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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 respect for the obligation to supply reports was a key element of the supervisory system of the ILO. The information contained in the reports had to be as detailed as possible. The changes brought about in the reporting procedure in recent years with a view to simplifying the task of the governments, were starting to have an impact. There remained, however, eleven countries included in the list of countries that had not fulfilled their obligation to supply reports. These countries had an unjustified advantage to the extent that the absence of the report made it impossible for the Committee to examine their national law and practice with regard to ratified Conventions. Thus, the Committee had to insist that these States took the necessary measures to respect this obligation in the future.

The Employer members emphasized with regard to member States' failure to supply reports on the application of ratified Conventions for the past two years or more, that the reporting obligation was at the heart of the supervisory system. The number of member States that did not comply with this obligation was increasing. According to the report of the Committee of Experts, 32 States had not supplied reports on the application of ratified Conventions. Even though in the meantime some of the reports due had been transmitted to the ILO, the late arrival of these reports disturbed the normal functioning of the supervisory system. It was crucial that member States submit their reports according to the deadlines set. The Employer members further recalled that the member States enumerated in paragraph 90 of the Committee of Experts' report were those that had not fulfilled their reporting obligations for more than two years. This was a regrettable situation and the member States concerned would have to give substantive explanations in this respect.

A Government representative of Denmark stated that her government deeply regretted that the ILO had not received reports from the Faeroe Islands and that there had been no change in the situation since the case had been brought up in the last session of this Committee. She had to repeat the information that her predecessor had provided to the Committee then, namely that the Faeroe Islands had complete autonomy in the area of social policy. The Government of Denmark could not intervene, nor could it submit the reports for the Faeroe Islands and it was powerless in this respect. However, the Government had continuously been urging and would continue to urge the Faeroe Islands to comply with their reporting obligations and to provide the requested reports. The Government would in the near future again contact the relevant Faeroe Island authorities and this time inquire whether technical assistance from the ILO could be helpful in the process of fulfilling the reporting obligations. She hoped to be able to give this Committee some more positive information at the next session of the Conference in 2003.

The Employer members stated that very little information had been provided by the governments listed in this paragraph of the report of the Committee of Experts. There might be specific problems for member States to comply with their reporting obligations, in particular regarding the manner in which the reports had to be drafted. While this was understandable, the Employer members recalled that it was always possible for member States to request technical assistance of the ILO to overcome this obstacle. The request could be addressed, for example, to the Regional Offices of the ILO. The member States, for their part, had to establish the necessary infrastructure to ensure the availability of staff which drafted the reports.

The Worker members observed that only one country had replied among those invited to provide reasons for the failure to comply with their reporting obligations; the other countries were either absent or non-accredited to the Conference. It was important in this respect to note the commitment made by Denmark. The Committee should continue to insist that member States take all measures in order to respect this obligation. The need to reinforce the supervisory system remained theoretical if governments did not respect the obligation to supply reports on ratified Conventions. Governments should be reminded that they could ask the ILO for technical assistance.

The Committee recalled the fundamental importance of supplying reports on the application of ratified Conventions and of doing this within the prescribed time limits. This obligation constituted the very foundation of the supervisory mechanism. The Committee expressed the firm hope that the Governments of Afghanistan, Armenia, Denmark (Faeroe Islands), Equitorial Guinea, Kyrgyzstan, Sao Tome and Principe, Sierra Leone, Solomon Islands, the former Yugoslav Republic of Macedonia, Turkmenistan and Uzbekistan, who until now had not yet supplied a report on the application of ratified Conventions, would do this as soon as possible. The Committee 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 emphasized the importance of first reports after ratification. They pointed out that first reports were the basis for the assessment of the implementation of Conventions. Unless first reports were supplied, it was difficult for the Committee of Experts to ascertain that there was compliance with the requirements of Conventions. They found it difficult to understand such failure after governments had decided to ratify Conventions. They expressed their concern about the growing number of reports outstanding and indicated that part of the reason could be traced to the increased number of ratifications. They underlined the fact that some of these failures went as far back as 1992, 1995 and 1996. The importance of first reports had become even greater in view of the change introduced of not requesting detailed second first reports. They wanted to hear the explanations that the governments concerned would give in this regard.

Following the Employer members, **the Worker members** emphasized that first reports on the application of ratified Conventions were of particular importance since they provided the basis upon which the Committee of Experts could proceed with the first evaluation of the application of the Convention by the ratifying State. Furthermore, these first reports allowed the avoidance of errors of interpretation on the application of Conventions. Sending first reports constituted an indispensable part of the supervisory system. The 11 member States cited should be requested to make a special effort to fulfil their obligation to provide first reports on the application of ratified Conventions.

A Government representative of Ireland stated that Ireland very much regretted missing the deadline for its first report on the Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), which it had ratified in 1998. The information necessary to ensure the completion of the report was being collected. He assured the Committee that the report would be submitted in the very near future.

The Employer members regretted that only the Government of Ireland gave the requested explanations. They hoped that the other Governments concerned would read the relevant paragraphs of the Committee's report and send the requested reports which were important for the functioning of the supervisory machinery.

The Worker members stated that only one country had provided information concerning its failure to supply a first report. Often the same reasons were invoked to justify these failures. It was unacceptable that some first reports were due since 1992. This was a serious matter, and if a government was faced with particular difficulties it should inform the Office as soon as possible in order to obtain the necessary assistance. The Office should be in contact with each member State concerned, in order to determine the reasons why the required information was not communicated.

A representative of the Secretary-General pointed to information concerning the first report on the Indigenous and Tribal Peoples Convention, 1989 (No. 169) presented earlier to the Committee by a Government representative of Fiji.

The Committee noted the information and explanations provided by the Government representative. It recalled the crucial importance of submitting first reports on the application of ratified Conventions. The Committee decided to mention the following cases in the appropriate section of the General Report: since 1992, Liberia (Convention No. 133); since 1995, Armenia (C.111), Kyrgyzstan (Convention No. 133); since 1996, Armenia (Conventions Nos. 100, 122, 135 and 151), Grenada (Convention No. 100), Uzbekistan (C. 47, 92, 103, 122); since 1998, Equatorial Guinea (Conventions Nos. 68 and 92), Mongolia (Convention No. 135), Uzbekistan (Conventions Nos. 29 and 100); since 1999, Uzbekistan (Conventions Nos. 98, 105, 111, 135 and 154), Turkmenistan (Conventions Nos. 29, 87, 98, 100, 105 and 111); and since 2000, Chad (Convention No. 151), Fiji (Conventions Nos. 144 and 169), Ireland (Convention No. 172), Mongolia (Conventions Nos. 144, 155 and 159).

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

The Worker members emphasized that the failure to supply information or their delayed supply hampered the work of the Conference Committee as well as that of the Committee of Experts. The comments formulated by the latter had to be taken seriously and countries had to fulfil this obligation.

The Employer members stated that the list of governments failing to supply information in reply to comments made by the Committee of Experts was long. Also certain reports received were not complete or did not provide clear answers to the requests of the Committee of Experts. It was essential to send full information that would permit an objective assessment of the facts by the Committee of Experts.

A Government representative of Algeria indicated that his Government had furnished a written response which included a certain number of reports due. Certain reports involving the intervention of several sectors were in the process of being finalized and would reach the Office very shortly. On this occasion, the Government of Algeria reiterated its commitment to fulfil all its obligations within the time limits allowed.

A Government representative of Costa Rica stated that, contrary to the indications in the report of the Committee of Experts, his Government had submitted reports on Conventions Nos. 81, 95 and 102 by a communication of 12 November 2001. He was surprised that his country was referred to in connection with Convention No. 81, while his Government had appeared on the list of cases where the Committee had noted, with interest, various measures taken (paragraph 113 of the report). This was an indication of the efforts of his Government to guarantee the conformity of national legislation and practice with this Convention. With respect to Convention No. 94, he indicated that his Government's report, which would be sent to the Office on 1 September at the latest, would cover it. The present Government assumed the exercise of its functions on 8 May of this year and until recently it was unaware of the omission indicated by the Committee. The competent authority would submit, within the prescribed time limit, the respective report, as well as the relevant information in response to the comments of the Committee of Experts. He underlined that all the reports which were due this year were the object of consultation with the competent authorities. With respect to Convention No. 95, the Government undertook to submit the detailed report due within the prescribed time limit this year, along with the relevant information in response to the comments of the Committee. With respect to Convention No. 102, he indicated that they had prepared the response to the comments of the Confederation of Workers Rerum Novarum, which had raised questions related to the application of this Convention, and the response to the comments of the Committee of Experts. He expressed the unequivocal desire of his Government to take into account the comments of the Committee of Experts, in accordance with the fundamental principles of the ILO.

A Government representative of Côte d'Ivoire mentioned that for two years his country had been facing events which had disrupted the functioning of institutions and structures of various administrative authorities. The information requested by Committee of Experts would be provided as soon as the delegation returned to Côte d'Ivoire.

A Government representative of Denmark stated that the situation was regrettably the same as for the question of failure to supply reports for the past two years. The explanations provided by her earlier also applied to the failure to supply information in reply to comments made by the Committee of Experts, including the need for the possibility of any technical assistance that may be given in this regard.

A Government representative of Ethiopia expressed his appreciation for the work of the Committee. He recalled that his Government was engaged in an extensive process of amending the labour laws. This process had demanded most of the country's manpower resources and thus it was not possible for it to meet the due date for the reports. He asked for the understanding of the Committee in this regard and assured it that his Government's reports would be supplied in due course.

A Government member of France had reaffirmed the willingness of his country to fulfil its obligations. France had made two decisions: to ratify a large number of Conventions and to apply most of them to its non-metropolitan territories in conformity with article 35 of the Constitution of the ILO. As a result, France had the absolute record of the number of reports due. The administrative workload implied by the dialogue with the Committee of Experts was important and required the involvement of numerous participants in France and in non-metropolitan territories, and posed certain problems of coordination. These administrative delays should not be considered as an attempt to hide things or interfere with the dialogue with the Committee of Experts. The respective services would be urged to permit the dialogue to continue.

A Government member of Guatemala stressed again the importance of sending reports and replies to the comments of the Committee of Experts. The supervision of the application of standards was in fact the cornerstone of the activities of the ILO aimed at guaranteeing the application of the rights of workers and employers and at social development. Her country had ratified 72 Conventions which underlined the significant work and the great effort made by her Government in order to fulfil the obligations resulting from the ratification of these instruments. In the process of its recent restructuring, the Ministry of Labour, the body responsible for drafting reports on the Conventions, had requested the technical cooperation of the Office. It is expected to be able to provide, in the near future, all information requested by the Committee of Experts.

A Government representative of Iraq recalled that, during the general discussion, he had explained the position of Iraq concerning periodic reports on the implementation of Conventions. He also recalled that this focused on paragraph 101 of the general part of the Committee's report as well as paragraph 141 of the General Survey. He informed the Committee that he was presenting reports on Conventions Nos. 13, 98, 105, 111 and 118. He explained that the reason for the delay was the deteriorating economic and social situation in the country resulting from the economic blockade imposed by the international community. He hoped the Committee will take into consideration these difficulties and expressed his trust that his Government would be supplying reports on time in the future.

A Government representative of Nigeria stated that the main reasons for his Government's difficulties in respect to supplying information in reply to comments of the Committee of Experts were the complexity of the forms and the problems of capacity building in his country. This was applicable to the problems enumerated in paragraph 101 and paragraph 141 of the report of the Committee. He indicated that the Office had sent a standards specialist in November 2001 and two members of the Ministry of Labour had participated in the ILO seminar on international labour standards just before the Conference this year. With this help from the ILO he assured the Committee that the Government of Nigeria would bring its reporting obligation up to date.

A Government member of Paraguay indicated that he provided replies in respect of Conventions Nos. 87, 98, 123 and 105, and that he would submit the respective reports to the Office. Regarding Conventions Nos. 60, 81 and 111, he indicated that he would be providing information shortly. The new Ministry of Labour had recent-

ly become operational. He indicated that the current delays would not continue.

A Government representative of the Netherlands deeply regretted that year after year the Netherlands were called upon to explain the reasons for the failure by Aruba to supply information in reply to comments made by the Committee of Experts. They were fully aware that reporting was at the root of the supervisory system of the ILO and that the Committee of Experts could do its work only if all States reported on a timely basis. She recalled the constitutional situation in respect to reporting in the Kingdom of the Netherlands with regard to Aruba. The Kingdom was divided into three equal parts, namely a European part and two separate Caribbean parts, Aruba and the Netherlands Antilles. According to the Charter, the highest Constitution in the Kingdom, each country was autonomous with respect to fulfilling its constitutional obligations. Thus, Aruba and the Netherlands Antilles were fully responsible for fulfilling their reporting obligations. The European part of the Kingdom could not do much to affect the situation. Its role was to request Aruba to fulfil these obligations and it had done so on several occasions. She regretted that there had not been any positive result in this respect. Her Government was exploring the feasibility of a project to provide Aruba with technical assistance and her Government hoped the ILO Caribbean Office could be involved in these efforts to enable Aruba to fulfil its reporting obligations in the foreseeable future.

A Government representative of the Democratic Republic of Congo indicated that the reports due under articles 19 and 22 of the Constitution of the ILO had been drafted and would be delivered to the secretariat of this Committee. While this delay was regrettable, however, the Democratic Republic of Congo had made an effort to fulfil its constitutional obligations and in particular to respond to the comments formulated by the Committee of Experts, despite its difficulties. In this respect, it was appropriate to express gratitude to the Office for its technical assistance which was provided to the Democratic Republic of Congo by means of a seminar of practical training in international labour standards organized last May.

A Government representative of Slovakia indicated that the Office had requested 27 reports from the Slovak Republic out of which 14 had been supplied while 13 reports had not been supplied. With respect to replies not supplied to the comments of the Committee of Experts, this was due to the significant reform of labour laws and laws on social insurance made during the years 2001 and 2002. The new Labour Code and the Act on Social Insurance and other important legal regulations relating to the Conventions concerned had been adopted. Reports for Conventions Nos. 19, 90, 122, 124, 128, 130 and 159 had been elaborated but they had not reflected the updated legislation. After consultations with the relevant authorities and the social partners, the Ministry of Labour, Social Affairs and the Family, had decided to redo the reports in question in order to take account of the new legislation. The changed reports would be sent to the Office during July and August of this year.

A Government representative of Swaziland acknowledged the failure to supply some of the information requested. He attributed the problem to the heavy demands on his office and to the need to collect a significant amount of information from other government bodies and the difficulties encountered in collecting them. He promised that the necessary pressure would be put on those bodies to supply the information required. About half of the needed reports forms were not available and the Office's assistance would be requested in this regard. Some reports had been prepared even though time limits for supplying them had passed. He stated that the reports under preparation would be sent to the Office shortly.

A Government representative of the United Republic of Tanzania stated that the United Republic of Tanzania had noted with respect the concerns of the Committee of Experts as regards the comments concerning Conventions Nos. 94, 137, 144 and 149. She promised that her delegation would submit the required replies as soon as possible. Most of the labour laws in her country were outdated and the mainland of the United Republic of Tanzania was currently in the process of reviewing them. Zanzibar was also following, and a request for assistance in this respect had been submitted to the ILO. She hoped the requested assistance would be provided.

