point raised by the Committee of Experts concerned "hazardous work". In fact, Convention No. 138 contemplated that certain types of work should be prohibited for minors less than 18 years old because of the harmfulness to their health, their security or their morals. The Worker members could not help but observe that, 22 years after Kenya had ratified this Convention, the Government had still not issued a list determining these types of work. In this regard, they highlighted the importance of the list, particularly now that Kenya had also ratified Convention No. 182 and they expressed the hope that, in ratifying this new instrument, the Government would issue a list of hazardous jobs as quickly as possible.

The third point raised by the Committee of Experts concerned the lack of a definition of so-called light work. They recalled that, on this point as well, the Committee of Experts had made observations for many years. Despite these observations, the legislation and practice remained in violation of the provisions of Convention No. 138. They therefore stated that the Government should provide the Office with a definition of light work, an age limit for children that could be employed in this type of work (not to exceed the age of 13) and, lastly, a prescription regarding the number of hours and the conditions of such employment or work.

It was with great interest that the Worker members noted the technical assistance offered by the IPEC programme, as well as the cooperation with UNICEF in combating the problem of child labour in Kenya and improving the educational system. They particularly highlighted the efforts undertaken by the Government, with the assistance of the IPEC programme to improve the operation of the labour inspection system to improve controls over child labour. They were convinced that labour inspection was an essential tool for the effective application of the labour laws in general and of child labour legislation in particular.

In light of the statistics contained in the Committee of Experts' observation, the Worker members considered that the child labour situation in Kenya was very serious. They took due note of the promises made by the Government representative, but noted at the same time that there was a long way to go. For this reason, they requested that the Kenyan Government continue its efforts to combat child labour and to supply the Committee of Experts with information concerning the outcome of these efforts.

The Worker member of Niger said that the case of Kenya concerned the specific issue of the minimum age of admission to employment or work, or in other words the problem of child labour. Although, when ratifying the Convention in 1979, Kenya had specified a minimum age of 16 years, it was now tending to violate the Convention. He expressed puzzlement at the draft amendment to the legislation referred to by the Government representative. At a time when nearly all the member States of the ILO were ratifying Conventions Nos. 138 and 182, it was surprising that Kenya was examining retrogressive draft legislation to make children work at a younger age. Sections 3 and 25 of the 1977 Regulations were revealing and insidious in this respect. The report of the Committee of Experts had been very clear in showing that the Convention was violated and that this was done on purpose. This was demonstrated by the fact that the minimum age of admission to employment did not apply to all economic sectors, as if there were sectors in which it was permissible for children to work. He warned the Committee that the Government was merely trying to gain time and that the lives of millions of children were at stake.

The Worker member of the United Kingdom explained that the purpose of his comments was both to reinforce the findings of the Committee of Experts with regard to the need for legislative change and to encourage continued and more rapid progress by the Government in the implementation of the national action plan envisaged in the context of the IPEC programme. He noted with particular pleasure that Kenya had ratified Convention No. 182 in May 2001 and hoped that the complementary nature of the two Conventions would help the Government and the social partners develop further effective tripartite action in pursuit of the aims of both Conventions.

He expressed puzzlement as to why the Government, at a time when the discussion and adoption of Convention No. 182 by the Conference had further clarified the requirements of Convention No. 138, and when it was engaging so positively with IPEC, should have even considered reducing the minimum age of admission to employment, in clear breach of the Convention. He emphasized that such a course of action would send all the wrong messages about the political will of the Government to pursue the effective abolition of child labour, not only to the social partners, civil society and the international community, but in particular to unscrupulous employers who sought excuses to continue their exploitation of children. He therefore welcomed the statement by the Government representative that the amendment would not be pursued. He added that legislation that applied only to the industrial sector was not in conformity with the Convention. It was evident that in a country where so much of the population, both adults and children, worked

in agriculture, where domestic service was also a major source of employment, and where commercial services, both formal and informal, were also important, the fact that the laws on the minimum age of admission to employment only dealt with industrial work excluded the vast majority of child labourers from their scope. It was also extraordinary, in view of the fact that the work of the Kenya Union for Domestic, Hotels, Educational Institutes, Hospitals and Allied Workers (KUDHEIMA), in collaboration with the ILO, on children working in domestic service, was a significant example of good practice. He emphasized that the lack of conformity with the Convention, and particularly the ridiculously low scope of coverage of the law, was a major issue which had to be addressed with speed, particularly in view of the hazards involved in agriculture and the incidence of child abuse in domestic service.

He welcomed the preparation by the Ministry of Education of draft legislation to make primary education compulsory, as well as other initiatives, including those relating to the girl child. He emphasized that Convention No. 182 complemented Convention No. 138 and the central importance of education in combating child labour. Recommendation No. 190 also called on international institutions to support the aims of Convention No. 182. Moreover, in its discussions of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers (CEART) report on the status and conditions of teachers, he recalled that the Committee had re-emphasized the right of teachers to bargain collectively and the need for them to be adequately paid. In that connection, he noted that, although the Kenyan Teachers' Union had negotiated a wage increase with the Government, and despite the support of the STEP programme, the IMF had stopped the Government paying the agreed increase as a condition for its loan.

The most serious aspect of the case was that the Employment (Child) Rules of 1977 effectively permitted all types of child labour, regardless of age. The requirement for consent from parents or from the Labour Commissioner did not remove the hazards from particular occupations. Moreover, the Rules did not even clearly limit the employment of under-age children (that is, children under 16 and over 12 years of age) to light work. As a result, there was no effective lower age limit, despite the amendment to section 2 of the Employment Act. The Rules and the Act contradicted one another, and both were in contradiction with the Convention. He added that the legislation on hazardous work and the relevant age limit was insufficient. Nevertheless, he expressed satisfaction that the Government was training labour inspectors to deal with child labour issues, including hidden child labour, and that innovative communications and awareness-raising techniques were being used in Kenya. He also looked forward to the establishment and implementation of a time-bound programme in Kenya under Convention No. 182, and to a major acceleration in the rate of transfer of children from work to school.

He said that Convention No. 138 was to a great extent an aspirational Convention. Setting a minimum age alone does not magically remove child labour. He therefore urged the Kenyan Government to continue its cooperation with IPEC, develop the tripartite structures and provision of education necessary to eliminate child labour in the country and ensure that its legislation was in conformity with Convention No. 138, rather than sending the wrong messages to the country and the world about its political will.

Finally, he referred to a text on child labour that was being prepared for the special session of the United Nations General Assembly on the rights of the child, which referred to improving living and working conditions for children who worked by promoting quality basic education and social and economic policies aimed at poverty reduction to help families of working children with employment and income-generating opportunities. He drew the Committee's attention to the fact that this text made no mention of the minimum age for admission to employment and was therefore in contradiction with Conventions Nos. 138 and 182, as well as with the Declaration on Fundamental Principles and Rights at Work, and would ignore the call on international institutions and member States to support the aims of Convention No. 182, thereby sending hugely confusing and wrong messages about their obligations to governments such as that of Kenya.

The Government representative said that he had listened very carefully and with keen interest to the valuable comments made by the Employer and Worker members and other speakers. He confirmed that the Government would take all the necessary steps to ensure full compliance with the provisions of the Convention. The two reports mentioned, namely the child labour policy document and the report by the Central Bureau of Statistics concerning child labour in Kenya today, would also be made available to the Committee of Experts for its next session at the end of the year.

In response to the comments made by the Employer members concerning the minimum age for admission to employment or work, he indicated that, when ratifying the Convention in 1979, a minimum age of 16 had been specified. However, this had created a problem in view of the fact that most children completed schooling at the age of either 14 or 15, thereby leaving a gap before they were able to enter work. The proposal had therefore been made to amend section 2 of the Employment Act with a view to harmonizing the minimum age with the completion of compulsory education. Nevertheless, in view of the comments made, it had now been decided to leave the amendment aside at present and therefore to continue respecting the minimum age for admission to employment or work of 16 as specified when ratifying the Convention. In view of the fact that the Employment Act did not contain a definition of light work or specify a minimum age for hazardous work or cover sectors other than industrial enterprises, the Task Force would be responsible for ensuring that action was taken to remedy these shortcomings.

The Employer members regretted that the Government representative had not responded to all the issues raised. The Conference Committee needed to be informed of the precise wording of the legislation and the time schedule within which the legislative work would be carried out. Further information should therefore be supplied to the Committee of Experts. The Government not only needed to amend its legislation, but also its practice, to bring both into conformity with the Convention.

The Worker members noted the statements made by the various speakers and said that, although the Kenyan Government had the political will to combat child labour, they nevertheless noted that certain legal provisions for the practice of child labour still persisted. For this reason, they urged the Government once again to make more effort in this field, with the assistance of the IPEC programme and other organizations, such as UNICEF.

The Committee noted the information provided by the Government representative and the discussion that followed. It noted with concern that, according to the information provided by the Government, more than 3.5 million children did not attend school and were working in the various sectors of the economy. The Committee further noted that, although the Government had taken certain action to protect children (boys and girls) engaged in hazardous work in over 600 enterprises, fewer than half of them had been removed from such work. The Committee also observed that, according to official data, over 800,000 children worked on the streets. This form of work had generally been considered to be harmful to children's health and morals. In this respect, the Committee noted the ratification of Convention No. 182 by Kenya.