The Worker members observed that out of 34 States which had been cited, only 14 had provided explanations. The same arguments were always put forward to explain the reasons why governments had not replied to the comments of the Committee of Experts, namely, situations of crisis or conflict, administrative instability or structural reforms. Many governments did not give reasons for this failure, despite the opportunity offered to them. Taking into account the importance of the obligation to supply reports, it was necessary to insist that governments take all necessary measures in order to respond to the comments of the Committee of Experts within the time limits set. In addition, certain countries that did not fulfil their obligations had or should have at their disposal, the necessary technical capacities and should strengthen their labour administration systems to this end.

The Employer members fully supported the conclusions drawn by the Worker members following the explanations given by some governments. They had essentially heard promises by the governments to correct the shortcomings in meeting their reporting obligations occurring in the past. The Employer members hoped that these promises would also refer to future behaviour of governments. Referring to the statement of the Government of Iraq evoking the general political situation in his country, the Employer members stressed that these indications were of no relevance to the present discussions.

The Committee took note of the information and explanations given by the government representatives who appeared before it. It insisted on the vital importance, for the continuation of dialogue, of the communication of clear and full information in reply to the comments of the Committee of Experts. It recalled that this was part of the constitutional obligation to supply reports. In this respect, it expressed its deep concern over the very high number of cases of failure to supply information in response to the comments of the Committee of Experts. It recalled that governments could ask the ILO for assistance in order to overcome any difficulties they might face. The Committee urged the governments concerned, namely, Afghanistan, Algeria, Bolivia, Costa Rica, Côte d'Ivoire, Denmark (Faeroe Islands), Dominica, Equatorial Guinea, Ethiopia, Fiji, France (French Guyana, Guadeloupe, New Caledonia, Réunion), Gabon, Grenada, Guatemala, Guinea, Haiti, Kyrgyzstan, Lao People's Democratic Republic, Liberia, Mongolia, Nepal, Netherlands (Aruba), Nigeria, Paraguay, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Swaziland, Tajikistan, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Uganda, to do everything in order to provide the requested information as soon as possible. The Committee decided to mention these cases in the appropriate section of the General Report.

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

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

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

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

Belize. Since the meeting of the Committee of Experts, the Government has sent replies to all of the Committee's comments, as well as the first report on Convention No. 14.

Bosnia and Herzegovina. Since the meeting of the Committee of Experts, the Government has sent some of the reports due concerning the application of ratified Conventions, as well as replies to most of the Committee's comments.

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

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

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

United Republic of Tanzania (Zanzibar). Since the meeting of the Committee of Experts, the Government has sent most of the reports due concerning the application of ratified Conventions.

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

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

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

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

Convention No. 29: Forced Labour, 1930

Côte d'Ivoire (ratification 1960). **A Government representative** indicated that in response to the request of the Committee of Experts to furnish information on the application of Convention No. 29 on forced labour, he would address, on the one hand, the question concerning the hiring out of prison labour to individuals and on the other, the question of trafficking and exploitation of children.

On the first question, the Government representative indicated that articles 24, 77, 81 and 82 of Decree No. 69-189 of 14 May 1969 regulating prisons and stipulating the conditions in which penalties are served actually provided for the hiring out of prison labour to individuals but that the texts were not applied in practice. However, he recognized the pressing need to modify the texts with a view to bring them into conformity with Convention No. 29, ratified by Côte d'Ivoire since its independence in 1960. His Government was also very committed to bringing legislation into conformity with the constitutional provisions prohibiting forced labour. The speaker assured the Committee of the Government's intention to proceed shortly on the required modifications. Since the previous session of the Conference, several working sessions between specialists of the Ministry of Justice and Civil Liberties and those of the Ministry of Labour have contributed to progress in the issue. A draft amendment was being formulated which provided that all hiring of prison labour was to be subject to the consent of the prisoners and to the signing of a labour contract between the concessionary and the prisoner concerned. Problems of coordination have made it impossible for the experts to finalize the draft for its adoption by the Council of Ministers before the present session of the Conference, but it will be communicated to the Commission of Experts as soon as possible.

On the second question (trafficking and exploitation of children), the Government of Côte d'Ivoire had been invited to take the appropriate measures to penalize those responsible for the trafficking of persons for purposes of exploitation, to communicate information on the number of court proceedings brought against those responsible and the sentences imposed, to supply a copy of the Code on the Rights of the Child, to report on the application of the agreement between Mali and Côte d'Ivoire and to supply copies of Act No. 88-686, the new Criminal Code and the Code on Criminal Proceedings. The Government undertook to communicate very shortly this information – which had not been previously available – to the Committee of Experts, and to explain the measures taken by the Government with a view to penalizing those responsible for the trafficking in persons. The allegations concerning migrant workers and in particular those concerning children forced to work on plantations against their will and sometimes even sold to plantations owners were exaggerated. As soon as such allegations were brought against the Government of Côte d'Ivoire, it authorized various bodies of the international media to visit every place in the country in order to carry out their investigations, in a free manner, and to collect reliable and objective data on the exploitation of children in cocoa plantations. At the end of these investigations, no evidence was submitted that children had been in a situation of slavery or had been sold in these plantations.

On the question of trafficking and the exploitation of children, no quantitative survey carried out or supervised by an international organization was currently available. The Government of Côte d'Ivoire is a member of the IPEC programme and is awaiting the assistance of the Office to carry out this survey because it cannot effectively combat this curse without knowing its magnitude. Meanwhile, Côte d'Ivoire, in collaboration with the United States Agency for International Development (USAID) and the International Institute for Tropical Agricultural Development (IITA), based in Ibadan in Nigeria, and the American Chocolate Manufacturers Association, commissioned a study of 2,000 agricultural enterprises in order to have a precise idea of the exploitation of children and child victims of trafficking. This study, of which the results were expected by the end of June 2002, constituted today the only serious and reliable study on the issue.

In its search for solutions to the problem of trafficking and the exploitation of children, the Government, by a decree of 25 July 2001, created a National Committee to Combat the Trafficking and Exploitation of Children. This Committee chaired by the Ministry of Family, Women and Children included representatives of public administration and civil society and was presently developing, with the assistance of UNICEF, a national plan of action to combat trafficking and the exploitation of children. Trafficking of children was a new phenomenon and the Criminal Code did not specifically deal with its repression. However, the courts had sentenced traffickers on the basis of articles 370 and 371 of the Criminal Code under which one of the modalities of trafficking in children, namely the kidnapping of minors, is punishable with imprisonment of five to ten years. The Government developed a specific bill on the trafficking and exploitation of children, which was currently submitted for approval to Parliament. The bill define a child as being any person below 18 years of age; it would oblige the State and the local authorities to ensure the protection of all children against trafficking and against all forms of exploitation without distinction based on sex, religion, nationality, ethnicity, opinion, social status or any other situation of the child. It provided, in the case of child trafficking, for imprisonment of five to ten years and a fine of 100,000 to 10,000,000 CFA. The penalty would be ten to 20 years of imprisonment if the victim was less than 15 years of age. The bill also provided that care shall be provided by the State to child victims of trafficking with respect to their board and lodging, their health care, psychological assistance, rehabilitation and social reintegration and, where appropriate, their repatriation; it had an undeniable social component. The repatriation of child victims of trafficking was not systematic. The State had the responsibility to ensure the moral, physical and psychological re-adaptation of the children before proceeding with repatriation, if necessary.

Within the context of its national and international fight against trafficking and the exploitation of children, the Government of Côte d'Ivoire ratified the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182). It has not remained inactive in the face of the phenomenon of trafficking and the exploitation of children. For the last two years, it had been undertaking a high-level awareness campaign at the national and subregional levels. For this purpose, various national and international seminars and forums had been organized with the support and the collaboration of international organizations such as the ILO, UNDP, the Friedrich Ebert Foundation and INTERPOL.

The political will, expressed several times by the Government, was that children belonged in school and not at work. It considered the trafficking and exploitation of children to be an act detrimental to human dignity and an odious crime against the most vulnerable persons of society and, therefore, against the future of the country. Côte d'Ivoire suffered from the continuous scrutiny of an issue that touched its credibility and on which it had proven on several occasions its political good will. Moreover, the farmers from Côte d'Ivoire suffered from this denigrating campaign that aimed at labelling the cocoa from Côte d'Ivoire as being the result of slave labour of children. In effect, this negative campaign undertaken with the intention to boycott the principal export product, which was cocoa, damaged an economy already fragile due to the uncertainty of the global market and it contributed to the deprivation of all means of subsistence causing the dangerous impoverishment of millions of agricultural workers, notably these farmers (both Ivoirian and foreigners) wrongly labelled as slave drivers.

The bill on the suppression of child trafficking and a proposed national plan of action to combat the trafficking of children illustrated the good will of the Government. The trafficking of children for labour purposes was a very complex social phenomenon and a long-term multisector battle. However, all the evoked measures would be insufficient if there was not at the same time an effective fight against poverty, not only in Côte d'Ivoire but also in other countries in the subregion. It was this other fight against poverty which needed the support of the international community and which was being undertaken by the Government of Côte d'Ivoire.

The Worker members recalled that the Committee of Experts had been concluding for the past 30 years that the legislation enacted in 1969 which provides for the hiring out to private persons of prison labour is incompatible with Convention No. 29 and must be amended. They stressed again that they fully concurred with the detailed observations of the Committee of Experts. The Worker members noted that the Government had still not completed even draft amendments to the decree in question. If the Government wished to demonstrate its good faith in this matter, it should proceed with the necessary amendments to the legislation as a matter of urgency and seek technical assistance from the Office, if needed.

The Worker members expressed deep concern about the slow rate of progress being made concerning the trafficking and enslavement of children brought particularly from Mali and Burkina Faso,

to perform forced labour in the agricultural and mining sectors, and as domestic servants. But they appreciated the Government's willingness to accept both the existence of the problem and international assistance to address it, and urged the Conference Committee to acknowledge this first step. Nonetheless, the Government tended to blame the citizens of neighbouring states for the problem of trafficking in children. There was no doubt that all states in the region share a common responsibility, and to this end, the Worker members welcomed the bilateral agreement of September 2001 between the Governments of Mali and Cote d'Ivoire to combat cross-border child trafficking. But the Government was responsible for the law and practice within its own borders, not just for combating and punishing trafficking in children, but also for combating the exaction of forced labour by its citizens.

There was no doubt that the nature of the employment relationship in which these children found themselves was to be defined as forced labour under the terms of the Convention. Moreover, the nature of the work and the circumstances in which it was carried out were clearly incompatible with the requirements of the Worst Forms of Child Labour Convention, 1999 (No. 182) and, in several respects, with the Minimum Age Convention, 1973 (No. 138), and with national law itself. They welcomed the Government's ratification of these two Conventions, but referred to the disturbing conditions of the 1,150 children working in the Issia gold mine and Tortiya diamond mine and urged the Government to address this suffering as a matter of urgency.

The Worker members recalled the particular risks of physical and emotional deprivation and exposure to sexual abuse that female child labourers faced in performing hidden work such as domestic service, child prostitution and commercial sexual exploitation. Conventions Nos. 29 and 182 both required that such practices be identified as a high priority.

Concerning trafficking of children for cocoa production, the Worker members noted that the 500,000 small farmsteads in Cote d'Ivoire produced most of the world's cocoa. This was not a new problem, but deregulation of the cocoa market, under pressure from the IMF, had likely aggravated it. The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) had been actively engaging industry, in particular the American Chocolate Manufacturers Association and the Biscuit, Chocolate, Cake Confectionary Alliance of the United Kingdom, in a process which will culminate in July 2002 in the establishment of a joint foundation to eliminate the worst forms of child labour in the cocoa industry. The Worker members invited the Government to participate in the joint foundation project.

The Worker members stressed that there was still a need for a clear picture of the extent of the problem. A survey had been commissioned, but the methodology of the report was flawed, despite the efforts of IPEC to train personnel in inspection and survey methods to ensure reliable results. For example, the organization that had carried out the survey interviewed employers in each of the 1,500 farms surveyed, but only spoke with a total of 47 adult and 17 child workers, all of whom were paid and not forced labourers. They pointed out that open responses were more likely to be elicited when the inspection teams included local trade union officials, including women, who could communicate more directly with the workers. Furthermore, they noted that such flawed methodology was not surprising given that commercial social auditors generally lack the specialized skills and training of labour inspectors. The Worker members, with the support of several governments, again called for an integrated approach to corporate social responsibility, including the development of internationally agreed benchmarks for social auditors in order to ensure quality monitoring.

In conclusion, the Worker members welcomed the fact that the Government recognized the problem and agreed to an investigation, and welcomed the commitment of the social partners to deal effectively with the problem. They also welcomed the participation of IPEC in providing survey methodology, and regretted that the ILO's possible contribution had not been given more consideration in the survey already carried out. A follow-up survey was needed. It should be carried out during the harvest when forced labour abuse is most prevalent, should avoid the methodological flaws of the first survey, and should include trade unions in the inspection teams. Furthermore, the Government should demonstrate its commitment by cooperating fully with the follow-up survey, and by acting to protect both in law and practice all those within its borders, in conformity with the Convention. Citing the final part of the Committee of Experts' observation, the Worker members stressed that it was not enough "to take the necessary action to sanction those responsible for people trafficking for exploitation," but there also was a need to punish those who exact forced labour, whether trafficked or not. Recalling that the new Constitution of 2000 prohibited forced labour as an offence punishable in law, the Worker members urged the Government to ensure that practice complied with the Convention. In closing, the Worker members took due note of the commitments made by the Government and awaited their implementation.

The Employer members stated that this case contained two issues. The first referred to Decree No. 69-189 of 1969 that had been criticized by the Committee of Experts since 1972 for providing that prisoners could be hired out to private individuals. The Employer members noted that the Government's draft amendment did not yet fulfil its legal obligations. However, in light of the Constitution adopted in 2000, the Government was undertaking a review of many laws to see if they were consistent with the Government's human rights obligations. The Government thus appeared to be complying with the request of the Committee of Experts in this respect.

In its report for 2002, the Committee of Experts included a six-page general observation for Convention No. 29 which arbitrarily included comments made by the Employer members last year during the Conference Committee but ignored their core point: in order for a prisoner to complete his or her sentence with dignity, meaningful work was needed, in particular, for those serving long sentences. States were increasingly unable to provide meaningful work due to increased privatization of production, so only cooperative arrangements between the state and the private sector would provide such meaningful work. The Committee of Experts demanded that such an arrangement be voluntary, and that it approximate the working conditions found in more general private sector working relationships. However, the state had the right to demand that prisoners work. Furthermore, employing prisoners under conditions of work generally prevailing in the private sector was not feasible because enterprises were not free to select workers, which posed a risk to their investment and resulted in lower productivity than that in free employment relationships. Therefore, wages must be lower than in the general labour market. Consequently, two alternatives existed: either prisoners are given access only to less meaningful employment, with catastrophic consequences for those detained long-term; or states are allowed to work with private enterprises without requiring that the work be done voluntarily and under general labour market conditions. The Government had to provide minimum standards governing the conditions of prison labour. The Employer members urged the Committee of Experts to review its interpretation of the Convention since at the time of its adoption this question had no relevance at all. But even if the existing interpretation were accepted, it would be more reasonable to limit it. The Committee of Experts' existing theoretical interpretation had a negative impact on prisoners, whose performance of meaningful work constituted an important element for their later reintegration into society.