The Committee expressed concern, in view of the dimensions of the problem, that the Government had not yet implemented the draft child labour policy developed with the support of IPEC. The Committee also noted that in the process of revising the legislation that was currently under way, the minimum age for admission to employment or work, which had been set at 16 years when the Government had ratified the Convention, could be lowered to 15 years. The Committee noted that, in its observation, the Committee of Experts had requested the Government to ensure that the minimum age was not reduced to 15. It also noted that in the same observation the Committee of Experts had requested the Government to take the necessary measures to extend the application of the legislation, and therefore the Convention, to all sectors of the economy, since the current provisions of the legislation respecting the minimum age only applied to industrial work. The Committee further noted that there was also no provision determining work which was considered dangerous nor on work considered to be light work. The Committee noted with interest the Government's undertaking that it would take into consideration the different matters raised by the Committee of Experts, as well as the composition of the Task Force and the draft legislation that was under examination.

The Committee therefore urged the Government to adopt the necessary measures to combat child labour. To this end, the Committee hoped that the Government would soon implement the draft child labour policy set out in the recently completed national action plan, and that it would allocate the resources to put it into effect. The Committee also hoped that the ongoing legislation revision process would not affect the minimum age for admission to work or employment which had been set at 16 and in conformity with the commitment made by the Government representative to the Committee, and that the necessary provisions would be adopted to extend the application of the minimum age to all types of work, in addition to industrial work, and that a definition would be adopted of dangerous work, and that work considered to be light work would be regulated. The Committee also urged the Government to strengthen labour inspection activities with a view to the protection

of young persons, and particularly those working in agriculture. The Committee further urged the Government to submit a detailed report specifically addressing the matters raised above so that the Committee of Experts could examine it at its next session in November-December 2001. The Committee hoped that collaboration between the Government, IPEC and UNICEF would be strengthened with a view to consolidating the action taken to combat child labour.

United Arab Emirates (ratification: 1998). **A Government representative** pointed out, with reference to the communication made by the International Confederation of Free Trade Unions (ICFTU) concerning work by children as camel jockeys, that his Government had sent an initial reply to the International Labour Office in November 2000. The reply acknowledged receipt, indicating that time was needed to collect some information from various governmental bodies on the claims mentioned in the communication. He added the following clarifications: (1) the communication sent to his Government towards the end of 2000 referred to isolated events that occurred in 1997, 1998 and 1999, and were unsubstantiated as they were based on hearsay and on a few events that took place outside the United Arab Emirates. Furthermore, the communication and annexes were sent in English, which required their translation into Arabic first, followed by an examination into the unsubstantiated accusations; (2) the comments made by the Committee of Experts did not relate to law or practice in the United Arab Emirates nor did it relate to the application of Convention No. 138, pursuant to the provisions relating to its application. The United Arab Emirates had ratified this Convention in 1998 and had sent detailed and substantiated reports on its application in practice and in law, pursuant to article 22 of the ILO Constitution; (3) the report of the Committee of Experts had revealed that the use of children as camel jockeys was contrary to section 20 of the Labour Code; the latter prohibited the employment of children under 15 years. Furthermore, the Committee of Experts had referred to the report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography (E/CN.4/1999/71) which mentioned that the Camel Jockey Association of the United Arab Emirates prohibited the use of children as jockeys in 1993. In that context, the speaker reiterated his Government's commitment to the decision of the Camel Jockey Association in addition to his country's commitment to the letter and spirit of the Convention as well as its application in practice. He undertook to send a detailed report to the Committee of Experts. He emphasized that his country afforded protection to children in the following manner: (a) the United Arab Emirates gave special attention to the protection of children based on its beliefs, Constitution, national legislation, and its practice; (b) the Constitution contained various articles providing for the protection of children, mothers and vulnerable groups and prohibiting the exploitation and trafficking of persons under sections 15, 16 and 34; (c) the legislation and regulations currently in force in the United Arab Emirates prohibited categorically the exploitation and mistreatment of children as specified in sections 346 and 350 of the Federal Penal Code of 1987; (d) sections 20 and 34 of the Federal Labour Law No. 8 of 1980 prohibited the employment of young persons of either sex who had not turned 15 years of age, and set penalties for guardians who employed children under 18 years of age, in violation of the legal provisions; (e) the Camel Jockey Association was incorporated on 25 October 1992 to regulate that occupation in the country; (f) the Basic Rules governing Camel Racing contained a set of instructions that prohibited the use of children in such races. The speaker further indicated that, as specified in section 14, camel jockeys should fulfil a few conditions such as the prohibition of the use of children as camel jockeys; the weight of jockeys should not be less that 45 kg; medical fitness of jockeys; and the wearing of protective helmets; and other points. He stressed his country's commitment to the observance of human rights since it had ratified a number of international agreements such as the Convention on the Eradication of all Forms of Racial Discrimination of 1965, and the Convention on the Rights of the Child of 1990. Moreover, his country had ratified the core ILO Conventions Nos. 29, 100, 105 and 138 and a decree was promulgated ratifying Conventions Nos. 111 and 182 in June 2001. The regulations in force prohibited the use of children in camel racing even if these children entered the country through smuggling or accompanied by their parents. He added that the allegations brought against his country were misleading as they were aimed at spoiling his country's reputation, or were made by persons misinformed of the legislation in the United Arab Emirates. He concluded by informing the Committee that his country would be sending in due course a detailed report on the subject, and expressed his belief in the wisdom of the Chairperson and the Vice-Chairpersons to reach the appropriate conclusions regarding this question.

The Worker members noted that the importance of Convention No. 138 had been revealed through the ratification campaign on the fundamental Conventions and the combat against child labour. The reason for placing the United Arab Emirates on the list, which had ratified the Convention in 1998, was not to discourage States which made efforts to ratify the Conventions but rather to help them in the application of the provisions of the Convention with a view to eliminating child labour as quickly as possible. The information communicated by an international workers' organization revealed that in the United Arab Emirates very young children, barely 5 years old, were used as camel jockeys. Concerning the age for admission to this type of work, two points should be underlined. First, in accordance with Article 2 of the Convention, legislation prohibited work by children who were less than 15 years old; the problem in this case resided, therefore, in the application of legislation in practice. Second, the employment of children as camel jockeys was considered by the Committee of Experts, and the Worker members agreed on this point, as a type of hazardous employment which according to Article 3 of the Convention could be performed only by persons who were not less than 18 years old. The situation was even more serious as these children had often been kidnapped or sold by their parents. The work of very young children in inhuman conditions, deprived of contact with their family, constituted a very serious violation of fundamental human rights. In these conditions, the Committee should adopt strict conclusions. It should be noted however, that recourse to the technical assistance of the Office or to the International Programme on the Elimination of Child Labour (IPEC) could help the Government to bring its legislation and national practice into conformity with the Convention.

The Employer members considered that there was a double violation of Convention No. 138. They noted the information received by this Committee based on the communication of the ICFTU which had already been sent to the Government on 18 September 2000. Until now, the Government had not provided any reply. The Committee of Experts' comments, based on the information transmitted by the ICFTU, related to the issue of work performed by children of 5 or 6 years of age as camel jockeys. These boys were underfed and were subjected to severe diets before races so that they were as light as possible. This practice violated the condition of the minimum age of 15 years for admission to employment or work, as indicated by the Government itself when it ratified the Convention. In addition, in view of the hazardous nature of the work of camel jockeys, the condition of the admissible minimum age of 18 years for employment, as stipulated in Article 3, paragraph 1 of Convention No. 138, was violated. Regarding the statement of the Government representative, the Employer member indicated that it had been puzzling and dubious. The Government representative had first of all indicated that it was difficult for his Government to reply since the documentation forwarded to it was in English. Then he had indicated that his Government had already replied and finally, he had stated that his Government would reply in due time. Although it was a general principle that the parties concerned had to be heard before judgement, this Committee had the right to decide upon this case since the Government had not replied in due time. In conclusion, the practice of using young children as camel jockeys had to be noted with great concern by the Committee.

The Worker member of the United Kingdom asserted that the Committee had before it a Government, which had ratified the Convention, yet which was failing to meet its obligations either to apply the Convention or to report in full to the Committee of Experts. The violation was clear: the general age for entry into employment specified by the Government when it ratified the Convention in 1998 was 15 years of age. Without doubt, camel jockeying was a hazardous occupation, and should not be performed by anyone under the age of 18. That was the case both under Conventions Nos. 138 and 182. Yet, all the information indicated that extremely young children were being trafficked, mainly from the sub-Continent and also possibly from Sudan. The Camel Jockey Association of the United Arab Emirates banned child jockeys in 1993, yet the rules were simply ignored. Child camel jockeys were often kidnapped, sold by parents or relatives or taken on false pretences from their own country. The work was extremely hazardous and could result in serious injury or death. There was evidence of mistreatment and torture of child camel jockeys by their employers. They were separated from their families in a strange country with a different language where they were unable to report abuse. The speaker welcomed the Committee of Experts' clear statement that camel jockeying constituted dangerous work under Article 3 of the Convention. He then proceeded to give concrete examples of the dangers involved. An article in the *Gulf Times* earlier this year included an interview with a camel jockey from a neighbouring State who was recovering from a broken arm, and a former jockey who confirmed that there were many injuries to child jockeys,