Coming back to the case of Côte d'Ivoire, the Employer members stated that this was a very serious case, because the issue concerned a big part of the population and in particular children who suffered from forced labour practices in the country. They noted the Government's indication that in Côte d'Ivoire, undertakings were small and used family labour and sometimes immigrants from neighbouring countries. These workers had ultimately established their own undertakings and had brought from their countries relatives and children whom they declared to be family, which had aggravated the practice of using child labour in the country, as well as the free circulation of goods and persons in the framework of ECOWAS. Moreover, Côte d'Ivoire was a country of high immigration. The Employer members further noted the bilateral cooperation agreement the country had signed with Mali to combat these scandalous and inhuman practices. The Employer members welcomed the Government's attitude vis-à-vis this problem, which it did not understate at all. However, the Government was apparently unable to resolve the problem on its own. Therefore, the Employer members considered the statement of the Government representative as an urgent appeal to the international community. Child labour was always linked to poverty in the country. In this light, they associated themselves with the Worker members who referred in their statement to the possible options to provide help and assistance to Côte d'Ivoire. Nevertheless some doubts remained whether the Government had taken sufficient measures in this regard. Therefore, the Government should be requested to do its utmost to remedy the deplorable situation of child labour in its country.

The Worker member of Côte d'Ivoire drew attention to the practice of hiring out of prison labour, which unfortunately had not changed during 30 years. In effect, Decree No. 69-189 of 14 May 1969, made under sections 680 and 683 of the Criminal Procedure Code, was still in force. This situation constituted a flagrant violation of Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of Convention No. 29. The hiring out of prison labour outside a legal framework was common in poor countries where a prison guard had work done on his own account by prisoners and retained part of the remuneration. This practice, which betrayed a profund con-

tempt for the individual, also excluded any prospect for reinsertion of prisoners into society through work. Concerning the situation of forced labour in which children of migrants are found, it should again be noted that these practices concerned small-scale family exploitations which frequently involved the children's own parents who had come from Burkino Faso and Mali, and it could not be said that concrete measures had really been taken in the sense suggested by the Committee of Experts to put an end to these practices. It is true that the long and permeable borders rendered controls uncertain. Furthermore, these controls, which had proven to be extremely random, were not sufficient in themselves but needed to be combined with a harmonization of the legislation of Mali, Burkina Faso and Cote d'Ivoire against trafficking in human beings, given that the repatriation of victims did not solve the problem in the long term due to the complicity of parents and the indifference of employers to a particularly intensive awareness-raising campaign. It was true that Cote d'Ivoire had ratified Conventions Nos. 138 and 182, but there remained much more to do in this country before these instruments were really reflected in reality.

The Worker member of Senegal stated that the statutory provisions to which the Committee of Experts referred in its observation (Decree No. 69-189 of 14 May 1969, made under sections 680 and 683 of the Criminal Procedure Code) constituted a flagrant violation of Convention No. 29. These provisions, still in force despite the observations made by the Committee of Experts in the past 30 years, provided for the hiring out of prison labour to private individuals and should therefore be repealed. It was to be hoped that at its next session the Committee would note much more significant progress than simple declarations of intent. With regard to child labour, the problem was all the more difficult since the responsibility for the matter was spread out. The problem moreover touched on Conventions Nos. 29, 138 and 182 and pointed not only to the responsibility of Côte d'Ivoire, but also to that of the majority of neighbouring countries, notably Mali and Burkina Faso. The problem also touched on immigration and, consequently, on the lowering of barriers to cross-border movements with the creation of the Economic and Monetary Union of Western Africa (UEMOA). The recognition of the facts by the Government of Côte d'Ivoire and the painful matter of the sexual exploitation of children for commercial purposes equally revealed that economic exploitation had taken on a new dimension. With regard to Article 25 of Convention No. 29, the Government, despite its announced intentions, still had to assume its responsibility to ensure the effectiveness and efficiency of sanctions. The report of the Committee of Experts indicated that some 1,150 children worked in the gold mines of Issia and the diamond mines of Tortiya. In this regard, the IPEC project would allow a clear understanding of the situation by revealing the precise conditions in which traffickers operated. Finally, the Conference Committee should urge Côte d'Ivoire to go much further in the application of Convention No. 29, even if the Government demonstrated the good will to do so.

The Worker member of Romania stated that the situation in Côte d'Ivoire was a typical violation of Convention No. 29, in particular of Article 1, paragraph 1, and Article 2. Decree No. 69-189 of 14 May 1969 as well as sections 680 and 683 of the Criminal Procedure Code, which provided for the hiring out of prison labour to private individuals, contravened the provisions of Convention No. 29 since only work which was voluntarily accepted by prisoners and carried out in conditions similar to those of free employment relations could be considered as compatible with Convention No. 29. Among other practices which were in violation of Convention No. 29, the speaker noted the forced labour of migrant workers, including children, in plantations. This practice could also be viewed as the phenomenon of the exploitation of children in Côte d'Ivoire. According to a 2001 report of ILO/IPEC, children worked most frequently in plantations or as domestics. Nonetheless, the economic exploitation of children also occurred in the production of both goods and services (catering, crafts, street trading, domestic work, engineering and mines). This work was carried out during long hours throughout the day and night in violation of the Covenant on the Rights of the Child and the national legislation of Côte d'Ivoire. The situation of girl children was all the more dramatic since they were exposed to sexual exploitation in addition to economic exploitation. Finally, 15,000 children were the victims of trafficking, notably from Mali to Côte d'Ivoire. For this reason, the speaker asked that the Government take measures to put an end to the abovementioned practices so as to be in conformity with Convention No. 29.

The Worker member of France stated that family plantations in Côte d'Ivoire apparently were the principal destination of trafficked children, and that this trafficking originated in countries such as Burkina Faso and Mali, and in other countries as well. The problem had wide ramifications and the solution would not be found inside the borders of one single country. The recognition by the Government of Côte d'Ivoire of this reality should not serve as a pretext for the governments of the region to mutually reject their responsibilities or as an excuse to fail to take necessary measures. The emergence of subregional economic entities such as ECOWAS could, in the context of free movement, certainly facilitate trafficking, but these structures could also be an advantage and a framework for the governments concerned to take appropriate steps. Last year, the OECD showed that the respect of fundamental labour standards did not in any way impede the economic development of a country. The OECD, like other multilateral organizations, placed good governance at the top of the list of the attractive features a developing country could have, along with the respect for the rule of law, which began with the respect of national instruments adopted in application of ratified international Conventions.

The meeting of the heads of State of the G8 which was to take place in several days would be the occasion for the ratification of the New Partnership for Africa's Development (NEPAD), a major development project in Africa from which Côte d'Ivoire and its neighbouring countries could benefit. NEPAD, which was largely based on facilitating private investments, should above all not perpetuate, or, even worse, aggravate practices of forced labour, since this would be tantamount to furthering the economic development of Africa through the maintenance of its social underdevelopment, with the implicit consent among African governments and private, often Western, investors.

The Government member of the United States indicated that her Government had been closely following developments in Côte d'Ivoire as a consequence of the country's eligibility for trade benefits under the African Growth and Opportunity Act. The United States was also providing technical assistance to Côte d'Ivoire through IPEC and bilaterally. She stated that her Government was saddened by the trafficking and forced labour of children in Côte d'Ivoire, as had been described by the Committee of Experts and the present debate. She welcomed measures taken and planned by the Government of Côte d'Ivoire to curb the trafficking of children into the country. However, as noted by the Committee of Experts, further action needed to be taken to ensure that persons responsible were adequately sanctioned. She also wished to acknowledge the active participation of the international cocoa industry, including the American Chocolate Manufacturers Association, in eliminating forced labour of children in Côte d'Ivoire. Her Government was encouraged by their efforts and was pleased to be working with them on technical assistance to Côte d'Ivoire.

The Government representative of Côte d'Ivoire took note of the observations and constructive criticisms. He stated that the Government would endeavour to find, within a participatory framework, the most favourable solution to the situation.

The Worker members expressed their thanks for the good will demonstrated by the social partners to address the matter of forced labour of children in Côte d'Ivoire, and they underlined the goodwill of the Worker members towards the Government, industry and people of the country. They indicated their appreciation to the Employer members for their statements that touched on the issue of trafficking and forced labour of children in the cocoa plantations, but questioned why their intervention had not focused on this subject but rather on repeating their position on the hiring out of prisoners. They refrained from again addressing the question of prison labour point by point and indicated that their position on this matter was on record in the discussion of the Conference Committee last year, and that they concurred with the views of the Committee of Experts. With regard to prison labour in Côte d'Ivoire, they urged the Government to address the concerns raised by the Committee of Experts through amendments in law and practice, and through technical assistance from the ILO, if desired. As regards child labour, they welcomed the cooperation of all parties and the ILO input with the survey of cocoa plantations, but regretted that the recommendations had not been followed. Since another survey was to be carried out again during the harvest season, with the paricipation of the international community, trade unions, and the Government, it was to be ensured that previous methodological mistakes should not be repeated. Penal sanctions should not only be applied to traffickers of children, but also to those who extracted forced labour from children. They urged the Government to fulfil its obigations under Convention No 29 in law and in practice. With this in view, the Government should accept the recommendations of the Regional High-Level Tripartite Meeting of Experts on the Role of Labour Inspection in Combating Child Labour, held in Harare in September 2001, which they believed might be useful in this case.

The Employer members indicated that with regard to the issue of prison labour, the Committee of Experts had once again raised the matter in its general observation. The Employer members had

refrained from addressing the issue in the general discussion and had indicated that they would do so at a later appropriate moment. The present case, they felt, was the appropriate moment to express their views on the subject of prison labour. With regard to the forced labour of children, the Employer members agreed with the points made by the Worker members and by the Government member of the United States. Comprehensive solutions to this problem needed to be developed. One solution might be to make the issue of forced child labour a priority for labour inspection. This would allow for a determination of facts, which then could be used to make recommendations for action. Creative means needed to be found to address this scandalous situation. They indicated their support for any truly effective measures to combat the forced labour of children.

The Committee took note of the statement of the Government representative and the subsequent discussions. The Committee noted that the information contained in the report of the Committee of Experts, and drawn from various sources including United Nations bodies such as the Committee on the Rights of the Child as well as the ILO's International Programme on the Elimination of Child Labour (IPEC), contributed to establishing the existence of child trafficking from Mali, Burkina Faso and Ghana to Côte d'Ivoire for the purposes of exploiting their labour in plantations, in mines, in the domestic service and more seriously for the purpose of sexual exploitation. The Committee took note of the information provided by the Government representative, in particular concerning the Government's will to cooperate in a quantitative analysis of the situation and to take the appropriate measures against the trafficking and exploitation of children, in particular by means of a national plan of action, a draft bill and cross-border agreements. The Committee noted the political will expressed by the Government of Côte d'Ivoire to fight against forced labour and child trafficking. The Committee also noted that, in their interventions, various members of the Committee emphasized the seriousness of such violations of Convention No. 29, which also constituted a violation of Conventions Nos. 138 and 182, and recalled that it would be appropriate to undertake an in-depth survey and strengthen supervision, notably by the labour inspectorate, possibly with the methodological support of the Office. The Committee urged the Government to make all necessary efforts to guarantee that children would no longer continue to be victims of trafficking for purposes of exploitation, that those responsible would be punished and that the Convention would thus be applied in this respect. It wished to be kept informed about the follow-up given to the draft bill communicated by the Government. It recommended the Government to collaborate closely with the social partners and to take into account the conclusions of the meeting on child labour and the labour inspectorate held in Harare in September 2001. The Committee also noted the assurances of the Government representative concerning the amendment of the legal provisions that provided for the hiring out of prison labour to private individuals.

Germany (ratification: 1956). **A Government representative** stated that the question at issue was to what extent work performed by prisoners complied with the provisions of the Convention. In 1929-30, when the Convention was elaborated, two aspects had appeared important to the drafters of the Convention. At that time, the widespread view on prison labour was that work to be performed by inmates constituted part of the punishment and this had to be reflected in the particularly unfavourable working conditions. Another particularly important aspect for the ILO was that prison labour should not be used by employers in order to gain an unfair advantage, i.e. prison labour could not be a tool to exercise pressure on the other workers in order to impose lower working conditions. Convention No. 29 had been elaborated by taking into consideration these fundamental views prevailing at that time. Today, the issue of reintegration of prisoners through work was prominent in most countries, because prisoners had to be reintegrated in both the society and the world of work. In the light of the Convention, a possible conclusion was that prisoners working for private enterprises must be considered equal with workers in freedom, since reintegration into the world of work was only possible if prisoners performed work for private employers. The Government representative recalled that the State was never a good employer in the productive sector. Private employers had to have the function to help reintegrate prisoners. Two distinct possibilities for prisoners to perform work for private enterprises were available. The first was the outside employment of prisoners in a free employment relationship. In this case, the prisoner had a normal labour contract and came under the same legal provisions as workers in freedom. The Committee of Experts had considered this a case of progress. The second possibility was that prisoners performed work for private enterprises within state prisons, which had been criticized by the Committee of Experts. The Government representative emphasized that the provision of work within the state prisons was indispensable, because not all prisoners could be sent to private enterprises outside the prisons, particularly if the sentence had been pronounced just a short time ago. The provision of work to prisoners was only possible if the State created incentives for private enterprises to transfer their production inside the prisons. The idea that prison work was as attractive to employers as workers in freedom did not correspond to reality. One of the reasons for this was the limited availability of occupational qualifications amongst prisoners. The employer was not able to select his staff on the basis of the occupational qualification required for the production. Another reason was the rotation in prisons. Prison workers stayed with the enterprise established inside the prison until the imprisonment was finished. These factors did not contribute to the creation of favourable production conditions. Therefore, the State had to create incentives for private enterprises.

Turning to the report of the Committee of Experts, the Government representative emphasized that the Committee had only made observations regarding the German practice of prison work for enterprises inside the prisons. The Committee of Experts had referred to the Government's report of 2000 which did not reflect anymore the situation prevailing in the country. The Government had transmitted its report for 2000 rather late and, consequently, it had not been possible for the Committee of Experts to examine it at its session in 2000, but at its session in 2001. In the meantime, a new law had been enacted which became effective on 1 January 2001 and which addressed the points raised by the Committee of Experts. The Government representative suggested that, in the case the Committee of Experts was not able to examine a government's report and would examine it at its next session, the Office could send a communication, inviting the Government to transmit additional information on any changes. This would help avoid relying on outdated information.

The Government representative further indicated that the legislative changes introduced in 2001 were based on a decision of the Constitutional Court of 1998 which, before making its decision, had asked for, and received from the Office, information on the comments of the Committee of Experts, so that its decision may be considered as being influenced by the Experts' opinion. As to the content of the Act on the execution of sentences, as amended, the level of remuneration for prisoners had been increased from 5 per cent to 9 per cent of the average remuneration of workers covered by the pension scheme. For calculation purposes, the reference was the average remuneration level during the last two years. Prisoners now received a wage of approximately DM400 a month, compared with DM220 previously. The Act further granted one free day from work after work had been performed for two consecutive months. The prisoner was given the choice to spend the days off either as work-free days inside the prison; as additional holidays outside the prison, but only in the case of prisoners who were entitled, on grounds of their good behaviour, to spend holidays outside the prison; or to accumulate these days to shorten their term of imprisonment. With regard to the legislative amendments introduced in 2001, the Government representative was looking forward to the assessment of the Committee of Experts which would be a determining factor in any subsequent amendments. The adoption of any further amendments, however, would take some time, due to the federal system of the country.

The Employer members wished, before commenting on the case, to touch upon the procedural aspects mentioned in the previous intervention. There were several examples where the government report arrived in October and the Experts were apparently unable to process it at that time while in other cases the Experts would take into account information from other sources, sometimes without sufficient analysis. It was unclear at what point in time the Experts were unable to process information. The Employer members wished to make two suggestions for consideration. First, the Experts might consider providing governments with some clear and transparent guidance as to the timing of the submission of reports. Second, some consideration could be given to ensuring more transparency and consistency in examining information from other sources when dealing with government reports.

This was the first time that this case was being discussed by this Committee although the Experts had commented on it 11 times since 1991. The case concerned the situation of prisoners working in private enterprises under the constant supervision of the Government. The Experts had made a distinction between two situations, namely, "outside employment in a free employment relationship" and "compulsory work in a workshop run by a private enterprise". It was important to note that in both circumstances the work was supervised at all times by the State. Therefore, this distinction was misleading as in fact there was little difference in context between

the two situations. In the first case, the Experts had found that this practice fell outside the scope of Convention No. 29, because the prisoners were able to get out of prison either as a result of good behaviour or because they had served a large part of their sentence and had not committed a serious crime. In these cases, the prisoners did not present a threat to society. The second case involved more hard core circumstances where the prisoners could not be released from prison. In this case, the Employer members held that the Committee of Experts' observation was too strict. The State clearly had a legitimate right to limit its activities to its core competencies. At the same time, society had an interest to see that prisoners performed useful work, in particular, for rehabilitation purposes. The private sector provided the appropriate framework to help accomplish this goal. While the Experts had acknowledged this in the first case, they had not done so in the second. In Germany, the prisoner remained under the supervision of the State at all times. In a modern developed state there clearly was a difference between the rehabilitative purpose of prison labour and the conditions which prevailed in 1930. Prison labour enabled workers to do something constructive with their time. The issue of consent of the prisoner was in their view a theoretical question. As a practical matter, virtually all prisoners consented to work. In a prison under the control of the public sector, the Employers found it difficult to accept that someone who had committed a crime against society deserved the same circumstances as someone who had not. Regarding the conditions of employment the private employers must take those prisoners who were available regardless of skills and productivity. These shortcomings needed to be balanced with the level of social insurance and wages.

The Employer members found it hard to understand how the Experts with all the vast changes that had taken place in the world since 1930 could not recognize the changes in prison practice and prison rehabilitation, particularly within a developed and democratic country and particularly where there was ongoing governmental supervision, and see this as within the scope of the Convention. The current practices were different from what the Conference had in mind in 1930 when Convention No. 29 had been adopted. Today the approach was not to use prison labour as punishment. The static historical view of the Experts undermined the basis of work of this Committee.

The Worker members stated that for the past number of years this Committee had discussed extensively the privatization of prisons and prison labour. This practice was growing quickly in many developed countries, in particular in France, Austria, Australia, the United Kingdom, the United States and of course in Germany, but also constituted a profound problem in many developing countries. The discussion would focus on the issue of prisoners held in public prisons performing work for private enterprises and, in this regard, the Government had provided information in writing, complemented by the statement before the Committee, on two aspects: (a) outside employment in a free employment relationship; and (b) compulsory work in a workshop run by a private enterprise. Regarding the first aspect, the Government reported that prison authorities were obliged to promote free employment relationships; these came into being only at the prisoner's request; the prisoner had a normal labour contract, came under the same legal provisions as workers and trainees in freedom, received wages established by collective agreement, and was covered by the social security system including pension, health, accident and unemployment insurances. A contribution for detention costs might be levied that could not exceed DM660, which seemed quite reasonable. The German situation demonstrated that the measures compatible with Convention 29 regarding outside prison employment could in fact be implemented if there was the political will to do so. For this, the Worker members commended the German Government.

The Experts emphasized, however, that the conditions of a free employment relationship did not apply to the second type of private use of prison labour in Germany, namely, compulsory work in a privately run workshop. The Experts reminded this Committee that the current practice corresponded exactly to the description given in the ILO Memorandum of 1931 of the "special contract system", a system in which the labour of prisoners was hired to private contractors. The fact that prisoners remained at all times under the authority and control of the prison administration, did not detract from the fact that they were hired to a private enterprise – a practice designated in Article 2(2)(c) of the Convention as being incompatible with this basic human rights instrument. For many years the Experts had identified two additional conditions in order to overcome the problems associated with a prisoner who had been convicted in a court of law and hired or placed at the disposal of private individuals, companies or associations. First, the prisoner must freely consent to the arrangement and, second, the conditions of work should approximate a free labour relationship.

The Worker members had listened carefully to the comments made by the Employer members during the discussion of Côte d'Ivoire. The Employer members' position was that governments had the right to demand that prisoners work, but that governments were increasingly unable to provide meaningful work due to increased privatization of production. Therefore, only cooperative arrangements between the State and the private sector could provide such meaningful work. The Worker members did not dispute the right of governments to force prisoners to work when such work fell under the exclusions of Convention No. 29. They had often emphasized in this Committee the importance of rehabilitation of prisoners so that they could re-enter society as productive citizens and with skills to enter the labour market once they had served their debt to society. However, they reminded the Committee that Convention No. 29 was not a prisoner rehabilitation Convention but a core human rights instrument. Its drafters had recognized the vulnerability of prisoners as captive labour and had drafted a Convention that provided a framework to ensure that compulsory prison labour was indeed rehabilitative and not exploitative. As the Experts stated, prisoners did not need to be protected from their own free will in accepting work, but rather from exploitation of their deprivation of freedom. The Employer members seemed eager to take advantage of the potential for exploitation while at the same time indifferent to the need for protection. They conveyed an attitude that the key to rehabilitation was the private sector and therefore the State should get out of the way. Even the Employer members would accept that the pursuit of profit by companies employing prisoners took precedence over their altruistic desire to rehabilitate prisoners. In this context, it was important that conditions were set to ensure that the nature of the work provided by prisoners employed by private companies was indeed rehabilitative and not exploitative. This was one of the objectives of Convention No. 29 which did in fact provide for the private sector to employ prisoners without exploiting them.

Regarding the issue of "free consent" in relation to the existing situation in Germany, the Experts had noted that under section 41(3) of the Act on the Execution of Sentences, adopted in 1976, employment in a workshop run by a private enterprise was to depend on the prisoner's consent, which might be withdrawn later on, subject to six weeks' notice if no other prisoner could fill the vacancy earlier. This sounded reasonable. However, this provision of the law had been suspended before entering into force and had remained dead letter ever since. The Worker members asked the Government representative to update the Committee on the status of this suspension and any possibilities that it may be lifted. In regard to "conditions approximating a free labour relationship", the Experts commented on two issues, the absence of any social security benefits for prisoners working in private workshops and the level of wages earned by the prisoners. The Government representative had provided new information today on these issues. In regard to the absence of social security benefits, the Worker members inquired whether the new legislation now extended some coverage to prisoners working in private workshops. The Experts had indicated that sickness and old age insurance might have been extended to such prisoners. While the Worker members welcomed this partial step they wondered why the full range of social security coverage available in Germany had not been extended to these prisoners. They asked the Government representative to explain why full social security benefits including the national pension scheme and the national health insurance system had been denied and what plan might exist to provide them in the future. In regard to the wages paid to prisoners in private workshops, the Experts noted that the 1976 legislation established an initial wage level at only 5 per cent of the average wage of comparable workers but that this rate would steadily increase beginning in 1980. This had never happened. For 25 years since the enactment of the legislation the wage level had stood at only 5 per cent. The Experts had reminded this Committee in paragraph 8 that on 1 July 1998 the Federal Constitutional Court had found this level of prisoners' remuneration incompatible with the principle of rehabilitation and instructed the legislature to set new rules in conformity with the German Constitution. In other words, the level of remuneration was so inadequate that it did not provide a sufficient incentive to encourage prisoners to work voluntarily. This Committee was now told that in response to this Court order the rate had recently been raised to 9 per cent. The Worker members needed to express the view that going from 5 to 9 per cent was hardly sufficient and surely did not move the country very much closer to meeting its treaty obligations under Convention No. 29. The Government representative had also spoken of a new concept contained in the new legislation that should be considered in connection to the remuneration scheme. Prisoners may now be able to reduce their time in prison by working in private workshops. A prisoner could reduce his time in prison by six days for every year

worked. So a prisoner working in a private workshop for ten years would be able to reduce his sentence by 60 days. Again, the Worker members had great difficulty seeing this new scheme as a major step forward. This new concept also raised the issue of duress as discussed in the past.

Finally, the Experts noted with concern that "45 years after ratification of this basic human rights Convention, prisoners working for private enterprises in Germany fall into two categories, with some enjoying the full benefits of a free employment relationship, while the others were hired to those who used their labour without their consent and in conditions bearing no resemblance whatsoever to the free labour market". The Experts expressed the hope that the Government would at last take the required measures to bring the legislation and practice into conformity with Article 1(1), read together with Article 2(1) and 2(c) of the Convention. Although the Worker members accepted that some positive steps had been recently adopted in regard to compulsory work in workshops run by a private enterprise, they found that these steps were insufficient and were only very preliminary steps toward bringing Germany closer to meeting its full obligations under the Convention. They hoped that the German Government would recognize the authority of the Committee of Experts in regard to this aspect of the Convention as it had in regard to outside employment in a free market relationship.

The Worker member of Germany welcomed the fact that the Committee of Experts paid attention to the conditions under which prisoners worked in industrialized countries. While it was true that the forms of prison labour had changed over time, the basic problems remained. In no case should the condemnation in a court of law result in the prisoners' loss of all their rights at work, nor should it lead to unfair competition. Despite longstanding criticism, the previous German Government had not lived up to the commitments it had initially made, which was why the Federal Constitutional Court had to deal with the issue in 1998. The German Confederation of Trade Unions (DGB) had referred, in its submission to the Court, to Convention No. 29 and the practice of the Committee of Experts. The Office had been represented at the oral proceedings and the Court's judgment expressly referred to Convention No. 29. The Federal Constitutional Court had recently declared the Act promulgated as a result of its 1998 judgment as being in conformity with the Constitution. The Court had however pointed out that the Government was under the obligation to review periodically whether the evolving circumstances required a further increase of remuneration for prison work. It was now to the Committee of Experts to examine the new legislation. While the legislation was a step in the right direction, it did not remedy all problems. In particular, there was a need to increase the level of remuneration, since the current level at 9 per cent of the average remuneration was not sufficient to allow prisoners to take responsibility for their families and to provide compensation. The proposal to increase the remuneration of prison labour to 15 per cent of the average remuneration had been rejected by the "Länder", which were responsible for prison matters. Moreover, the coverage of prisoners by the social security system remained insufficient, in particular concerning pension schemes. In concluding, the Worker member of Germany stated that human dignity and the task of resocialization required the creation of positive perspectives through freely chosen labour. Reintegration was the best protection from new criminal behaviour, from a lifelong need for public assistance and the best protection for potential victims. He called on the Government to take further positive steps to fully satisfy the requirements of the Convention.

The Worker member of the United Kingdom associated himself with the comments made by the Worker members and by the Worker member of Germany.

The Worker member of France pointed out that this case was being examined by this Committee for the first time. Although the decision of the Constitutional Court was welcome, the Government could have taken into account more quickly the comments that the Committee of Experts had been making for over 45 years. The doubling of prisoners' wages and the granting of sentence reduction or rest days constituted a limited progress for prisoners and for the amelioration of their daily life. Even if prison work generated a productivity inferior to that of the free market, a pay rate equal to 9 per cent of the minimum wage was not just, in particular taking into consideration the fact that this wage could serve to compensate victims. On the other hand, it was impossible to estimate the price of a one-day sentence reduction; as freedom was in fact priceless. Social protection in the areas of health and old-age pensions represented in fact a deferred pay, of which prisoners did not benefit. Also, upon their release, prisoners were not affiliated to the social security system, which hindered their rehabilitation, constituted a supplementary source of precariousness and could favour recidivism. Prison must not be a social vengeance but a means of rehabilitation, if prisoners so wished. Thus, in their eyes, work had to maintain a real "value". The levels of training, qualification and schooling of prisoners were obviously below average. That was why efforts had to be made to facilitate their rehabilitation and accompany their release. This matter was not covered by the Convention, but resulted from a modern and humanist vision of imprisonment and its practical application. In conclusion, certain prison work remained compulsory in Germany, which, given its low wage rate, appeared to be more of a complementary sentence than a rehabilitation measure. This case would have to be re-examined in light of the comments to be made by the Committee of Experts regarding the new legislation.

The Government representative, in response to a question raised by the Worker members concerning the extent to which prison labourers were covered by the social security scheme, explained that they were covered by the unemployment and accident insurance, but that medical care was generally ensured by the prison medical service. Once released from prison, those concerned would be covered by health insurance. He acknowledged, however, that they had no access to the pension scheme either as workers or as beneficiaries of the unemployment insurance system. With regard to the number of prisoners employed in a free employment relationship outside the prison, statistical data was regrettably not available, but affirmed that this was a widespread practice. The Constitutional Court had obliged the Government to review periodically the level of remuneration of prison labourers. In this connection, the views expressed by the Committee of Experts and the Conference Committee would also play a decisive role.

The Worker members confined themselves to the points that they hoped to see included in the conclusions. First, in regard to the question of outside employment in a free market relationship, the situation in both law and practice appeared to be in full compliance with the Convention. Second, the Committee should welcome the new legislation improving the remuneration provided to prisoners working in workshops run by a private enterprise as a first step to bringing the law more in line with this aspect of the Convention. Third, the Committee should ask the Government to include all relevant information in its next report in respect to the new legislation and all other issues observed by the Committee of Experts, such as the branches of the social security system extended to prisoners working in workshops run by a private enterprise.

The Employer members observed that the issue before this Committee was not the words of Convention No. 29 but the interpretation of these words. The Committee was witnessing a failure on the part of the Committee of Experts to see the world as evolving. As the Government representative had pointed out, the situation today with regard to prison labour was simply not the same as in 1930. This was because the work being performed in prison was intended to develop relevant skills for when the prisoners left prison. It was disingenuous of the workers to say that employers preferred prison labour. In fact, as the Government representative had affirmed, incentives were needed to get the employers to provide these jobs. And the idea that persons who had committed crimes against society were entitled to the same level of terms and conditions of employment as other workers was not reflecting reality, particularly in situations like this one where there was high turnover, low productivity and risk to property. The most this Committee could conclude was that the Government should continue to take the positive steps that it had indicated and that there was a clear difference of view in this Committee regarding the Experts' static approach to prison labour in a modern developed and democratic society where such labour took place under governmental supervision.

The Committee took note of the statement made by the Government representative and of the discussions which followed on the question of compulsory work of prisoners for private enterprises within the state prisons. The Committee took note of the observations that the Committee of Experts had made for many years, on the question of prisoners working in prisons in the context of concessions to enterprises without being able to give their consent to this work, and in conditions which could not be compared to those of the free labour market. The Committee equally noted that concerning outside employment, prisoners benefited from the advantages of a free employment relationship. The Committee also noted the information supplied by the Government representative on the question of prisoner consent and on the Act adopted in December 2000, which provides that the remuneration rate of these prisoners, fixed at 5 per cent of the average wage of free workers, would be increased to 9 per cent. The Committee expressed its desire to return to this question after examination by the Committee of Experts of the abovementioned Act, expressing the hope that new progress could be noted in the near future, with a view to the reha-

bilitation objectives reaffirmed by the German Government. More generally, the Committee discussed general questions on the protection of prisoners against exploitation of their work and the relevance of this situation with regard to the protection provided for in the Convention. The objectives of rehabilitation, which were being more and more emphasized were not incompatible, quite the contrary, with Convention No. 29.