including “bleeding due to constant pressure … and smashing of genitals is common and indescribably painful”. Some recent cases reported to the speaker from his colleagues in Anti-Slavery International included the following: a 4-year-old camel jockey from Bangladesh whose employer burnt his legs for underperforming — burnt them so badly that his life was endangered; a 10-year-old from Pakistan found wandering in the streets of Abu Dhabi after escaping from his trafficker; two brothers, aged 6 and 4, rescued following a tip-off from the Pakistan Embassy. The 6-year-old had been treated in a hospital for leg injuries after falling from a camel. They were reported to have been sold for US$5,325 each to a man in the United Arab Emirates; in March 2001, two more 7-year-olds were trafficked from Pakistan to Dubai, and sent back because they were overweight; in April 2001, a 7-year-old Bangladeshi died from kidney damage sustained in camel racing in Dubai. He was repatriated for treatment but died in a Dhaka hospital. The United States State Department estimated that 20 under-age jockeys were repatriated during 2000. The Centre for Women and Children Studies in Dhaka estimated that nearly 1,700 boys were victims of trafficking in the 1990s. Most were boys younger than 10 years old. Most were destined to be camel jockeys in Gulf countries. In 1998, the Government of the United Arab Emirates stated that it was doing its best to eradicate the practice and that camel owners using jockeys under the age of 14 should be severely punished. The speaker pointed out that the age limit was four years too low. But it was also clear that the Government of the United Arab Emirates had not taken measures in conformity with Article 9 of the Convention which called for the effective enforcement of its provisions, including the establishment of appropriate penalties. The use of young children — sometimes very young children — was blatant, appalling and an inexcusable abuse of children as well as a blatant violation of the Convention. The United Arab Emirates was one of the world’s richest countries. It had no excuse for its failure to stop this abuse. It should carry out regular unannounced inspections to identify, release and rehabilitate any child camel jockey under the age of 18. It should ensure the prosecution of all those responsible for employing children as camel jockeys and for trafficking children. It should report the extent and results of those prosecutions to the Committee of Experts, and the sentences passed by year since 1998 of those illegally employing under-age jockeys, and those trafficking children. The speaker insisted that the Government ask IPEC for immediate technical assistance to deal with this problem as a matter of urgency. But if the Government denied all the evidence, then the Office should itself verify the facts on the ground.

The Worker member of New Zealand endorsed the statements made by the Worker members. This case was a clear violation of the Convention. While the Camel Jockey Association of the United Arab Emirates had banned the use of children as camel jockeys in 1993, the Committee of Experts referred to new evidence which “clearly indicated that these rules were being blatantly ignored”. More specifically the Committee of Experts had referred to evidence that in February 1998, ten Bangladeshi boys between 5 and 8 years of age, were rescued in India while being smuggled to the United Arab Emirates to become child jockeys. It was an irony that as that case was being discussed, the debate on the Global Report on forced labour was taking place in the plenary. This case symbolized some of the worst features of the practice of forced labour: the kidnapping, trafficking, exploitation and physical abuse of children. The United Arab Emirates which was a wealthy country, appeared to be turning a blind eye to the practice. Article 9 of the Convention called for the effective enforcement of appropriate penalties. This was clearly not being done. The United Arab Emirates might have laws and regulations but they were not being enforced. Given the total failure of the Government to meet its obligations and enforce its laws the speaker supported the call for the Committee to issue strong conclusions in this case.

Another Government representative noted with interest all the comments made by members of this Committee and indicated that he would transmit them to his Government. However, he wished to emphasize that since 1993, when the Camel Jockey Association of the United Arab Emirates finally prohibited the use of children as jockeys, no children under 45 kg had been used as camel jockeys in his country. Furthermore, since entry into the United Arab Emirates was very easy, his Government could not control the persons wishing to exploit children. However, one of the cases of the exploitation of two foreign children who had been repatriated to their country of origin, as mentioned by the Worker member of the United Kingdom, was now being investigated by his Government.

The Worker members noted that the declarations of the Worker member of the United Kingdom had provided concrete information which demonstrated even more clearly the seriousness of the situation. Measures should be adopted at the level of legislation and the control of the Convention’s implementation in practice. Many options were available to the Government which could request technical assistance from the Office or IPEC. However, the fact that the Government had denied the problem constituted a source of additional concern.

The Employer members referred to their initial statements concerning this case. Since there had been no new elements, the deep concern of the Committee had to be expressed in its conclusions.

The Committee took note of the information provided by the Government representative and the subsequent discussion. The Committee recalled that it had on many occasions expressed its concern at the use of children in employment or work which might prevent them from participating in school activities or affect their normal, physical and mental development. That concern was all the greater when the activities for which children were used might jeopardize their health, life or morals. The use of children as camel jockeys was a dangerous activity that might seriously damage their health, as the Committee of Experts had indicated in its observations. According to the information communicated to the Committee of Experts, the children used as camel jockeys had been brought into the country illegally for that specific purpose. Moreover, according to that information, before the children were used for that activity, they were subjected to diets which harmed their health. Consequently, the Committee, in expressing its profound concern at the new information submitted to it concerning a serious violation of the Convention, considered that measures should be taken to prevent trafficking in children to the country and their employment in that dangerous activity. The Committee requested the Government to prevent the use of children under 18 years as camel jockeys. In addition, the Committee hoped that the Government would adopt legal and practical steps to reinforce the prohibition of children as camel jockeys, including the establishment of criminal sanctions to combat such activities. It also requested the Government to submit a report for examination by the Committee of Experts at its next meeting in November-December 2001, containing detailed information on the measures it had adopted in that respect, including strengthened criminal sanctions and the appropriate measures to enforce them. It further asked the Government to report on the measures that it had adopted, under its national policy to be formulated to combat child labour, in accordance with Article 1 of the Convention, in order to combat trafficking in children for use as camel jockeys and to provide information on any relevant necessary inspections and judicial decisions. The Committee hoped that the Government would seek technical assistance from the ILO, and in particular IPEC, with a view to developing programmes to eradicate the use of children as camel jockeys.

Convention No. 158: Termination of Employment, 1982

Turkey (ratification: 1995). **A Government representative** stated that in its report for the year 2001, the Committee of Experts, while reviewing various dimensions of existing labour legislation in Turkey, had criticized a draft amendment on job security submitted to it, on grounds of the inconsistencies between the said draft and the pertinent Articles of Convention No. 158. As a matter of fact, this draft bill prepared by the Ministry of Labour last year was also criticized by union leaders and employers as well as academicians within Turkey who claimed that it did not meet the requirements of the job security model foreseen by Convention No. 158. Taking these criticisms and the views expressed by the Committee of Experts into consideration, the Ministry of Labour formed a commission in February 2001, composed of nine academicians, and entrusted to this commission the drafting of a new bill which would ensure full compliance with the Articles of the Convention. The commission included three academics elected by the Government, three by the Turkish Confederation of Employers’ Associations (TISK) and three by the labour confederations (TÜRK-IS, HAK-IS and DISK), each one appointing its own representative. Although serving different parties, these academicians were known for their neutral and objective views on labour issues. At the outset, the social partners made a full commitment to accepting the final text which the said commission would produce. In the meantime, the Government withdrew its first draft from the legislative process. After deliberations in its various meetings, this nine-member commission reached compromise solutions and prepared a new draft bill through the joint efforts of its members. This unique experiment was the first of its kind in Turkish labour relations, reflecting features of a successful social dialogue at this level. This new draft, which was in full compliance with the Convention, had now been submitted for the approval of the Council of Ministers which was expected to refer it soon to the remaining procedures of the legislative process. After its enactment, the Government would certainly be pleased to submit it to the ILO.

The Committee of Experts had observed in its report that the draft submitted to it by the Government did not provide any clarity as to the requirement of "valid reasons" for termination. The new draft, adopted by the unanimous decision of the commission's members, filled this void by stating clearly that the employer contemplating to terminate a worker employed under a permanent contract with an unspecified term, must depend on a valid reason regarding the capacity or conduct of the worker, or based on the operational requirements of the undertaking, establishment or service. On the issue of prohibited grounds that, inter alia, could not constitute valid reasons for termination, the new draft had enumerated the following: (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours; (b) acting or having acted in the capacity of, or seeking office as, a workers' representative; (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities; (d) race, colour, sex, marital status, political opinion, national extraction or social origin; (e) absence from work during maternity leave during which female workers must not be engaged in work, as foreseen in the Labour Act No. 1475; (f) temporary absence from work due to illness or accident, in the waiting period envisaged by the Labour Act No. 1475.

Concerning the Committee of Experts' observation that legislation should ensure workers an opportunity to defend themselves before termination of employment, the new draft had addressed this issue by providing that the employer should give the notice of termination in written form, stating the reasons for termination in clear and precise terms. Furthermore, the employment of a worker could not be terminated for reasons related to the worker's conduct or performance before he was provided with an opportunity to defend himself against the allegations made, unless the employer could not reasonably be expected to provide this opportunity. The new draft provided that the burden of proving that termination was based on a valid reason rested on the employer.

With regard to the Committee of Experts' remark that adequate remedies should be ensured and awarded in cases of unjustified dismissals, the new draft called for remedies for the worker seeking redress through appeal mechanisms, either before the labour court or arbitration. If termination had been declared invalid, the remedies included reinstatement, or compensation, to be not less than the worker's six months' wages and not more than the total of his annual wages.

In cases of terminations for the worker's "serious misconduct" or "improper behaviour", the proposed amendment foresaw the same remedies if termination was found unjustified, that is, reinstatement or compensation. Furthermore, stronger remedies had been provided for terminations due to the worker's union membership, participation in union activities and for union representatives (shop stewards), i.e. reinstatement or at least the worker's total annual wages. For certain categories who fell outside the scope of the Labour Act by definition, the new draft brought the same protections as for those who were covered against terminations due to union membership or participation in union activities.