The Worker member of France suggested that the Government be requested to supply statistics on the practice in different Länder.

Mauritania (ratification: 1961). **A Government representative** considered that the presence of his Government before the Committee constituted a real paradox. In practice, Mauritania had never been in a better position since joining the ILO 40 years ago. Numerous promotional activities had been organized for international labour standards. Mauritania had now ratified all the fundamental Conventions and had signed a technical memorandum with the ILO. The various labour institutions in the country had been re-established, computerized and renovated, and labour inspectors trained. The Ministry of Labour had requested the ILO to undertake two in-depth studies on forced labour and on child labour. The Government had also transmitted to the ILO all the requested reports. In these conditions, it was difficult to understand why Mauritania was once again one of the cases to be examined by the Committee.

The population of Mauritania was composed of an Arab group from North Africa and other groups from sub-Saharan Africa. The entire population was Muslim. Each of the above groups had had a hierarchical system involving freemen, professionals and slaves. However, the traditional system had disappeared and no longer existed. But the system had after-effects.

At present, economic power and knowledge were the factors that counted in Mauritania. The Labour Code adopted in 1963 prohibited forced or compulsory labour, while the Constitution of Mauritania recognized the equality of its citizens, and penalties were envisaged for all persons who violated the prohibition of forced labour. Mauritania also intended to revise its Labour Code in order to strengthen the prohibition of forced labour. The adoption of new laws would not suffice to abolish forced labour. Time and education were needed to change mentalities.

The rule of law prevailed in Mauritania, as testified by the existence of political parties, political organizations, a dynamic civil society, a free press and the existence of a Parliament with an opposition. The Constitution also protected public freedoms. According to UNDP's Human Development Report, Mauritania was in 137th position in 2001, compared with 147th in 2000. An Act had made school attendance compulsory for children aged 6-14 years. The school attendance rate had almost doubled in ten years, and in its 2001 Report, UNESCO cites Mauritania as among the three sub-Saharan African countries which almost have a universal schooling rate. As part of its anti-poverty measures, the Government of Mauritania had developed a programme on urban development and a programme to combat poverty in rural areas. The anti-poverty programmes were for the benefit of all who met the poverty criteria, irrespective of their former social position. The social condition of the offspring of former slaves hardly differs from that of persons originating from other castes. They may be rich people, intellectuals, officials, merchants, poor or analphabets.

The Committee of Experts had shown a certain lack of rigour in its analysis of information available. Mauritania had not received the observations made by the ICFTU, which were mentioned in the Committee of Experts. These observations had been made in the month of October 2001. Even if Mauritania had received a copy of the observations, the Committee of Experts should not have examined them before its session in November 2002. Furthermore, the Government deplored that its six-page reply had been covered in only three lines in the report of the Committee of Experts. With regard to the allegations made by the World Confederation of Labour (WCL), Mauritania had replied to them in its report on the follow-up to the Declaration. Mauritania had accepted a mission and the Committee of Experts should have waited for the outcome of the mission.

The Government intended to respect the obligations that it had assumed in ratifying ILO Conventions and its legislation fully respected their provisions. The Government respected its people, was committed to social justice and did not tolerate the practice of forced labour.

The Worker members thanked the Government representative for his very extensive presentation of his Government's position, when explanations on the application of the Convention would have sufficed. The Government should not be surprised that this case was on the list of cases to be examined since there had been evident violations of this fundamental Convention for many years. During the adoption of the list of cases the previous year, the Worker members had indicated that they were following this case closely and would come back to it if progress were not noted by the Committee of Experts.

Slavery in Mauritania was a reality and the situation of slaves and those who risked being subjected to slavery was of great concern. The report of the Committee of Experts, which referred to communications from the ICFTU and the WCL, showed that practices of slavery existed in the country. The problem was widespread and highly complex. Thousands of human beings were victims of these practices and had no freedom to leave their so-called employers or to refuse certain types of work. The fact that the abolition of forced labour had been enshrined in legal instruments had not brought an end to practices of slavery in the country. It was shocking to note the persistence and gravity of the phenomenon, even if the Government claimed that it only consisted of after-effects, which was tantamount to understating or even denying the existence of the problem. A seminar on servitude organized by the Free Confederation of Mauritanian Workers (CLTM), which had been scheduled to be held in Kiffa from 15 to 18 September 2001, had been prohibited by the Governor of the city on the grounds that it had not been granted prior authorization and that forced labour did not exist in the country. This denial of the problem was also illustrated by the absence of provisions envisaging penalties in Ordinance No. 81-234 of 1981 on the abolition of slavery. Neither this Ordinance nor other standards contained provisions permitting the imposition of penal sanctions for the exaction of forced labour. It was inconceivable that a legal rule governing fundamental individual freedoms was not backed up by significant penalties and, as emphasized by the Committee of Experts, this was a clear violation of Article 25 of the Convention. The seriousness of the violations of fundamental freedoms referred to in this case placed an obligation on the Government to take practical measures to eradicate forced labour, particularly by raising the awareness of those concerned and severely punishing all those found guilty. The Government should also accept an ILO direct contacts mission to assist it to bring an end to this situation. The Government, in collaboration with the partners concerned, and particularly workers' and employers' organizations, needed to pursue a coherent policy to resolve this problem.

The Employer members thanked the Government representative for the extensive information provided which, they assumed, had been included in the report that the Government indicated it had submitted in October 2001. This raised an issue mentioned by the Employer members in the general discussion, since it appeared that the Government's report and that of the ICFTU, which was quoted in the observation of the Committee of Experts, had been received at the same time, but that only one side of the case had been considered.

The Employer members noted that the Government representative had placed great emphasis on the ratification by his country of the ILO's fundamental Conventions. They emphasized in this respect that adherence to principles was very different from the application of the provisions of Conventions in practice. Indeed, in view of the comments made on the political and social situation in the country, it could be concluded that, notwithstanding the provisions of the Constitution, the existence of the Parliament and the 1963 equality legislation, the matter at issue was a practical problem relating to the application and enforcement of laws so as to eradicate forced labour in practice. The admission by the Government representative that there remained attitudinal problems to be resolved amounted to a confirmation that forced labour did indeed exist in the country. The Government representative appeared to be saying that the law existed, but was not implemented in practice.

The Employer members recalled that the case had been examined by the Committee on four occasions, beginning in 1982. Twenty years later, they would have expected much more progress to have been made in combating the problem of slavery. In the face of allegations by workers' organizations and NGOs, which had previously been denied by the Government, it had now been admitted that the vestiges of forced labour persisted, but were limited to economically weak groups. The only way of ascertaining the real situation was to go to the country and examine what was happening there. The request by the Committee of Experts for the Government to accept a technical advisory mission was therefore reasonable. They called for the Government representative to indicate whether this would be acceptable.

A second issue that had not been discussed by the Government representative was whether any law in Mauritania provided for penalties for the exaction of forced labour. The Committee of Experts had noted that the legal prohibition of forced labour was limited to contractual relationships between employees and employers, but did not cover informal relationships, which occurred in all

societies. In addition to this gap in the law, information was also required to show that penalties were in practice imposed on those responsible for forced labour.

Another issue that had not been discussed by the Government representative consisted of the powers conferred on local leaders by the Ordinance of 1962 to requisition labour, and the possibility under an Act of 1970 to requisition labour in services considered essential under penalty of imprisonment or fines for those who refused to obey a requisition order. The Employer members noted that the Committee of Experts had requested information from the Government on the establishments in which employees could be requisitioned in the event of a strike.

In conclusion, the Employer members observed that there were evidently a number of shortcomings in the law and a wide gap in practice. More information clearly needed to be provided on these issues, although some might already be included in the report mentioned by the Government representative. They looked forward to the analysis of this information by the Committee of Experts.

A Worker member of Mauritania recalled that this case concerned two matters: practices of slavery, and the requisitioning of labour under the threat of sanctions, still permitted under Mauritanian law. There should be further investigations regarding the first matter. The Free Confederation of Mauritanian Workers remained nonetheless concerned with the failure of the land reforms which had been decided upon with the official abolition of slavery. Years later, the grabbing up of land by unscrupulous business people had indeed had disastrous effects on the economy. Concerning the possibility of requisitioning of labour – still allowed under national law – certain noticeable improvements could be noted, even if the Labour Code had not yet been revised. The abrogation of the law which institutionalized a single trade union system and which subjected the creation of trade unions to previous authorization was indicative of this positive trend.

The Worker member of Niger stated that, although it was important to ratify a Convention, it was no less important to apply it effectively. Convention No. 29 on forced labour touched human dignity, which is a universal concern for all the members of the ILO. Slavery is a sad reality in Mauritania and the elements noted by the CMT and the CISL established the persistence of this phenomenon. The Government of Mauritania did nothing faced with this situation. Ordinance No. 81-234 of 1981 did not penalize the fact of having imposed forced labour. By using expressions such as "after-effects", the Government manifested its will to marginalize the problem. The prohibition of the seminar on slave labour which had been planned in Kiffa from 15 to 18 September by the Free Confederation of Mauritanian Workers on the sole grounds that the seminar had not been authorized and that slavery did not exist in Mauritania, stated very eloquently the real will of the Government.

Another Worker member of Mauritania, recalling that the Free Confederation of Mauritanian Workers was affiliated with the ICFTU, stated that the information that was available incontestably indicated the existence of a trend to eradicate the after-effects of the plague of slavery. He encouraged the sending of a mission to the field in order to establish the facts on the ground, as regards both the positions advanced by both the ICFTU and the Government.

The Government representative stated that the allegations made by the ICFTU regarding certain practices of slavery in Mauritania led him to wonder if they concerned his country. It should be recalled that even under the previous military regime, neither the competent bodies of the United Nations nor various reports stemming *inter alia* from the Government of the United States had ever noted the existence of such practices. There were no forced labour practices in Mauritania, not even in isolated cases. The Labour Code provided for sanctions and it was the Government's intention to develop these. Historically speaking, the Decree of 1980 forbidding forced labour was only a formal step in solidifying a prohibition already in existence.

Another Government representative recalled that Mauritania had never been called before the Conference Committee with regard to Convention No. 29, and that his country adhered to the ILO Declaration on Fundamental Principles and Rights at Work. He himself had asked the ILO to conduct a study with a view to promoting the Declaration, and that the conclusions of this study had been endorsed by the social partners. Moreover, in March 2002, the National Labour Council had examined a draft Labour Code, which contained, as the previous code, provisions prohibiting forced labour. As regards the Decrees concerning obligatory labour which needed to be amended, he was certain that they would be.

The Employer members recalled that no law existed to penalize the exaction of forced labour, making it still possible to requisition people. A wide gap also remained with respect to practice. The Government's apparent refusal to accept a technical mission was not consistent with its statement that it came before the Committee in a good position. Therefore, the conclusions should stress that the current Conference Committee discussion was no different than that which took place in 1990, despite the ratification by the Government of all of the fundamental Conventions and technical assistance provided under the Declaration in the interim.

The Worker members recalled that, in 2000, Mauritania had been called before the Committee with regard to the Labour Inspection Convention, 1947 (No. 81). As regards certain practices mentioned in the observation of the Committee of Experts as being characteristic of a violation of Convention No. 29, the facts brought forward came from reliable sources.

The Worker members stated that the Government should be requested to do the necessary to conduct a campaign to inform the whole population of the problem of forced labour as well as of the available alternatives. The Government had to promote the integration of former slaves into society and the labour market. The legislation should be amended in order to bring it into conformity with the provisions of the Convention. In particular, national law would have to provide for penalties, which would have to be effectively applied, to suppress forced labour practices. Finally, it would be appropriate if the Government would agree to a direct contacts mission by the ILO, which could evaluate the situation in an objective manner in all the regions of the country and assist the Government, in consultation with the social partners, in conducting a coherent policy to address this problem.

The Committee took note of the Government's statement and the debate that followed. The Committee recalled that the case had been subject to several discussions, in 1989 and 1990, on the occasion of which the Committee had concluded that this was a serious violation of the Convention. The Committee noted the information communicated by the Government representative to the effect that the rule of law in the country prevented that situations such as those described could exist, that Mauritania had ratified the eight fundamental Conventions and that the labour inspectorate had been strengthened and programmes to combat against poverty put in place. The Committee noted with concern, as did the Committee of Experts, that the workers' organizations continued to allege a serious violation of the Convention because of the existence of practices of forced labour, the absence of sanctions to punish those responsible and the ambiguity of the legal provisions with regard to the requisition of labour. It also noted that the Government reaffirmed that the alleged practices could only have an isolated character and only be the after-effects of an historical phenomenon. The Committee took note of the fact that the Government had agreed to a technical assistance mission by the Office to the country to examine the details of a study on forced labour and child labour and it hoped that this first step would be followed by the necessary legal, economic and educational measures to end practices of forced labour.

The Government representative wanted to recall that the Government had not recognized the existence of incidents of forced labour in Mauritania, even in isolated cases.

The representative of the Secretary-General recalled that, concerning the working methods of the Committee, as indicated in his response to the different questions raised during the general discussion, the practice was that observations from the workers' organizations were systematically communicated to the Government for comments. While awaiting the response from the Government, the Committee of Experts noted the observations of the employers' organizations and the workers' organizations, and invited the Government to respond to them but did not make any conclusions at this stage. It was only when the response from the Government had been received, or in the case in which the Government had not furnished any response although it had been given the occasion to do so, that the Committee examined the substance of the observations received.

Myanmar (ratification: 1955). See Part Three

Sudan (ratification, 1957). **A Government representative** stated that his delegation had read with interest the report of the Committee of Experts, and took note of the observations made regarding the application by Sudan of the Forced Labour Convention, 1930 (No. 29). The Government of Sudan reaffirmed its condemnation of slavery, forced labour and similar practices. These acts were violations of the Sudanese Constitution and crimes made punishable by the Penal Code. By virtue of the recently promulgated Presidential Decree No. 14 of 2002 the Committee for the Eradication of Abduction of Women and Children (CEAWC) had been placed directly under the authority of the President of the Republic. This new status strengthened the authority of the CEAWC. Its chairman was the State Minister and its members included the Ministers of

Culture and Social Affairs in the provinces where abductions had occurred as well as known figures and representatives of civil society and NGOs. The mandate of the Committee as defined in the Presidential Decree was to endeavour to return abducted women and children to their homes; to provide the necessary support to tribal elders in order to put an end to the phenomenon of abduction of women and children; to investigate cases of abductions affecting women and children; to call to account any person suspected of perpetrating, supporting or participating in acts of abduction of women and children and prosecute them; to study the root causes behind the phenomenon of abduction of women and children and the exaction of forced labour; to recommend to the President of the Republic measures and ways and means to put an end to the phenomenon of abduction of women and children; to coordinate with international and regional organizations and NGOs to help implement these objectives. The Presidential Decree gave the chairperson the necessary powers usually enjoyed by the Minister of Justice to prosecute all cases of a criminal nature. It also stated that regional committees would be set up in each province affected by the phenomenon of abduction of women and children. These committees would include among their members the public prosecutors and representatives of the armed forces, the police, domestic security and local government. The CEAWC had elaborated an ambitious plan to put an end to the phenomenon and was hoping to be able to fulfil this task within this year. The Presidential Decree and details of the plan of the CEAWC were contained in Document No. 1, submitted to the secretariat.

He then turned to the question of the courts which dealt with the crime of abduction of women and children. Since its creation the CEAWC had been working in conformity with its organizational and operational structure, which included tribal committees. Within this context, consultations had taken place with the tribes concerned. Their leaders were committed to finding traditional solutions to the problem and had asked the Government not to intervene while waiting for results of efforts at the traditional tribal level. The British organization, the Save the Children Fund, had confirmed the relevance of this approach in a letter to the Minister of Justice, dated 9 April 2000. This organization had insisted that those responsible for abductions should not be prosecuted at the moment in order to protect abducted women and children. This letter was contained in Document No. 2, submitted to the secretariat. Several attempts at tribal conciliation had taken place. Conferences had been held to bring together all affected tribes with a view to ending the practice and strengthening peaceful coexistence among tribes. This having been said, prosecution was an essential component of the mandate of the CEAWC, while the Minister of Justice had authority to bring to justice the abductors who did not collaborate with the work of the CEAWC. The Minister of Justice had set up special deputies for prosecuting and monitoring cases of people responsible for acts of abduction or trafficking. The relevant decision of the Minister of Justice was contained in Document No. 3, submitted to the secretariat.

The exact number of abducted persons was not confirmed at this stage. There were many allegations but none of them had been proven. The Sudanese Government, in cooperation with the CEAWC, was in the process of working on a distinction between abducted persons and displaced persons who had been separated from their families mainly as a result of the ongoing war in the south of the country. The number of such displaced persons was very large and there were difficulties of documentation and handling of these cases which were not cases of abduction. The figures in the report of the Committee of Experts of about 5,000-14,000 abducted persons were extremely exaggerated and had no resemblance to reality. A high-level mission to Sudan had been carried out recently with eminent personalities from several countries including France, Italy, Norway, the United Kingdom and the United States. This high-level mission had formulated several recommendations and the Sudanese Government was studying these recommendations in order to implement them. The CEAWC, in cooperation with the United Nations High Commissioner for Refugees, had managed to repatriate 118 people from the Baggara tribe detained by rebels since 1987 in Yeitown in the south. The CEAWC had monitored their safe return to their region in the western part of Sudan. The age-old phenomenon of abduction and kidnapping had been exacerbated by the war in the south. Ending the war in the south and re-establishing peace was a major challenge in the context of efforts to put an end to this phenomenon. The signing of the Khartoum Agreement in April 1997 had made it possible to reduce this phenomenon considerably. A ceasefire in El Nuba established since January 2002 had lead to positive developments in tribal relations in the region. A report broadcast in the United States by the ABC channel concerning efforts to liberate abducted persons showed that some NGOs had exaggerated their findings and had portrayed a false image of Sudan. The Chairperson of UNICEF had also clearly said that the number of abducted persons was smaller. The Sudanese Government attached great importance to the phenomenon of abduction in neighbouring areas. The President personally monitored the CEAWC, and had assigned in January 2002 Sudanese pounds 1,000,500,000 to the Committee in order to put an end to the phenomenon. The Government thanked the Committee for its interest in Sudan and expressed its gratitude to those who helped attain the objective of eliminating abductions, including UNICEF, the Save the Children Fund, the relief agency of Sweden, as well as the Governments of Canada, the European Union, Norway, the United Kingdom and the United States. He hoped that the Committee would urge these international organizations to continue their cooperation to attain the objectives of CEAWC within the year so that peace may be re-established in the country.

The Employer members stated that the case of Sudan's application of Convention No. 29 had unfortunately been going on for more than 12 years. In the past three years, the Conference Committee had noted in its conclusions that this was a case of continued failure. This constituted the strongest formulation the Conference Committee had at its disposal to illustrate its great preoccupation. The report of the Committee of Experts cited many violations of the Convention, involving acts of cruelty concerning the abduction and kidnapping of women and children and incidents of slave trade and forced labour. These practices did not concern only the areas where armed conflicts took place but they also took place in regions under the control of the Government. The Employer members observed that the Government had established a special Committee on the Elimination of Abductions of Women and Children (CEAWC) following the pressure put by the Conference Committee on the Government. For many years the Conference Committee had stated that the CEAWC had not had any success in fulfilling its mandate, which was to end the practices described above and to ensure the safe return of those kidnapped or abducted. They noted that the Government representative had referred to the establishment of a new action programme to increase the effectiveness of the CEAWC. The Employer members stressed that the effectiveness of the CEAWC indeed required to be urgently increased. As in the past years, the Government had indicated that the practice of kidnapping and abduction among tribes in southern Sudan formed part of their tradition and was a normal practice, thereby giving the impression that this practice was some type of folklore. The Employer members, however, recalled that this case was very serious and these practices involved cruel acts and affected the lives of many victims in the country. Moreover, the documents submitted to the General Assembly of the United Nations, and to the United Nations Commission on Human Rights showed that massive action was required. The Employer members further noted the discrepancies in the statistical data provided by the Government concerning those abducted and those released. The Government had only indicated the number of 550 persons released without relating it to the thousands who were abducted. The Employer members considered that the statistical figures provided by the Government also reflected the extent to which the Government had recognized the problem. Moreover, the Government had repeatedly indicated the same reasons why the CEAWC worked so inefficiently. Therefore, the Conference Committee should, as did the Committee of Experts, request stronger action which should include considerably increased sanctions for the exaction of forced labour. The Employer members considered that the action programme referred to showed that the CEAWC would continue to work slowly. Even though the Government intended to liberate and return those kidnapped or abducted, it was obviously not in a position to do so. Besides technical assistance, assistance in the administrative area might be required. The Employer members did not underestimate the difficulties the country was facing. It was however also true that the armed forces which were one of the most powerful parties in Sudan, were involved in these practices. In conclusion, the Conference Committee was obliged to urge the Government to accelerate the necessary action to resolve the problem.

The Worker members expressed their serious preoccupation about the case of the application of Convention No. 29 by Sudan. In fact, the case had been examined six times by this Committee over the past ten years and had been mentioned five times in a special paragraph. Available information did not allow, unfortunately, to note even the slightest progress; forced labour remained a sad reality in Sudan. The information coming from the Special Rapporteur of the United Nations Commission on Human Rights and from Anti-Slavery International revealed the seriousness of the situation and the inertia of the Government. The life of thousands of human beings was at stake. Women and children were being bought and separated from their families to become slaves. Despite its awareness of the problem, the Government did not take the necessary

measures to eradicate this phenomenon. It ignored these practices and de facto amnestied those responsible for the abductions and for the forced labour. The Government should take urgent, relevant and efficient measures to combat forced labour practices in Sudan and to provide detailed information in writing on the action taken with a view to put an end to this disaster and on the concrete results of such action, on the number of persons liberated from slavery and on the measures taken to return them to their families and on their rehabilitation, as well as on the sanctions imposed on those enslaving them. The Worker members reiterated two proposals made last year in this Committee, namely the imposition of significant sanctions proportional to the seriousness of the situation and the need to send a direct contacts mission – proposals that could allow to eradicate forced labour practices. These practices, affecting thousands of women and children, were a serious violation of Convention No. 29 and constituted a crime against humanity. A direct contacts mission should go to the country and should have access to all information and to all the regions. The Government should indicate clearly whether it accepted such a mission or not.

The Worker member of Swaziland stated that the Committee was dealing with a very serious case which affected largely the most vulnerable members of society. He stated that these victims had a right to look up to their Government for safety, protection and defence. It was an obligation and a responsibility of those who governed, to provide a peaceful environment, respect for the rule of law, and justice to those governed. This obligation of the Sudanese Government should not be delegated. By ratifying the Forced Labour Convention, 1930 (No. 29), as far back as 1957, the Government had publicly declared its intention to implement both in law and in practice all the requirements of the Convention. It was saddening to note that sufficient effort had not been made by the Government to meet the requirements of the Convention. When the Committee had previously offered to send a direct contacts mission to assist the Government in finding solutions to the practice of forced labour, the Government had, unfortunately, refused. This refusal undermined the Government's plea for funds from the international community to enable it to cover inaccessible areas of the country where trafficking, abduction and forced labour were rife.

Historically, the Government had denied the existence of forced labour. Later it contested the statistics provided by Anti-Slavery International saying the figures were highly exaggerated. They had, however, conceded the figures submitted by the CEAWC. So far, there was no evidence of any prosecutions of perpetrators and of preventive mechanisms established. Anti-Slavery International had compiled in May 2002 the following information: communication from the Chairperson of the CEAWC dated 30 August 2001 to Anti-Slavery International indicating the number of returned persons who had been abducted at 1,200, a figure believed to be very conservative; Anti-Slavery representatives had noted in October 2000 that Government officials and others did not consider those persons as abducted persons when they were absorbed into households or into another family by sale, marriage or false adoption. To them, they were not victims of human rights violations and even less victims of forced labour or slavery; the UN sources also reported that Government-supported militia had again carried out raids in north Bahr El Ghazal in January 2001 abducting 122 women and children. In October and November 2001, NGOs in Sudan had reported that new raids had again occurred in north Bahr El Ghazal and that an unspecified number of women and children were missing as a result. On 28 March 2002, the United Nations Special Rapporteur on the situation of human rights in the Sudan, Mr. Gerhardt Baum had noted that he continued to receive reports of cases of raids followed by abductions. The Special Rapporteur supported the idea of a permanent monitoring in Bahr El Ghazal as a measure to stop these heinous practices.

The Worker member urged the Government to introduce or amend existing legislation to ensure that all these practices were prohibited and that the penalties were made commensurate with the human rights violations committed. While the Government pointed out that, under section 162 of the Criminal Code, abduction was punishable by ten years of imprisonment, the penalty for exaction of forced labour remained to be only one year of imprisonment. In January the Managing Editor of an independent newspaper, "Khartoum Monitor" had been convicted for propagation of false news and was to be imprisoned for six months if he failed to pay a fine of 5 million Sudanese pounds for having exposed the fact that military trains running between Wau and Babannsa had been used by the Government-supported militia to carry out raids and abductions over a number of years. In April 2002, a United Nations Resolution on human rights in Sudan (E/CN.4/2002/L.27) had called on the Government of Sudan to take measures to eradicate the practice "of abductions, in particular those cases connected with the passage of the Government train through Bahr El Ghazal". At the end of May 2002, a commission of eminent persons comprising members from the United States, the United Kingdom, Italy, Norway and France, whose task was to investigate slavery, abductions, enforced servitude, had established that abductions and slavery existed and were carried out by Government-armed tribal militias. The commission had also recommended that the train link in Bahr El Ghazal should be suspended because militias used it for their slave trade.

The speaker wished the Government of Sudan to do the following: publicly condemn abductions and declare all associated practices illegal; make appropriate amendments and effectively enforce the law; provide the ILO with detailed information on the measures taken to prevent further abductions and on the prosecutions of the perpetrators of all aspects of forced labour; invite the ILO's direct contacts mission to the Sudan to obtain full factual information and to examine what effective assistance could be made available to the Government to eradicate these practices; ensure that abducted women who had subsequently married were given full information about their options in a neutral setting, enabling them to decide freely to remain with their husbands or to leave; and in the case of children who had been absorbed into households, the best interests of the children should be the principal criteria for deciding what should happen.

The Worker member of Sudan thanked the International Confederation of Free Trade Unions (ICFTU) for consistently bringing the practices of abduction and forced labour taking place in his country to the attention of this Committee. This practice had been first claimed to be slavery, then slave-like practices and it had been continuously repeated in this Committee that the phenomena were actually kidnapping and abduction and not slavery or even forced labour. While he did not wish to defend the Government, he objected to the accusation of slavery and slave trade as these were an insult to the whole nation, even though such terminology was sometimes used in good faith. However, he admitted that kidnapping and abduction were not unknown practices in several countries in Africa, including Sudan. Sudan was the largest country in Africa with a land surface area of 1 million square miles with nine neighbouring countries, some of which were experiencing various types of unrest. The Sudanese population was only 30 million but was composed of more than 500 tribes. Most of the towns were along the river Nile but the majority of the population were nomads and cattle herders, some of whom lived in sub-Saharan areas. During the dry season, some tribes moved with their cattle towards wetter areas. Conflict between tribes arose regarding pastures. Following conflicts between tribes, women and children were sometimes seized by raiders. The practice was wrong and awful and had to be condemned but it was nonetheless found in many parts of sub-Saharan Africa. It was more rampant where there was a breakdown of authority. It was the result of the sheer exercise of power by the strong over the weak. Such practices were very old and had never been described as slavery or slave-like practices. The beginning of the civil war in 1983 introduced a third party to the conflict, namely the Southern Peoples Liberation Army (SPLA), which was taking advantage of any inter-tribal conflict or the breakdown of authority. The abducted did not always belong to a particular tribe or ethnic group. Conflicts occurred between Arab tribes and Nilotic tribes. As proof of this, he read paragraph 12 on page 164 of the English version of the report of the Committee of Experts where it was stated "In June 2000 a delegation from the CEAWC visited Pibor town in Jongli State to document 12 Dinka, Taposa, Nuer and Anyuak children who had been abducted by Nurie, a tribe in southern Sudan". However, the best proof that could be cited in this respect was the Wunlit Dinka-Uer Agreement between the leader of the SPLA and the leader of the DSF signed in March 1999, which provided for the outlawing of abduction of children and women between the two sides.

However, Sudan was now showing some progress in reducing, or even eradicating, the unacceptable practice of abduction of women and children. This could be summarized as follows: as a result of the efforts of Senator John Danforth, the American President's Special Envoy for Peace in Sudan, a peace agreement had been signed in Geneva in January this year between the Government of Sudan and the SPLA. The results of that agreement could not be overlooked and had led to the provision of considerable humanitarian relief. The effect of war and peace on inter-tribal conflicts and hence on the phenomena of kidnapping and abduction, could not be ignored either.

Recently a Committee led by Mr. Penn Kemble from the USA, with experts from the USA, Norway, the United Kingdom, Italy, Canada and France, had investigated the practice of kidnapping and abduction of children in Sudan and had made their recommendations which were forwarded to the Sudanese Government only last week, as reported in the media.

The President of Sudan had signed Presidential Decree No. 14/2002 on the re-establishment of the CEAWC. Two points in the Decree could not be overlooked. The Chairman of the Committee was now a full-time minister with powers of the Minister of Justice to refer criminal cases to trial. The CEAWC should conclude its work within one year and its Chairman should submit monthly reports and a final report to the President of the Republic.

The Worker member concluded by echoing the remarks made by Mr. Stanley of the TUC regarding Convention No. 29 and the Côte d'Ivoire, that one should not use the powers of this Committee as a 4 x 2 stick on the heads of governments. Instead one should always try to highlight progress and Mr. Stanley suggested discussing the case the following year. He fully agreed with that remark and requested the same on the Sudanese case in order to consolidate the progress made and to wait before taking decisions that may lead to contradictory remarks. He suggested that the matter be discussed next year.

The Worker member of Turkey deeply regretted to have to discuss, and without any progress over the years, at the beginning of the third millennium, a case of serious allegations concerning slavery, servitude, slave trade and forced labour which involved government forces and militia. Although the Government representative of Sudan had, as in previous years, categorically denied all the observations made by credible institutions such as the United Nations, Anti-Slavery International and the ICFTU, no convincing argument to the contrary had been presented. The Government representative of Sudan had adopted a similar attitude 13 years ago in 1989 when this case had been taken up for the first time in this Committee. He quoted the then Government representative as stating that "The legislation prohibited any form of exploitation or forced labour. There was no doubt as to the Government's commitment with regard to international instruments on the prevention of slavery and the slave trade, and Sudan had been among the first African countries to ratify the UN Convention on the abolition of slavery." He had concluded in the following manner: "Sudan was a democratic country, in liberty open to anyone who wished to find out on-the-spot what was happening; there was nothing to impede these efforts from being undertaken so that this could be confirmed in the eyes of the world."