As the Committee of Experts had noted, a social security reform package which included unemployment insurance was approved by Parliament in August 1999. At present, therefore, workers in Turkey enjoyed a satisfactory severance pay system as well as unemployment benefits. With the incorporation of Convention No. 158 into the Labour Act, as embodied in the new draft, they would be covered by a full-fledged social protection system.

Regarding the Committee of Experts' observations concerning the inadequate status of measures for collective redundancies in Turkey, the new draft had foreseen amendments which were fully in line with the Convention. The amended version of section 24 on collective dismissals provided for clear-cut definitions and strict notification requirements, as well as consultations with trade unions or workers' representatives on measures to be taken to avert or to minimize the terminations or to mitigate their adverse effects on workers.

The speaker brought to the Committee's attention a new law on the structure and functions of the Economic and Social Council which was enacted in April 2001. Thus, the Economic and Social Council, which was administered by government circulars since 1995, had now been given a stronger legal status. Moreover, according to the recently published National Programme in which the Government of Turkey had committed itself to harmonizing national norms and practices with those of the European Union, the passage of job security legislation was the short-term goal which must be realized within one year, at the latest.

Tripartite social dialogue to which Turkey attached great importance would continue to play a significant role in the implementation of the reforms envisaged by the National Programme, as evidenced by the experiment of the aforementioned nine-member commission, the recently enacted Law on the Economic and Social Council and the proposed consultation mechanisms involving workers' representatives.

As these recent examples of progress showed, and despite the various economic difficulties faced by the coalition Government during the last two years, Turkey had again demonstrated its commitment to bring its labour relations system into conformity with ILO standards. In this connection, the speaker thanked the ILO once again for its pioneering work in paving the way for more social progress in his country.

The Employer members mentioned at the outset that the report of the Committee of Experts contained only one case on this Convention, maybe due to the fact that only 33 States had ratified it. Regarding the general observation made by the Committee of Experts in which it urged governments to consider ratifying the Convention and to seek information or assistance from the Office, the Employer members wondered whether such observations of a legal/political nature fell within the mandate of the Committee of Experts. The task entrusted to the Experts was to examine the extent to which governments complied with their obligations regarding the implementation of ILO standards in particular, Conventions that had been ratified. When the Governing Body considered the matter in March 2001, there had been no agreement as to whether the ratification of this Convention should be recommended to member States. For this reason the Employer members had doubts about the appropriateness of the abovementioned observation and considered that it went beyond the competence of the Committee of Experts. Over the last 20 years, this Committee had addressed matters related to Turkey more than 18 times mostly with regard to Conventions Nos. 98 and 87. Turkey had ratified Convention No. 158 in 1995 and a few years later the first representation under article 24 of the ILO Constitution was made by the Confederation of Turkish Trade Unions (TÜRK- IS). The basis for the examination by the Committee of Experts was the government report covering the period from mid-1997 to end of 1999, and the November 2000 discussion in the Governing Body of the representation made under article 24 of the ILO Constitution. The point of departure was a draft amendment to Labour Act No. 1475 (1971). The first question was whether the draft reflected the term "valid reason" in accordance with Article 4 of the Convention. The draft amendment stated that an employer would have to provide a "clear reason" for dismissal. This did not seem to be an important legal issue. It was more important to look at the manner in which the provision was used in practice. The second point related to the prohibited grounds for dismissal mentioned in Article 5 of the Convention. The list of prohibited grounds did not necessarily have to be included in the national legislation as it was not exhaustive nor exclusive. The Article used the words "in particular" and therefore provided examples. In this respect, it was more important to examine how the requirement of a clear reason applied in practice. More information on this point might have been useful. The experts also had doubts regarding dismissal on grounds of personal behaviour for deliberate acts or serious misconduct, and wondered whether it made sense to introduce responsibility for a three or four-day absence from work. Even in such cases, Article 7 called for employers to provide the possibility of appeal against unjustified dismissal. In this respect, the experts had noted that no cases of appeal to courts had been cited in the Government's report. This requirement did not relate to Article 7, but to Article 8 which indicated that one could make an appeal in several fora including courts or arbitration. However, it was not necessary to examine the details as the Government member had explained that the previous draft had been amended by a commission of experts. The new draft appeared to be quite different and the employers noted with interest the information provided orally by the Government representative. However, it was not a common practice to carry out an ad hoc examination, and it was up to the Committee of Experts to examine the text after it had been submitted in writing. This Committee could examine this issue at a later stage if necessary. As to the conclusions, they should ask the Government to submit the text as soon as possible in order to establish whether any observations were to be required for the future. For the time being, on the basis of the facts presented to the Committee, it seemed that all points raised by the Committee of Experts had been met, but this would have to be established at a later stage.

The Worker members thanked the Government member for the information that he had provided. He had indicated that bearing in mind the few ratifications, the application of Convention No. 158 was rarely discussed in the Committee. On that subject, the Committee of Experts had made a general observation that year emphasizing the need to ratify it. The objective of Convention No. 158 was to strike a balance between workers and employers' rights. While

employers should have the right to make decisions about employment in their company, workers should enjoy protection against unfair or unjustified dismissal. The loss of a job had serious repercussions on the life of a worker and his family because it could mean insecurity and, indeed, poverty. The Governing Body had expressed an opinion on the application of Convention No. 158 ratified by Turkey in 1995, following a representation submitted by the Confederation of Turkish Trade Unions. The observations of the Committee of Experts in that case concerned failure to observe and violation of several provisions of the Convention. In the case of Article 4 of the Convention, Labour Act No. 1475 did not require a valid reason to be given for dismissal, and the same applied to the Maritime Labour Act and the Journalists' Labour Act as well as other workers not covered by those laws. Furthermore, under Article 5 of the Convention, the legislation should contain a list of grounds which were not considered valid reasons for dismissal. In addition, the legislation did not ensure workers an opportunity to defend themselves against allegations invoked by the employer as grounds for dismissal, which was contrary to Article 7 of the Convention. Finally, the concept of serious misconduct was defined too broadly in the national legislation, which meant that in practice a large number of workers were deprived of a period of notice of dismissal, which meant that Article 11 of the Convention was not applied. The Worker members indicated that other violations were worthy of comment; nevertheless, it was already clear that Turkey was not applying the Convention which it had ratified in 1995. The existence of a Bill which would answer some of the points raised was to be welcomed. It would not, however, resolve others. Under those circumstances, the Government should be called on to make the necessary amendments to the Bill in order to bring its legislation into conformity with the Convention with a minimum of delay.

The Worker member of Turkey stressed that the Committee had before it a very good example of the effective guidance of the ILO in securing significant progress in protective labour legislation and social peace. The draft Bill which had been prepared by the Ministry of Labour and submitted to the Council of Ministers in September 2000 for final review before being passed on to the Legislative Assembly was far short of fulfilling the requirements of the Convention. The workers were not satisfied with this. In November 2000, the final report of the Governing Body on the workers' representation under article 24 of the ILO Constitution was issued, followed by the report of the Committee of Experts. These reports were effective. Through social dialogue, the Ministry of Labour reopened the draft Bill for discussion and the final outcome was a text which fulfilled, except for some shortcomings, the requirements of the Convention. The Bill was presented to the Council of Ministers for final evaluation on 28 May 2001. The Government had also undertaken, in the framework of the agreement it had signed with the speaker's confederation two weeks ago, to take the necessary steps for the rapid promulgation of the Bill. The provision of job security through the enactment of this Bill was included in the immediate obligations of Turkey in the national action plan concerning accession to the European Union. The speaker stressed that in the preparation of the Bill, there was an atmosphere of tripartite social dialogue supported by the contributions of the legal advisers. He noted with satisfaction that the President of the Turkish Confederation of Employers' Associations had openly stated that the employers would endorse and support a Bill that was prepared in harmony with Convention No. 158. Making his comments on the Bill, he indicated that its scope was limited to workers with a labour contract under the Labour Act only, thus excluding workers under the Maritime Labour Act, the Journalists' Labour Act and some other groups of workers. Additionally, workers in enterprises employing less than ten workers were outside the scope of this draft. A seniority of six months was required as well. Moreover, the job security of shop stewards was curtailed. He hoped that the shortcomings would be minimized during the legislative process. In spite of these and some other shortcomings, the Bill met the requirements of the Convention considerably. This was an achievement of the ILO supervisory bodies and the ILO tradition of tripartite consultation supported by legal advice. Finally, the speaker hoped that the Government would have the same attitude to social dialogue and respect for ratified ILO Conventions in bringing its legislation into full harmony with the rights guaranteed by Conventions Nos. 87 and 98 and, in particular, the right of public servants to organize, strike, and bargain collectively. He urged this Committee to acknowledge the very positive development concerning Convention No. 158 and encouraged the Government of Turkey to accelerate the legislative process.

The Employer member of Turkey stated that this was the second draft amendment to the Labour Act No. 1475 (1971) which was necessary since the first draft of 1999 was not in accordance with the requirements of the Convention and had been severely criticized by the Turkish Labour Law experts. A second draft had therefore been prepared and as a whole it was in conformity with the Convention. The Turkish Minister of Labour and Social Justice had submitted the second draft to the Office of the Prime Minister and it was believed that it would be adopted by Parliament. However, this draft did not have the full support of both social partners because it took over the rigid provisions of the Convention and lacked flexibility. The Turkish Employers' Association agreed with measures to protect the workers against unjustified dismissals. However, they had also demanded that provisions be adopted concerning severance pay as the currently existing level of compensation in case of unjustified dismissal dated back to a time when there was no unemployment insurance and no legal protection against unjustified dismissal. The present system of compensation placed a heavy burden on the employers. Therefore, the draft Bill was incomplete and provisions on reduced amounts of severance pay had to be adopted. The commission which had prepared the draft legislation had in fact submitted two texts to the Minister: the first concerned protection against unjustified dismissal; and the second reviewed severance pay provisions. However, the Minister only considered the first draft and completely disregarded the second. The Turkish trade unions reacted to any revision of severance pay and wished to maintain the existing system of compensation. The employers did not wish to abolish severance pay but to reform it in order to attain fair and equitable levels. Article 12 of the Convention provided not just severance allowance to workers but also unemployment benefits. In the view of the employers, protection against unjustified dismissal, severance compensation and unemployment benefits formed a comprehensive system. Therefore, the draft Bill should contain provisions concerning not only protection but also compensation and assistance. The Turkish Employers' Association was in disagreement with the Government on this issue.

The Worker member of Germany underlined the crucial importance of Convention No. 158 to workers. The Committee of Experts' report had extensively covered inconsistencies between the Convention and the law and practice in Turkey. He noted with interest the statement of the Government member. The new draft amendment was a good example of fruitful tripartite consultations. The Government needed to take all necessary measures to adopt the draft Bill and ensure that all inconsistencies were eliminated in practice. Two further aspects were of particular importance. First, laws on security of employment should apply to all branches of economic activity in accordance with Article 2 of the Convention. Second, according to the draft Bill, trade union representatives did not have a claim to reinstatement in the event of unjustified dismissal and only had a claim for compensation. The possibility of reinstatement was crucial to workers as this guarantee fell within the general context of trade union rights and was related to Conventions Nos. 87 and 98. Therefore, in addition to noting with satisfaction the progress made, it was important to ensure the full application of all aspects of the Convention.

The Worker member of Senegal said that Convention No. 158 and its Recommendation had the same objective and were important for security of employment, an essential aspect of the body of standards. The validity of the reason invoked in the case of dismissal was a crucial element of Article 4 of Convention No. 158. Article 17 of the Labour Act No. 1475 provided, in particular, that a worker could be dismissed without notice "if the worker has contracted a disease or suffered an injury … ". It should be underlined that the provision clearly stated that disease was a reason for dismissal, which was in conflict with Article 6, paragraph 1, of Convention No. 158 which provided that: "temporary absence from work because of illness or injury shall not constitute a valid reason for termination". Although the draft amendment submitted by the Government stated that an employer must provide a clear reason for dismissal, it did not require the validity of the reason invoked to be evaluated on the basis of the criteria contained in the Convention. Furthermore, the draft amendment did not include the right for the worker to defend himself against dismissal. The speaker requested that another Bill should be drawn up in consultation with the social partners, taking into account the principles of social dialogue and tripartism. It should also reflect the spirit of Convention No. 158.

The Worker member of New Zealand underlined that it was important to support successful social dialogue and the resolution of this case which concerned natural justice requirements for the protection of workers against arbitrary and unfair dismissal, namely the right to know the reason for the intended dismissal (Article 4) and the right to defend oneself against allegations of misconduct (Article 7). Given the seriousness of the potential breaches, it was particularly pleasing that the ILO supervisory mechanism had led to social dialogue between the Government of Turkey and the social partners and that substantial progress had been recorded. The

speaker therefore endorsed the comments made by the Turkish Worker member and shared the hope that the cooperative spirit of social dialogue would result in law and practice in Turkey being brought into full compliance with the Convention and would enable other outstanding issues relative to Conventions Nos. 87 and 98 to be successfully addressed.

The Worker member of Austria agreed with most speakers that the draft Bill covered virtually all points raised by the Committee of Experts and expressed his hope that all discrepancies would be remedied. With reference to the statement made by the Employer member of Turkey, Convention No. 158 did not cover the level of compensation and the issue of severance pay was not relevant in this context. The conclusions should welcome the rapid introduction of the Bill to Parliament and the rapid conclusion of the process. The draft amendment was a demonstration of a well-functioning social dialogue which should be sustained in view of the country's efforts to become a member of the European Union.

The Employer member of Turkey indicated that the intervention made by the Government member did not reflect the real situation because there were two draft laws which had been prepared at the same time, although they had been submitted separately, and had been considered as interdependent. The first draft related to the protection of workers against dismissals and was in conformity with the Convention, while the second draft related to the severance compensation. However, only the first draft had been submitted to the Prime Minister's Cabinet, in spite of the fact that the attention of the Minister of Labour and Social Security had been drawn to the abovementioned remark. It was worthwhile to underline that the severance compensation which was calculated on the basis of 30 days or 59 days for some collective agreements, played an essential role for the protection of workers. He concluded that the Turkish Confederation of Employers' Associations (TISK) had proposed the preparation of a new draft law on severance compensation in order to safeguard the vested rights of workers, and ensure the application of the Convention.

The Government representative referred to certain points made by members of the Committee. Regarding the comments of the Worker member of Turkey, he pointed out that Article 2(2) of Convention No. 158 allowed the member State to bring a certain seniority period in order to be entitled for coverage. With regard to the allegation that only workers covered by the Labour Act No. 1475 were covered by this draft Bill, the speaker pointed out that other workers were also covered in the event of dismissal on account of union membership or activities. Concerning the comments made by the Worker member of Germany, he pointed out that, if the termination was unjustified, the remedy was reinstatement. However, if reinstatement was not possible for practical reasons, the level of compensation was determined by national law which stipulated a minimum of six months' wages and a maximum of one year's salary. In the event of termination on account of trade union membership activities, then compensation was much higher and should not be less than the worker's total amount of annual wages. While working on the draft Bill, the Commission of Academicians also took account of the current severance pay as well. The Minister found the two drafts acceptable; however, both parties, workers and employers, were opposed to the draft on severance pay for different reasons. Upon this development, the Minister submitted only the draft Bill on job security to the Prime Minister's office.

The Employer members noted that new information had been provided to the Committee from the Government member and the Employer and Worker members of Turkey and that all agreed that the requirements of Convention No. 158 would be met once the draft Bill had been adopted. This was a positive development. In response to the comment made by the Worker member of Austria, the Employer members agreed that the Convention did not provide for compensation in case of justified dismissal. This point would have to be dealt at the national level. Finally, it was not really appropriate to make demands concerning the application of Conventions Nos. 87 and 98 on the day when the Committee was discussing Convention No. 158, especially as this practice had occurred in the past. As far as the conclusions were concerned, they would have to be formulated in a positive manner. All parties had expressed a positive view, and this should be reflected in the conclusions.

The Worker members welcomed the draft law under discussion which would bring significant improvements to the legislation on termination of employment. In spite of the divergent views between the social partners, the draft seemed to need further amendments in order to be in full conformity with the provisions of the Convention. The Worker members invited the Government to adopt the draft law as soon as possible while taking into account the abovementioned remarks.

The Committee took note of the information supplied by the Government member and the subsequent debate. It also took note of the conclusions relating to the representation, submitted under article 24 of the ILO Constitution, adopted by the Governing Body in November 2000. It also noted with interest the existence of a draft text which had been drafted, in tripartite consultations, to bring the legislation into conformity with the Convention. The Committee expressed the firm hope that in the very near future it would be in a position to confirm real progress in the application of the Convention. It requested the Government to submit a detailed report to be examined at the next meeting of the Committee of Experts for the purposes of evaluating progress.

C. REPORTS ON RATIFIED CONVENTIONS (STATES MEMBERS)

(Article 22 of the Constitution)

Reports received as of 21 June 2001

The table published in the Report of the Committee of Experts, page 617, should be brought up to date in the following manner:

Note: First reports are indicated in parenthesis. 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 — **8 reports requested**

- 7 reports received: Conventions Nos. 6, 14, 26, 29, 81, 100, 107
- 1 report not received: Convention No. 106

Argentina — **23 reports requested**

- 22 reports received: Conventions Nos. 9, 14, 22, 23, 29, 35, 52, 68, 71, 77, 78, 87, 88, 90, 95, 96, 100, 107, 115, 124, 129, 138
- 1 report not received: Convention No. 79

Barbados — **17 reports requested**

- All reports received: Conventions Nos. 7, 11, 19, 22, 29, 42, 63, 87, 90, 94, 95, 97, 100, 101, 111, 115, 122

Botswana — **13 reports requested**

(Paragraphs 187 and 194)

- All reports received: Conventions Nos. 14, (29), (87), (95), (98), (100), (105), (111), (138), (144), (151), (173), (176)

Burundi — **18 reports requested**

- All reports received: Conventions Nos. 1, 11, 12, 14, 17, 26, 27, 29, 42, 52, 62, 87, 89, 90, 94, 100, 101, (135)

Cameroon — **29 reports requested**

- 5 reports received: Conventions Nos. 29, 81, 87, 100, 158
- 24 reports not received: Conventions Nos. 5, 9, 11, 14, 16, 45, 77, 78, 89, 90, 94, 95, 97, 98, 106, 108, 111, 122, 123, 132, 135, 143, 146, 162