The Worker member stated that in reports of credible organizations, the observations were substantiated with names of the victims, the details about the sale of slaves and about redemptions. All reports testified to the widespread practice of slavery, to its systematic nature, where it was taking place with total impunity.

He indicated that the redeemed slaves had testified that they had been abducted by the National Islamic Front, mainly by its Popular Defence Force (PDF). There was ample evidence of systematic raids of villages and killing of men and abduction of women and children in the south of the country. Although the Sudanese Government had accepted a limited number of abductions by some tribesmen and had established a Committee for the Eradication of Abduction of Women and Children, the reality was much more brutal. What had to be fought against were not sporadic and individual instances of abductions but the systematic enslavement of about 14,000 human beings. The reluctance of the Sudanese Government to accept a direct contacts mission further reinforced such an evaluation. He believed that the Committee should invite the Government representative of Sudan to accept a direct contacts mission to visit the country this year. In case the direct contacts mission was refused again this year, and considering the gravity of the case, he would propose a special paragraph for Sudan this year as well.

The Worker member of India noted with grave concern that, although Sudan had ratified this important Convention on 16 June 1957, duly recording its international commitment to eradicate forced labour in the country, until today, women and children were being abducted, kidnapped and used as forced labour and even sold as slaves. He found no language to condemn these acts that went against basic and fundamental human rights. There had been claims and counterclaims as to the degree of the offence but the fact of kidnappings and abduction of women and children remained undisputed. The issue had been appearing before the Committee continuously for the last four years. Last year this case had been concluded in a special paragraph of the Committee's report as a case of continued failure to apply the Convention. The Government's plea that such kidnappings and abduction of women and children resulted from the conflicts between two tribes, should not be acceptable as the role of the Government could not be negotiated. The international community should prevail over the Sudanese people and Government to immediately take effective measures, in solidarity with the working people of the world, to try to halt such inhuman practices by accepting the technical assistance of the ILO to educate and upkeep the morale of the people.

The Worker member of Greece stated that the report of the Committee of Experts contained shocking information. The Government representative should provide precise replies if there was to be any hope for the thousands of persons who lived in slavery in Sudan. The figure of 5,000 to 14,000 was put forward for persons awaiting release while the Government advanced the figure of 1,200 persons living in slavery. Also according to the Government, the Committee for the Eradication of Abduction of Women and Children (CEAWC) had ensured the release of four children and the repatriation of 118 abductees. Whatever the figures, the very existence of slavery was not denied. There were persons who in reality were abducted to be re-sold like cattle. This was not the first time that the case had been discussed by the Committee. However, the Government had confined itself to making vague promises of change. A special paragraph was required, but other means also needed to be used to raise knowledge of the situation in Sudan.

The Government had asserted that slavery was a practice that was as old as the tribes who practiced it. It went without saying that this argument had no force since slavery was a crime against humanity. Tradition could not render such a practice legitimate. In conclusion, he called upon the Government to accept an ILO direct contacts mission.

The Government member of Denmark, also speaking on behalf of the Government members of Finland, Iceland, Norway and Sweden, regretted that the case had been examined on several occasions by the Committee without seeing much progress and expressed grave concern at the persistence of reports from many sources of abduction, trafficking and forced labour accompanied by extreme violence, affecting thousands of women and children in Sudan. This information showed without doubt that forced labour remained a reality in Sudan and that abducted persons were victims of serious human rights violations, in addition to being victims of forced labour. Moreover, the process of improvement had been unacceptably slow. Against this grave and very severe background, she strongly urged the Government to take a much stronger stand to combat the practice of forced labour, kidnapping and abduction of women and children, thereby facilitating an acceleration of the process of its eradication. She also urged the Government to take the necessary measures to ensure, in accordance with the Convention, the imposition of penal sanctions on persons convicted of having exacted forced labour. The Government should provide copies of the respective court decisions in its next report to the ILO, which she sincerely hoped would show positive measures in this respect.

The Government member of the Syrian Arab Republic called upon the Committee of Experts and the Worker and Employer members to take into account the real situation in Sudan, and in other similar cases. He recalled the need to distinguish between a country suffering from a conflict among its citizens and a country in which peace reigned; between a country whose economy was flourishing, and a country whose economy was floundering, due to economic blockade, penalties and a shortage of productive institutions and manpower. A country whose first concern was to safeguard the unity of the nation and its territory and in which all efforts were focused on achieving that, would suffer delay in achieving development and legislative and social modernization. He pointed out that human rights were the same in every part of the world and hoped that the members of the Committee would consult the Appendix to the Report of the Director-General submitted to the Conference so as to be aware of a more severe case of aggression and violations of human rights in Palestine and the occupied territories. He concluded by hoping that the Committee would seek ways of supporting Sudan in order to overcome its difficulties instead of blaming the Government.

The Government member of the United States indicated that this was a long-standing case of the most dramatic and devastating proportions. She indicated that the United States Government had appointed a special envoy to help bring about peace and to end human suffering in Sudan, including bringing an end to the abduction and brutal forced servitude of women and children. She expressed appreciation of the cooperation of the Government of Sudan in connection with the envoy's efforts and urged the Government to implement the recommendations of this high-level mission.

While welcoming the Government's report, she said that there was an urgent need for it to develop a clear and unambiguous policy on abductions, to support the work of the CEAWC and to bring those responsible for abductions and slavery to justice. She urged the Government to accept help from the international community, in particular the ILO, through a direct contacts mission, and she stressed the importance of concrete results and urgent measures to achieve those results.

The Government member of Egypt referred to the statements made by the Government and Worker members of Sudan, in which

they indicated the measures taken by their country and the commitment shown by the country's political leadership to put an end to this phenomenon, in spite of the difficulties encountered by Sudan as a result of the war in the country. She suggested that the videotape mentioned by the Government representative could help to clarify the situation and should be viewed at the next session of the Committee of Experts in November 2002. She also referred to the statement made by the Employer member of Sudan, who had referred to the new policy adopted by his country to put an end to forced labour and the crime of abduction. In that respect, she suggested that the ILO extend its support to the Government of Sudan, not only to assist it in overcoming the phenomenon, but also to encourage it to ratify more ILO Conventions. In conclusion, she emphasized that the aim of the examination of individual cases was not the imposition of penalties, but the provision of advice and assistance to the Government on the best means of overcoming such a problem and addressing its root causes.

The Worker member of Iraq expressed his full support for the eradication of slavery, forced labour and abduction at all times and in any place, because these practices were contrary to human rights. In light of the detailed explanations and the practical measures taken by Sudan, as described by the Government representative, to put an end to the abduction of women and children in some provinces of Sudan, he emphasized that the conflicts in some provinces in Sudan are conflicts between some tribes over pasture and were not related to ethnic or religious differences. He added that his country deplored and condemned such a phenomenon and indicated that the practice of abduction, which occurred in several countries, was a result of illiteracy and the existence of a diversity of tribes. He emphasized that in Sudan, with its large territory and in view of the ongoing conflict in the South, the fighting between tribes was a more serious problem than the issue of abduction per se. He therefore called for real efforts to be made to achieve peace and stop the war of attrition, which is being stirred by some colonial powers. He indicated that external major powers were seeking to prolong the war in Sudan, by encouraging the practice of the abduction of women and children and by aggravating the complex problem of southern Sudan, which prevented any opportunity for peace. He hoped that the international community would condemn such external interference in the internal affairs of Sudan and would respect its sovereignty. He concluded by emphasizing the need to encourage the Government of Sudan and the social partners to put an end to the phenomenon of the abduction of women and children through the implementation of measures indicated by the Government representative, as well as any additional measures that did not interfere with national sovereignty.

Another Government representative of Sudan welcomed all positive recommendations made during the discussion of the case. He indicated that the position of his Government was not to defend violations of human rights or to deny them. He emphasized that every single case of human rights violation was of great importance. However, the exaggeration of numbers would not help in achieving positive results. The Government of Sudan recognized the existence of the problem of forced labour, abductions and trafficking and the question was how to move things in the right direction. He described an awareness campaign carried out by the Government, targeting illiterate people in remote areas where the problem was most acute. He added that over recent years a lot of improvements had been made in infrastructure. As a result, it was now possible to watch the television and to have access to the Internet and to telephones even in remote areas of the country. All of these developments helped in raising general awareness of the issue. At a more specific level, the Government had assembled a group of 400 local chiefs, who had participated in seminars conducted with the assistance of UNDP and non-governmental organizations to initiate an awareness-raising campaign.

The Government was adopting a two-level approach: the raising of awareness, on the one hand, and the imposition of severe sanctions that are really adequate, on the other. He emphasized that the education and raising of awareness should be given preference. People who were educated and committed crimes should be prosecuted, while those who were unaware should not immediately be sent to prison. Patience would evidently be required to ensure that the uneducated were made fully aware of the issue.

He indicated that a significant amount of funding was necessary to conduct these activities. The President had allocated 1 billion Sudanese pounds for the next four-month period. Similar amounts have been allocated for similar periods over the coming year. He also referred to a Presidential Decree which envisaged the elimination of forced labour practices within one year from its adoption on 26 January 2002. He indicated that the Government was very serious about this problem and that the President was personally involved. The Government welcomed the cooperation of the international community in this respect and expected tangible results within a year. Finally, he hoped that in the near future, confrontation would give way to cooperation among the parties concerned with this problem.

Another Government representative (Minister of Labour and Administrative Reform) indicated that he originated from southern Sudan and knew the real conditions there. He expressed gratitude to those speakers who had made positive interventions in support of the efforts made by the Government in order to combat the existing problems. He indicated that the Government had never denied that there were cases of abduction of women and children and that it was committed to eliminating this phenomenon. The underlying reason for the problem was the war that had been raging for the past ten years over a vast area of no-man's-land.

He expressed confidence that measures taken this year as part of the plan of action would bring positive results and that with the assistance of other governments, it would be possible to move forward. It was very important to stop the war, which was contributing to the problem. He expressed his gratitude to the Government of the United States and those of the European Union for their efforts to stop the war. He added that there had recently been many missions in Sudan on this issue, which could provide important and valuable information. However, there was a danger of duplicating efforts if further missions were to come. He also referred to a videotape on the subject which could also be shown at the Conference and could be a source of important information. He expressed the firm belief that positive results would be forthcoming in the very near future.

The Worker members insisted on distancing themselves from large parts of the statements made by the Worker members of Sudan and Iraq.

In the light of the report of the Committee of Experts and the information supplied by Anti-Slavery International, it had to be noted that no progress had been made in the application of the Convention. The objective of the Committee discussing a case was not to embarrass the Government, but to convince it to bring its law and practice into conformity with the obligations that it had undertaken by ratifying the Convention. The kidnapping, trafficking, forced labour and slavery which affect thousands of women and children constituted serious violations of the Convention and were crimes against humanity.

The Government had once again made promises to the Committee. It proposed a one-year plan of action. Pending the results of this plan of action, the Committee should reach very strong conclusions. It should conclude that this was a case of continued failure to comply with the Convention, and that its conclusions should be placed in a special paragraph of its report.

The Employer members emphasized that it had never been alleged that the Government's policy was in support of the present situation. It had merely been stated by the Committee that a large number of the population had been suffering for a very long time from acts of cruelty, including abductions, kidnappings and cases of murder, rape and forced labour. The Government representative had referred to a number of obstacles hindering the resolution of the problem. The Employer members recalled that these had also been reflected in the reports of the Committee of Experts over the years and indicated that, although the Committee for the Eradication of Abduction of Women and Children had been established in 1999, there had been no decisive improvement in the situation up to now. With regard to the request by the Government representative for technical assistance, they recalled the more far-reaching proposal of a direct contacts mission to the country, which could be an appropriate tool to address the very serious human rights violations and to support, among other action, the organization of awareness-raising campaigns. It would be valuable for the Government to benefit from the experience and knowledge of others. Since the Government representative had not accepted this proposal, the Committee would need to express its deep concern at the continued failure of the Government to apply the relevant provisions of the Convention. The Committee's conclusions should be set out in a special paragraph of its report.

The Committee took note of the statement made by the Government representative and of the discussions which followed. It recalled that it had examined this case on several occasions in recent years. The Committee shared the concern of the Committee of Experts regarding the practices of abduction, trafficking and forced labour affecting thousands of women and children, not only in the south of the country where there was armed conflict, but also in government-controlled areas. The Committee noted the information provided by the Government representative, including the information on the activities of the Committee for the Eradication of

Abduction of Women and Children (CEAWC) set up in 1999, on the need for education and to raise the awareness of tribes, on the financial resources allocated and the setting up of machinery to bring to trial newly denounced cases to be dealt with by public prosecutors of the Ministry of Justice. The Committee noted the willingness of the Government to collaborate with the various international institutions and the plan of action which the Government had formulated for the eradication of forced labour practices. The Committee took note of the concerns expressed by the members of the Committee, especially the fact that tradition could not render legitimate such serious violations of Convention No. 29, and the refusal to accept a direct contacts mission. While taking into consideration the explanations provided by the Government representative, the Committee was nevertheless bound to observe that all the information provided by, inter alia, workers' organizations, the Special Rapporteur of the United Nations and the members of the Committee who had taken the floor, demonstrated the persistence of forced labour in Sudan and the inadequacy of the measures taken by the Government to combat this situation. The Committee noted in particular the lack of penalties imposed on those responsible. It urged the Government to take a stronger position in combating cases of forced labour resulting from abductions of women and children by clarifying its policy and giving it the necessary publicity. The Committee trusted that the Government would take urgent, effective and relevant measures to establish and strengthen machinery for prevention, identification and punishment. It took note of the Government's commitment to evaluate the situation and the results of the plan of action within a year, and expressed the firm hope that it would be able to note improvements in the action taken by the Government to combat forced labour in the near future. The Committee decided that its conclusions would be placed in a special paragraph of its report.

Convention No. 79: Night Work of Young Persons (Non-Industrial Occupations), 1946
and
Convention No. 90: Night Work of Young Persons (Industry) (Revised), 1948

Paraguay (ratification: 1966). **A Government representative** recalled the main elements of the observation of the Committee of Experts and provided a chronological description of the legislative amendments to section 122 of the Labour Code. He agreed with the Committee of Experts that there had in practice been a regression in the legislation as a result of the amendment in 1995, during the first civil Government, of section 122 of the Labour Code, which reduced from 12 to ten hours the rest period for young persons between 15 and 18 years of age. He indicated that it was necessary to take into account the lack of legislative experience of the Parliament following 35 years of military dictatorship. He indicated that, under the terms of section 257 of Act No. 1680 of 2001, issuing the Young Persons Code, section 122 above was repealed. He nevertheless regretted that section 58 of Act No. 1680, despite the participation of many sectors of society in its preparation, once again introduced the content of the repealed section 122. He could find no justification for this amendment.