Cape Verde — **7 reports requested**

- All reports received: Conventions Nos. 17, 29, 81, 98, 100, 105, 111

Central African Republic — **20 reports requested**

(Paragraphs 187 and 198)

- 17 reports received: Conventions Nos. 6, 11, 14, 17, 18, 19, 41, 52, 62, 81, 87, 95, 98, 101, 105, 111, 118
- 3 reports not received: Conventions Nos. 29, 94, 100

Chile — **11 reports requested**

- All reports received: Conventions Nos. 6, 14, 22, 24, 25, 26, 29, 100, 115, 122, 127

Congo — **5 reports requested**

(Paragraph 198)

- All reports received: Conventions Nos. 6, 14, 29, 87, 95

Costa Rica — **17 reports requested**

- 16 reports received: Conventions Nos. 14, 29, 87, 90, 95, 100, 101, 106, 114, 122, 127, 129, 138, 141, 148, 169
- 1 report not received: Convention No. 94

Côte d'Ivoire — **11 reports requested**

- 3 reports received: Conventions Nos. 29, 100, 105
- 8 reports not received: Conventions Nos. 6, 14, 18, 52, 87, 95, 129, 133

Cyprus — **27 reports requested**

- 25 reports received: Conventions Nos. 23, 29, 87, 90, 94, 95, 97, 100, 105, 106, 114, 121, 122, 124, 135, (138), 143, 144, 150, 154, 158, 159, 160, 162, (172)
- 2 reports not received: Conventions Nos. 147, (175)

Czech Republic — **19 reports requested**

(Paragraph 198)

- All reports received: Conventions Nos. 14, 29, 77, 78, 87, 89, 90, 95, 100, 108, 115, 122, 124, 130, 132, 140, 148, 155, 161

Democratic Republic of the Congo — **23 reports requested**

- 11 reports received: Conventions Nos. 11, 12, 14, 19, 26, 27, 29, 62, 81, 84, 88
- 12 reports not received: Conventions Nos. 89, 94, 95, 98, 100, 117, 118, 119, 120, 121, 150, 158

Denmark — **17 reports requested**

- All reports received: Conventions Nos. 6, 14, 29, 52, 87, 88, 94, 100, 106, 115, 122, 129, 130, 138, 142, 144, 148

France — **40 reports requested**

- 33 reports received: Conventions Nos. 14, 17, 22, 23, 27, 29, 42, 55, 56, 71, 77, 78, 87, 90, 94, 95, 97, 100, 101, 106, 111, 114, 115, 122, 124, 126, 127, 129, 137, 138, 144, 148, 149
- 7 reports not received: Conventions Nos. 24, 52, 63, 82, 105, 140, 147

Gabon — **22 reports requested**

- 12 reports received: Conventions Nos. 6, 29, 41, 52, 81, 87, 98, 100, 124, 135, 154, 158
- 10 reports not received: Conventions Nos. 11, 12, 14, 95, 101, 105, 106, 111, 144, 150

Georgia **10 reports requested**

(Paragraph 194)

- All reports received: Conventions Nos. 29, 52, 98, 100, (105), 111, (117), 122, (138), 142

Ghana **23 reports requested**

- 20 reports received: Conventions Nos. 11, 14, 22, 23, 29, 69, 81, 87, 88, 89, 90, 94, 103, 106, 107, 111, 115, 148, 149, 151
- 3 reports not received: Conventions Nos. 92, 100, 150

Greece **18 reports requested**

- All reports received: Conventions Nos. 14, 23, 29, 52, 55, 71, 77, 78, 87, 90, 95, 100, 106, 115, 122, 124, 138, 144

Hungary **18 reports requested**

- All reports received: Conventions Nos. 6, 14, 24, 29, 77, 78, 87, 88, 95, 100, 115, 122, 124, 127, 129, (132), (138), 140

India **10 reports requested**

- 8 reports received: Conventions Nos. 11, 14, 22, 29, 90, 100, 107, 115
- 2 reports not received: Conventions Nos. (122), 147

Islamic Republic of Iran **8 reports requested**

- All reports received: Conventions Nos. 14, 29, 95, 100, 106, 108, 111, 122

Jamaica **13 reports requested**

- 4 reports received: Conventions Nos. 29, 87, 98, (144)
- 9 reports not received: Conventions Nos. 8, 11, 94, 97, 100, 111, 122, 149, 150

Lesotho **10 reports requested**

- 9 reports received: Conventions Nos. 11, 14, 29, 87, 98, (100), (111), (135), (144)
- 1 report not received: Convention No. (167)

Libyan Arab Jamahiriya **22 reports requested**

(Paragraph 230)

- 19 reports received: Conventions Nos. 1, 29, 52, 53, 81, 88, 89, 95, 100, 102, 103, 105, 111, 118, 121, 122, 128, 130, 138
- 3 reports not received: Conventions Nos. 14, 96, 98

Malaysia - Sabah **3 reports requested**

- All reports received: Conventions Nos. 16, 94, 97

Malaysia - Sarawak **6 reports requested**

- 5 reports received: Conventions Nos. 12, 14, 16, 19, 94
- 1 report not received: Convention No. 11

Mali **15 reports requested**

- 13 reports received: Conventions Nos. 5, 6, 11, 14, 17, 29, 41, 52, 81, 87, 95, (141), (151)
- 2 reports not received: Conventions Nos. 18, 100

Mauritania **28 reports requested**

(Paragraph 198)

- 27 reports received: Conventions Nos. 3, 5, 11, 14, 17, 18, 19, 22, 23, 29, 33, 52, 58, 81, 87, 89, 90, 91, 94, 96, 101, 102, (105), 112, 114, 118, 122
- 1 report not received: Convention No. 95

Republic of Moldova **5 reports requested**

- All reports received: Conventions Nos. 87, 95, 122, 129, (132)

Niger **23 reports requested**

- 20 reports received: Conventions Nos. 11, 14, 18, 41, 81, 87, 95, 98, 105, 111, 117, 119, 131, 135, 138, 142, 148, 154, 156, 158
- 3 reports not received: Conventions Nos. 6, 29, 100

Paraguay **16 reports requested**

- All reports received: Conventions Nos. 14, 29, 52, 77, 78, 79, 87, 90, 95, 100, 101, 106, 115, 122, 124, 169

Peru **24 reports requested**

- All reports received: Conventions Nos. 14, 22, 23, 24, 25, 29, 44, 52, 55, 56, 71, 77, 78, 79, 87, 88, 90, 98, 100, 101, 102, 106, 114, 122

Slovakia **28 reports requested**

- 15 reports received: Conventions Nos. 11, 12, 17, 29, 42, 52, 95, 98, 100, 140, 155, 160, 161, (173), (176)
- 13 reports not received: Conventions Nos. 14, 77, 78, 87, 89, 90, 115, 122, 124, 130, 138, 148, 159

Slovenia **26 reports requested**

- All reports received: Conventions Nos. 14, 22, 23, 24, 25, 29, 56, 87, 90, 97, 100, 106, 114, 121, 122, 129, 132, 138, 140, 143, 148, 155, 156, 159, 161, 162

Swaziland **17 reports requested**

(Paragraph 230)

- 16 reports received: Conventions Nos. 11, 12, 14, 81, 87, 89, 90, 94, 95, 98, 100, 101, 105, 111, 144, 160
- 1 report not received: Convention No. 29

United Republic of Tanzania **18 reports requested**

- 9 reports received: Conventions Nos. 29, 59, 98, 105, (138), 142, 144, 148, (154)
- 9 reports not received: Conventions Nos. 11, 12, 17, 63, 94, 95, 137, 140, 149

United Arab Emirates **3 reports requested**

– All reports received: Conventions Nos. 29, 100, (138)

Grand Total

A total of 2,550 reports were requested, of which 1,952 reports (76.55 per cent) were received.

D. STATISTICAL TABLE OF REPORTS ON RATIFIED CONVENTIONS AS OF 21 JUNE 2001

(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	
		Number	Percentage	Number	Percentage	Number	Percentage
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.

Conference Year	Reports requested	Number	Percentage	Number	Percentage	Number	Percentage
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

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.

Conference Year	Reports requested	Number	Percentage	Number	Percentage	Number	Percentage
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.

Conference Year	Reports requested	Number	Percentage	Number	Percentage	Number	Percentage
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 now requested, according to certain criteria, at yearly, two-yearly or four-yearly intervals.

Conference Year	Reports requested	Number	Percentage	Number	Percentage	Number	Percentage
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

II. OBSERVATIONS AND INFORMATION CONCERNING THE APPLICATION OF CONVENTIONS IN NON-METROPOLITAN TERRITORIES (ARTICLES 22 AND 35 OF THE CONSTITUTION)

A. Information concerning Certain Territories

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

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

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

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

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[1] The list of the reports received is to be found in Part Two: IIB of the Report.

B. REPORTS ON RATIFIED CONVENTIONS (NON-METROPOLITAN TERRITORIES)

(Articles 22 and 35 of the Constitution)

Reports received as of 21 June 2001

The table published in the Report of the Committee of Experts, page 653, should be brought up to date in the following manner:

Note: Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.

Netherlands — **19 reports received: 48 requested**

Netherlands Antilles — **19 reports requested**

(Paragraph 198)

- All reports received: Conventions Nos. 11, 12, 14, 17, 22, 23, 25, 29, 42, 81, 87, 89, 90, 94, 95, 101, 105, 106, 122

United Kingdom — **50 reports received: 73 requested**

Anguilla — **11 reports requested**

- 3 reports received: Conventions Nos. 17, 87, 148
- 8 reports not received: Conventions Nos. 14, 22, 23, 29, 94, 97, 101, 140

Bermuda — **7 reports requested**

(Paragraph 198)

- 6 reports received: Conventions Nos. 22, 23, 82, 87, 94, 115
- 1 report not received: Convention No. 29

Falkland Islands (Malvinas) — **5 reports requested**

- All reports received: Conventions Nos. 14, 22, 23, 29, 87

Gibraltar — **6 reports requested**

(Paragraph 198)

- 5 reports received: Conventions Nos. 22, 23, 42, 87, 100
- 1 report not received: Convention No. 29

Guernsey — **10 reports requested**

(Paragraph 198)

- All reports received: Conventions Nos. 22, 24, 25, 29, 56, 87, 97, 114, 115, 122

Isle of Man — **11 reports requested**

- All reports received: Conventions Nos. 22, 23, 24, 25, 29, 56, 87, 97, 101, 122, (133)

Montserrat — **5 reports requested**

- 1 report received: Convention No. 29
- 4 reports not received: Conventions Nos. 14, 87, 95, 97

St. Helena — **3 reports requested**

- All reports received: Conventions Nos. 14, 29, 87

Grand Total

A total of 393 reports were requested, of which 300 reports (76.34 per cent) were received.

III. 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

The Employer members recalled that the competent authority to which the instruments adopted by the ILO would normally be submitted was the national Parliament. Submission was the first step to be taken by member States after the adoption of instruments. The only purpose of the act of submission to the competent authorities was to inform them of the contents of the relevant instruments. However, the obligation of governments to submit instruments to the competent authorities did not imply any obligation to propose the ratification or application of the instrument in question. This question was reserved for a subsequent examination of the instruments. With regard to the time limits for submission, they recalled that it had to be carried out within 12 months of the ending of the Conference which had adopted an instrument, or in exceptional cases within 18 months. However, they recognized that this deadline might be a little short for countries with very complex democratic structures involving a multiplicity of different bodies. Nevertheless, the ILO did not take action immediately following the elapse of the periods set out in the Constitution. Indeed, the countries whose cases were currently being examined by the Conference Committee were those which had failed to submit to the competent authorities the instruments adopted at least at the last seven sessions of the Conference. In conclusion, they emphasized the importance of member States complying with this important obligation.

The Worker members recalled that the obligation of submission constituted a fundamental element of the ILO standards system. It made it possible to strengthen the link between the ILO and national authorities, promote the ratification of Conventions and stimulate tripartite dialogue at the national level, as emphasized by the Conference Committee during the discussion of the General Survey last year. In its report, the Committee of Experts had indicated the nature and modalities of this obligation and had emphasized the fact that submission did not imply that governments had the obligation to propose the ratification of the Conventions concerned. The Worker members also expressed concern at the delay which had built up in certain countries and the difficulties which might well arise in resolving it. The Committee should urge governments to comply with this obligation and should recall that they could call on the technical assistance of the ILO.

A Government representative of Angola, referring to the comments of the Committee of Experts on the submission to the competent authorities of the instruments adopted by the Conference from the 80th to the 86th Sessions, indicated that Angola had submitted the instruments to the National Assembly as the competent authority with a view to complying with its legal requirements. Once this had been done, the corresponding communications would be sent. Moreover, he added that Angola had ratified the following three fundamental Conventions: Convention No. 87, Convention No. 138 and Convention No. 182. He indicated that the instruments of ratification had been deposited with the ILO. Therefore, Angola would soon have ratified the eight core Conventions of the ILO. He considered that prior to the Committee of Experts' next session, Angola would be in a position to fulfil the obligations in question.

A Government representative of Belize apologized for the fact that the instruments adopted at the last seven sessions of the Conference had not been submitted to the competent authorities in his country. This had primarily been due to the lack of staff, including the resignation of the ILO Desk Officer. He noted in this respect that his country had given priority to Convention No. 182, as requested by the Director-General, and had ratified the Convention. His country was now committed to working on outstanding submissions.

A Government representative of Bolivia, Minister of Labour and Small Business, regretted that his country had not complied with the commitments it had assumed. He indicated that the Ministry, which was responsible for social and labour issues, was taking the necessary measures at all the relevant levels to respond in an appropriate manner to the comments made. He expressed his country's wish to comply closely with the mandates of the Committee on the Application of Standards, the ILO Constitution and the Standing Orders of the Conference, and he personally undertook to speed up the procedures.

A Government representative of Bosnia and Herzegovina indicated that, in addition to the reasons stated previously, the long period of failure to submit reports to the competent authorities was due to the consequences of the war and the desperate economic and social situation of her country. She affirmed that her Government would do its utmost to remedy this situation as soon as possible.

A Government representative of Cambodia emphasized that his country had done its best to discharge its constitutional obligations relating to the submission of ILO instruments to the competent authorities. However, a delay had occurred in the submission of a number of instruments for several reasons. These included the two decades of war suffered by Cambodia, during which its infrastructure had been badly damaged. The country was now being restored and developed in all fields, including legislation. Great attention had been paid to drafting the labour law and implementing regulations, and to the application of international labour standards. With technical assistance from the ILO, the Labour Law of 1992 had been revised and a new one adopted in 1997. A number of decrees and regulations in the field of labour had been promulgated by the Council of Ministers and the Ministry of Labour. In 1999, Cambodia had ratified seven ILO Conventions, of which six were core Conventions. In July 2000, the Council of Ministers had issued a new decree in response to the comments of the Committee of Experts on the implementation of Convention No. 29. Moreover, earlier in 2001, the Council of Ministers had approved the draft Law on Social Security, which had then been submitted to the National Assembly for adoption. It had also been examining draft legislation on the establishment of a labour court.

With regard to the ILO's maritime instruments, he indicated that Cambodia's current labour law did not cover maritime workers. The Ministry of Public Works and Transport had therefore been entrusted with the task of submitting reports on all ILO maritime instruments to the Council of Ministers. In conclusion, he said that, despite the difficulties encountered, his country undertook to make every effort to meet the deadlines for submission, in so far as possible in view of the current situation in Cambodia.

A Government representative of Cameroon explained that, in response to questions raised last year, his Government had described the process of the modernization of its legal system, including a review of international labour standards. This process had evolved this year in stages. Firstly, with the assistance of the ILO and the MDT, a training seminar had been organized to improve the awareness of ILO standards in all the state structures involved in the process of the ratification of ILO instruments. Secondly, a commission had been established for the evaluation and review of texts, which, among other areas was responsible for preparing submission of standards to the National Assembly, which was the competent authority. The process had already achieved the ratification of ILO Convention No. 138 on 17 April 2001. The process of ratifying Convention No. 182 should be completed very soon. Any instruments which had not yet been submitted were also under review by the Commission, which should complete its work in the near future.

A Government representative of Congo recalled that his country had always fulfilled its obligations in relation to the ILO. However, the relevant period, namely from the 80th to the 86th Sessions of the Conference, had fallen between 1992 and 1998, when Congo had experienced several wars. It had therefore been difficult, or even impossible, to comply with any constitutional obligations dur-

ing this period of social and political instability, and particularly of institutional instability. Once this situation had ended, Congo had endeavoured to make up for lost time. Therefore, in 1999, it had submitted and ratified five Conventions, namely, Conventions Nos. 98, 100, 105, 111 and 138. Several other Conventions had been submitted and were in the process of ratification. It was not therefore a question of lack of will by the Government, but rather an accumulated delay in submission due to events. Several other Conventions would soon be submitted to the competent authorities. He indicated that the Government of Congo had taken note of the observations made by the Committee of Experts.

A Government representative of Madagascar informed the Committee that, in relation to the submission to the National Assembly of the instruments adopted at the 71st, 75th, 77th, 78th, 85th and 88th Sessions of the Conference, all of the appropriate measures had been taken by the Ministry of Labour with the technical assistance of the ILO. The Government was undertaking the same process for the instruments adopted at the 55th, 69th, 72nd, 74th, 76th, 80th, 81st, 82nd, 83rd, 84th, 86th and 87th Sessions. With regard to Convention No. 182, the Ministry of Labour had proposed its ratification. The consent of the competent authorities had been obtained through Law No. 2000-023 of 1 December 2000, which authorized its ratification. Decree No. 2001-103 formally ratified the Convention and had been issued by the President of the Republic on 5 February 2001. The instrument of ratification was presently being signed and would soon be sent to the Office. He noted that his Government was mindful of its constitutional obligations and that the Committee of Experts had expressed satisfaction and noted with interest the different measures taken by the Government with a view to ratifying Conventions. He also welcomed the ILO's standards-related policy and he hoped to continue receiving the ILO's technical assistance in order to submit the instruments adopted at the above sessions to the competent authorities. He thanked the Office for its readiness to provide assistance and indicated that the Government would inform it of the efforts made and of any difficulties that might be encountered.

A Government representative of Senegal emphasized that his country, which was very attached to human rights, had ratified the fundamental instruments relating to the protection and promotion of human rights. With regard to international labour standards, Senegal had ratified the core Conventions of the ILO and was implementing them. With regard to the failure to submit instruments, the last session of the Conference Committee had been informed that Senegal undertook to comply with its obligations concerning submissions. However, the obstacles which had hitherto rendered this process difficult had been described to the Committee. These mainly consisted of the many problems faced by the Ministry of Labour of a human, material and organizational nature. Despite the persistence of these problems, the Ministry had made every effort to bring up to date the submission of the reports required under ILO instruments adopted since 1992. It had completed those concerning the Conventions and Recommendations adopted at the 79th, 80th, 81st, 82nd, 83rd, 85th and 86th Sessions of the Conference. The opinion of the most representative employers' organizations and trade unions had been sought since 20 September 2000. The Conventions and Recommendations adopted at maritime sessions were presently under review. Convention No. 183 and Recommendation No. 191 on maternity protection had been analysed and the Ministry of Health and the Ministry of the Family and National Solidarity, as well as the Social Security Fund, had been consulted. Since April 2001, the question of the submission of the maternity protection instrument had been resolved. All proposals relating to the instruments submitted had been sent to the General Secretariat of Senegal, the sole institutional office empowered to submit them to the Council of Ministers for review. After their adoption by the Council of Ministers, the President of the Republic was responsible for submitting these instruments to Parliament. He emphasized that, as the Senegalese Parliament was currently dissolved, it would only be after the May 2001 legislative elections that a new National Assembly would be elected. All the submissions would therefore be carried out, in accordance with the commitments assumed, in the near future. He thanked the ILO on behalf of his Government for its support in the development and implementation of the labour legislation in Senegal.

A Government representative of the Syrian Arab Republic explained that the Constitution of the Syrian Arab Republic provided that the competent authority to which instruments adopted by the Conference were to be submitted was the executive authority in cases where the Convention had no financial implications for the general budget of the country. In such cases, an ordinary decree by the President was sufficient for the purposes of ratification. The legislative authority was considered to be the competent authority for the purposes of submission where ratification would have financial implications. He added that Conventions Nos. 123, 124, 129, 131 and 139 had been ratified by virtue of an ordinary decree and not by an Act. He emphasized that the above clarifications were important, since the competent authority could not be limited to the legislative authority for the purposes of submission, since its designation varied according to the Constitution of each and every country. With reference to the submission to the competent authorities of the Conventions adopted from the 80th to the 86th Sessions of the Conference, he indicated that all of the relevant instruments, in accordance with the constitutional provisions in his country, had been submitted by the Ministry to the Council of Ministers in accordance with the procedure to be followed for such instruments. The Conventions adopted at the 87th and 88th Sessions of the Conference had also been submitted to the competent authorities. In addition, Convention No. 138 had been submitted in May 2001 together with a draft decree proposing its ratification. Convention No. 182 had also been submitted with a proposal for its ratification. The Council of Ministers had agreed to the ratification of Convention No. 138, and the process of ratifying Convention No. 182 was well advanced and was before the competent authority. Although information on the submission of Conventions Nos. 138 and 182 and the proposals for their ratification had been sent to the Office in May 2001, this information had not reached the Committee of Experts in time for its session. The decrees for the ratification of Conventions Nos. 138 and 182 would be sent in the very near future to the Office after their approval by the Council of Ministers, together with information on all the Conventions which had also been referred to the Council. He therefore reaffirmed that no effort was spared in his country to comply with its commitments deriving from international labour standards in accordance with the constitutional provisions of his country. He hoped that these explanations had shed light on the situation in his country with regard to its compliance with the obligation to submit instruments adopted by the Conference to the competent authorities.

The Worker members stated that submission was a procedure which should not pose problems for a democratic country. ILO instruments had to be submitted to the competent authorities and the Worker members expected that obligation to be respected.

The Employer members recalled once again that the submission of the instruments adopted by the Conference was a constitutional obligation. However, it did not imply the ratification of the instruments concerned. Although, as in the case of the Syrian Arab Republic, the competent authority was not always the Parliament, the constitutional obligation was the same. As a subsequent step, it was then the ILO's task to determine whether the national authority indicated was in fact the competent authority. The Employer members recommended that the ILO should provide additional information on the nature and extent of the obligation of submission when transmitting instruments to member States. They recalled that the Governing Body's Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities was designed to clarify the issue.

The Committee noted the information supplied and explanations given by the Government representatives and by other speakers who took the floor. It also noted the specific difficulties encountered in complying with this obligation, mentioned by various speakers. Lastly, it took due note of the commitments made by several Government representatives to comply with their constitutional obligations to submit Conventions, Recommendations and Protocols to the competent authorities in the shortest possible time. The Committee expressed the firm hope that the countries mentioned, namely, Afghanistan, Angola, Armenia, Belize, Bolivia, Bosnia and Herzegovina, Cambodia, Cameroon, Central African Republic, Comoros, Congo, Dominica, Guinea-Bissau, Haiti, Kazakhstan, Kyrgyzstan, Madagascar, Saint Lucia, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Syrian Arab Republic and Uzbekistan would, in the near future, send in reports containing information relating to the submission of Conventions, Recommendations and Protocols to the competent authorities. Delays and failures to submit and the increase in the number of such cases were of great concern to the Committee because these were obligations emanating from the Constitution and were essential to the effectiveness of standard-setting activities. In this connection, the Committee reiterated that the ILO could provide technical assistance to help comply with this obligation. The Committee decided to mention all these cases in the appropriate section of its General Report.

(b) Information received

Honduras. The Government supplied the following information: On 31 May 2001, the Government submitted to the National Congress of the Republic all the Conventions adopted by the Conference between its 77th (June 1990) to its 85th (June 1997) Sessions.

Mali. The instruments adopted by the Conference at its 82nd (1995) and 83rd (1996) Sessions, and the Conventions and Recommendations adopted at its 84th Session (Maritime, 1996), were submitted to the National Assembly on 28 May 2001.

Seychelles. The Government has supplied the following information: The Cabinet approved in its meeting on 9 May 2001 the submission to the National Assembly of instruments adopted by the Conference from 1978 to 2000. These instruments were submitted for information to the National Assembly on 4 June 2001.

IV. REPORTS ON UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

(Article 19 of the Constitution)

(a) Failure to supply reports on unratified Conventions and on Recommendations for the past five years

The Worker members stated that article 19 of the ILO Constitution provided that member States must submit reports on unratified Conventions and Recommendations. These reports provided the basis for general surveys and gave insight into the obstacles faced by the member States in ratifying Conventions. These reports also made it possible to evaluate whether or not Conventions were still adapted to the economic and social situations. Some 18 countries had not complied with this obligation. The Worker members once again called on the governments concerned to fulfil their obligations under article 19 of the ILO Constitution.

The Employer members recalled the particular importance of the obligation to supply reports under article 19 of the ILO Constitution. These reports provided a basis for obtaining an overview on a particular subject irrespective of whether or not the State had ratified the instrument covered by the General Survey. These reports were particularly important for the examination of Conventions which had not received many ratifications. Possible obstacles to ratification could be identified, as well as the issue of whether and to what extent a Convention was in need of revision. In the case of this year's General Survey on the instruments covering the night work of women, which had received a relatively low number of ratifications, the number of reports requested had been high. The 21 countries mentioned by the Committee of Experts were those which had not, for the past five years, provided the reports on unratified Conventions and on Recommendations requested under article 19 of the Constitution. The situation was to be deplored and should be indicated in an appropriate section of the general part of the Conference Committee's report.

A Government representative of Bosnia and Herzegovina requested that the Committee refer to her previous statements.

A Government representative of Liberia indicated that the matter had already been submitted to the national legislative body in his country and was awaiting a decision by the Senate. The Office would be informed when the process was completed.

A Government representative of Nigeria recalled that before the advent of the democratically elected Government in his country, the previous administration had not favoured dialogue with trade unions. Since the establishment of democratic structures, the National Labour Advisory Council had started operating again. He recalled that the process of ratifying Conventions Nos. 111, 138 and 182 was under way.

The Employer members, referring to the explanations provided by the Government representatives, expressed the belief that some governments had not properly understood their obligations under article 19 of the Constitution. This obligation bore no relation to the question of the possible ratification of the instruments on which such reports were submitted. They therefore called upon the ILO to provide clear information to countries concerning this obligation. Based on the precept of *repetitio es mater cenciae*, they hoped that constant repetition would lead to a better understanding of the obligation in question.

The Worker members stated that statements made by the various governments had not contributed any new elements concerning the reasons for failure to supply reports on unratified Conventions and Recommendations. The Conference Committee must urge governments to fully respect this obligation deriving from the ILO Constitution in order to make it possible for the Committee of Experts to prepare complete general surveys.

The Committee noted the information supplied and explanations supplied by Government representatives and other speakers. The Committee emphasized the importance it attached to the constitutional obligation to send reports on unratified Conventions, Recommendations and Protocols. In fact, these reports made possible a better evaluation of the situation within the context of the general surveys of the Committee of Experts. The Committee insisted that all member States should fulfil their obligations in this respect and expressed the firm hope that the Governments of Afghanistan, Bosnia and Herzegovina, Equatorial Guinea, Fiji, Georgia, Grenada, Guinea, Lao People's Democratic Republic, Liberia, Nigeria, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Solomon Islands, The former Yugoslav Republic of Macedonia, Turkmenistan and Uzbekistan would fulfil their obligations under article 19 of the Constitution in the future. The Committee decided to mention these cases in the appropriate section of its General Report.

(b) Reports received on unratified Conventions Nos. 4, 41 and 89 and Protocol of 1990 as of 21 June 2001

In addition to the reports listed in Appendix I on page 145 of the Report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following countries: Cape Verde, Libyan Arab Jamahiriya.

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