He indicated that the Young Persons Code, which was one of the many legislative reforms undertaken since the advent of democracy, had been issued under the Constitution and established a supervisory system for the protection of children which was not yet in operation. He regretted that the Secretary for Children and Young Persons had not been able to be present during the discussion. He emphasized that he accepted the comments of the Committee of Experts and, as it had requested, the Government would provide a detailed report on the application of Conventions Nos. 79 and 90. He also gave a formal undertaking to take the necessary measures immediately to achieve the desired legislative reform in consultation with the social partners. He informed the Committee that the Executive wished to include the question of the ratification of the Minimum Age Convention, 1973 (No. 138), on the agenda of the Parliament. Finally, he reaffirmed the will of his Government to overcome legislative procedural issues and to participate in the campaign for the elimination of child labour.

The Employer members thanked the Government representative for the information provided, although they noted that some of the information was not directly relevant to the case. The Conventions in question dealt with the limitation of night work performed by young persons and the prohibition on children performing night work. They recalled that the national legislation had been amended in 1974 to bring it into conformity with the Conventions. In the 1976 report of the Committee of Experts, this had therefore been identified as a case of progress. However, in 1995 the legislation had once again been amended and no longer gave effect to the Conventions. The amendment had reduced to ten hours the period of consecutive hours of rest required for young persons engaged in night work, instead of the 12 hours envisaged by the Conventions. Moreover, the 1995 amendment was not in compliance with the country's other labour laws, which was however a matter relating to the internal affairs of the State.

As Paraguay had ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), this regression in its legislation was even more regrettable. In view of the backward step taken in the legislation to protect young persons, the Employer members wondered whether the ratification of Convention No. 182 was merely a symbolic act. In this respect, they emphasized the importance of only ratifying a Convention when the State was able to implement its provisions.

The Employer members noted that, after some hesitation, the Government representative had recognized the legislative problem, for which no explanation had been advanced. With regard to the statement by the Government representative that the respective provisions of the legislation would be amended in future to comply with the Conventions, the Employer members wondered whether specific deadlines had been set by the Government for the adoption of the amendment.

Finally, the Employer members called upon the Office to ensure that the same laws were always referred to using the same terminology in the Committee of Experts' various comments to facilitate comprehension of the report.

The Worker members thanked the Government representative for the information provided and recalled that this was the first occasion on which the Committee examined a case concerning the night work of children and young persons in Paraguay. The current situation in the country was very serious, as indicated by addition of a footnote to the report of the Committee of Experts.

In 1976, the Committee of Experts had noted with satisfaction the amendment of section 122 to give effect to Articles 2 and 3 of the two Conventions. However, the Government had decided to amend this section once again, thereby reducing to ten hours the period during which young persons between the ages of 15 and 18 could not be employed at night, whereas the Conventions required a period of 12 hours. Furthermore, section 122 did not provide for a rest period of 14 hours for children under the age of 15 years. Section 189 of the Young Persons Code prohibited young persons of 18 years of age from performing night work between 8 p.m. and 5 a.m., namely for a period of nine hours. This was in contradiction with section 122 of the Labour Code, which set this period at ten hours, and with Articles 2 and 3 of the Conventions, which require a rest period of 12 consecutive hours.

The employment of children throughout the world was giving rise to great concern. This backward step in the legislation for the protection of children, at a time when night work was included in the definition of dangerous types of work in the Worst Forms of Child Labour Recommendation, 1999 (No. 190), was severely reprehensible. It was even more regrettable in view of the fact that Paraguay had ratified the Worst Forms of Child Labour Convention, 1999 (No. 182), in March 2001. Night work was harmful for everyone, and particularly for young workers. If night work was permitted, restrictions needed to be applied.

The lack of compliance with the Conventions was not confined to the legislation, but also affected everyday life. The country was currently experiencing an economic crisis, had over 1 million unemployed workers, was suffering from corruption and had a large external debt. A large number of families lived off the income of their children, who worked day and night in supermarkets or as street vendors. It was also important for these children to have the right to education, health and a life of dignity. The Government of Paraguay needed to take the necessary measures to bring its legislation into conformity with the provisions of the Conventions by amending section 122 of the Labour Code and section 189 of the Young Persons Code. These amendments would only constitute a first step and could only be effective if they were applied in practice. Effective supervision needed to be established to protect young persons and labour inspection should play an important role in this respect. Furthermore, those guilty of these practices had to be punished.

The Worker member of Paraguay indicated that there were numerous cases of violations of Conventions Nos. 79 and 90 in Paraguay since the Labour Code and the Young Persons Code, adopted after their ratification, contained provisions contrary to these Conventions. Thousands of children worked in supermarkets, national and multinational enterprises, while their parents had no work. In practice, young persons were employed and exploited. Furthermore, thousands of children, who could be described as children working in the informal sector, had been abandoned on the streets, which posed great danger for their physical and moral well-being.

These boys and girls, without any protection, became involved in drug addiction, suffered sexual abuse and were victims of violence.

He expressed his serious concern at the failure to respect human rights and rights of children, who were often forced by the army to carry out mandatory military service, despite the fact that the prescribed age for military service was between 17 and 19 years. In many cases, children between 14 and 16 years of age had been forced to work on oil pipelines, in other areas of forced labour or in the private homes of military personnel. According to the complaint brought before the Human Rights Committee of the National Congress, a number of these children had died in military barracks handling arms without any safety measures, and threats had been made against their parents to prevent them from reporting these incidents. After 13 years of democracy, he called for the strengthening of labour legislation and compliance with ILO Conventions, in particular Conventions Nos. 87, 98, 29, 138 and 169, which were systematically violated.

He indicated that the labour situation in his country was deteriorating every day. As an example of this, he indicated that during a demonstration for the protection of the public property of strategic state enterprises, such as telecommunications, energy and water, among others, the workers had been the victims of violence by the authorities, which had resulted in the death of one rural worker, several injuries and over 200 detentions. He said that the Government had been responsible for this action and expressed the firm hope that the persons responsible would be duly punished.

The Worker member of Guatemala said that minors were the principal victims of the socio-economic model imposed upon developing countries and meekly accepted by many governments. He endorsed the observation of the Committee of Experts, particularly as regards the inconsistency between the legislation of Paraguay, and especially section 122 of the Labour Code, with the Convention. He drew the Committee's attention to the fact that on 12 December 2001 Paraguay had denounced the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60). He believed that the policy that was being pursued included the implicit premeditated intention to diminish the protection afforded to children, since non-industrial activities could now be performed by children under 15 years of age. He hoped that the Government would make the necessary amendments to bring its legislation into conformity with the provisions of the Convention.

The Worker member of Brazil, in response to the explanations provided by the Government representative, emphasized first that in Paraguay the regulation of work by children and young persons was below protection established by the Convention, and was therefore in violation of the Convention. Secondly, Paraguay had recently ratified Convention No. 182, which was one of the fundamental Conventions. Unfortunately, at the same time, it had denounced the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60), which was a retrograde step. While recognizing that Paraguay might have reasons for the denunciation of this Convention, he insisted that the campaign for the ratification of Convention No. 182 did not imply that other relevant Conventions should cease to be applied.

The Worker member of Argentina, indicated that Paraguay, in the same way as other Latin American and Caribbean countries, was going through an economic process characterized by a deterioration in social conditions, and particularly a reduction in the protection of children, which was not only in violation of the provisions of Conventions Nos. 79 and 90, but also Conventions Nos. 138 and 182. Children were forced to perform work in breach of the principles established in those Conventions. The neglect of minors had become common in Latin American cities, where they were condemned to exclusion and marginalization. The violation of ratified Conventions and the indifference of governments to the worst forms of child labour made it necessary to condemn those who did not guarantee compliance with fundamental principles. It was unacceptable that, because of the economic crisis, children had been transformed into a source of support for their families, while their parents were unemployed. In Paraguay, as well as in the other countries, delinquency, alcoholism and child prostitution were on the increase. Everybody needed to make a commitment to guarantee children a future without marginalization, with education, health and leisure. Governments were in the frontline of those who had to take this responsibility.

The Government representative once again endorsed the observation by the Committee of Experts and expressed his total agreement with it. He added that section 122 had been repealed by section 257 of Act No. 1680. Nevertheless, he admitted the inconsistency of the legislation, since section 58 of the above Act, which issued the Young Persons Code, took up the terms of section 122 which had been repealed. He reaffirmed the intention of his Government to take the necessary measures to bring the legislation into conformity with Conventions Nos. 79 and 90.

The Employer members concluded that the case was very clear and that all the parties, including the Government, agreed upon the need to amend the legislation to bring it once again into conformity with the Conventions. They welcomed the Government's indication that it was prepared to do this in cooperation with the social partners. They therefore called upon the Government to take the appropriate legislative measures in the near future and to report to the ILO in detail on the progress achieved.

The Worker members took note of the legislative amendments announced by the Government representative. Unfortunately, the report of the Committee of Experts did not refer to them and it was therefore impossible to verify the current situation. The various interventions indicated that the current legislation was not in conformity with the Conventions. It was very regrettable that the Government of Paraguay had made a step backward in modifying section 122 of the Labour Code at a time when night work was considered to be a dangerous form of work under Recommendation No. 190, which supplemented Convention No. 182, which had been ratified by Paraguay. The Government should take measures as quickly as possible to amend its legislation, and particularly section 122 of the Labour Code and section 189 of the Young Persons Code. The Government should also envisage the establishment of effective supervision to protect young persons and to impose appropriate sanctions upon offenders. The Worker members took note of the Government's intention to ratify Convention No. 138 and called for this ratification to be made in the near future.

The Committee took note of the statement of the Government representative and the discussion that followed. The Committee noted with concern the reduction in the protection afforded to children in relation to the restriction of the night work of children in industry and in non-industrial occupations. The Committee noted the indications by the Government representative concerning the validity of the observation of the Committee of Experts, the distribution of functions between the various institutions and the will of the Government to make the necessary amendments to ensure the application of Conventions Nos. 79 and 90. The Committee took note of the concerns of its members that the legislation had been amended to reduce the protection afforded under the Conventions on the night work of children. The Committee also emphasized that this regression had occurred in a broader context, since Convention No. 60 had been denounced in December 2001 and, as a result, the minimum age of admission to non-industrial occupations had been reduced from 15 to 14 years. The Committee hoped that the legislation would be amended without delay with a view to ensuring the application of the Conventions on the night work of children and that, in more general terms, the Government would make every effort to reinforce the protection provided to children. The Committee also noted that the Government envisaged the ratification of the Minimum Age Convention, 1973 (No. 138). It noted in this respect the formal commitment by the Government to resolve the situation and to bring the respective provisions of the legislation into conformity with the provisions of the Convention.

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

Uruguay (ratification: 1973). **A Government representative** emphasized the support of his country for the ILO's standards. He pointed out that Uruguay was one of the countries that had ratified the most Conventions and was constantly receiving ILO technical cooperation, which had assisted in achieving progress in such important areas as labour inspection. He emphasized that the Committee provided a valuable opportunity to provide information on labour inspection. Nevertheless, he added that many of the comments of the Committee of Experts were no longer valid, as the situation had changed.

With regard to the conformity of the national legislation with Article 6 of the Convention, and particularly its final phrase concerning "improper external influences", he believed that the point at issue was strictly confined to legal problems and problems of interpretation, since the legal and administrative provisions were in accordance with the provisions of the Convention. Indeed, Decree No. 680/77 issuing regulations respecting the conditions of service of inspectors, prohibited labour inspectors from having any direct or indirect interest in the enterprises under their supervision. The central provision of section 495 of Act No. 15.809 of 1986 provided for the powers of the executive authority to establish a system of exclusive assignment, of an obligatory or optional nature, to the inspection functions of the general labour and social security inspectorate and departmental heads in the Ministry of the Interior, who had been assigned to inspection functions. The public servants cov-

ered by the system had to complete a working week of not less than 40 hours and could not undertake either directly or indirectly any public or private paid activity, with the exception of teaching in public institutions. Public servants covered by this system received additional remuneration equivalent to 50 per cent of their monthly salary for a 40-hour week. Implementing this legal authority, the Executive had issued Decree No. 322/86 establishing the system of exclusive and compulsory assignment for inspectors and departmental heads of regional agencies within the country discharging inspection functions. Subsequently, Act No. 16.226 of 1991 had been adopted which, in section 290, provided for the possibility of officials in the general labour inspectorate to undertake other types of activities unrelated to their inspection functions, provided that they were declared to their institutions and they refrained from participating in that capacity in matters which were directly or indirectly related to their private activities, so that they could discharge their functions when so required. This new provision partially repealed section 495 of Act. No. 15.809. Nevertheless, there was no obligation under Article 6 of the Convention to establish a system of exclusive assignment of public officials to inspection duties. When issuing this provision, the State had taken special care to prevent any conflict of interests which might arise in the event of an inspector working in areas related to her or his public functions, so that the separation was clear and guarantees were established for the administration, inspectors and those subject to supervision. The obligation to declare activities unrelated to inspection functions ensured transparency. The provision in question did not reduce the threefold administrative, penal and civil responsibility of labour inspectors, as set out in the general provisions.

In short, the social and legal safeguards that the term "improper external influences" was intended to guarantee were explicitly provided for. The view that section 290 was a backward step in achieving the professionalism and technical improvement of inspectors could be advanced, on the assumption that the exclusive assignment to these duties, by not being total, permitted inspectors to devote part of their time to other types of activities, thereby affecting the efficiency of their inspection functions. In the final analysis, this was a matter of opportunity, rather than legal provisions.

The report also addressed the wage differences between labour inspectors and inspectors of other administrative institutions. This consisted of a wage claim that could not be related to any alleged incompliance with the Convention No. 81. With regard to the guarantees of employment stability, he noted that labour inspectors were public officials, which guaranteed the employment stability and independence provided for in the Constitution. This implied guaranteed employment for public servants, who could only be dismissed for ineptitude, omissions or offences proven by administrative process, and for which the approval of the Senate was required.

The second matter addressed by the Committee of Experts concerned the staffing of the labour inspectorate and the determination of priorities. He emphasized that there was a clear political will to revalue the inspectorate. Labour inspection had been and would continue to be directly exercised by the State. In recent years, the staff of the inspectorate had increased by 25 per cent. With regard to their geographical distribution, 18 per cent of inspectors were based in the country and the others in metropolitan areas. He said that he knew of no parameters that had been agreed upon setting standards for the number of inspectors considered adequate to cover labour inspection.

The Committee of Experts then noted that the Government had not replied to the comments of the trade union organization that the efforts of the labour inspection to improve its efficiency were concentrated in the construction sector, to the detriment of other sectors. This was due to the high level of injuries in the sector. As a result of the constant work carried out by the tripartite construction board, the adoption of legal standards and the international cooperation provided by the ILO, this injury rate had been considerably reduced. At the present time, the areas in which inspectors operated were very broad. By way of illustration, in recent years the number of inspections had increased in various sectors, such as ports, rice production, sugar plantations and forests, and attention had been paid to such issues as the informal sector and child labour. He emphasized the constant training effort that was made for inspectors and the establishment of participatory forums for the direct involvement of stakeholders, such as the tripartite boards in the construction, forestry and port sectors, the national occupational safety and health council and the committee for the eradication of child labour.

The Employer members noted that this was the first time that the Conference Committee was considering this case. The law permitted labour inspectors to carry out other activities. The extent to which these other activities were carried out and the number of staff involved was unclear. The Committee of Experts had noted that in two branches of industry the number of staff seemed to be insufficient, and requested further detailed statistics disaggregated by geography and industry. The Employer members stressed the importance of collecting and publishing such statistics. With regard to the current shortcoming in reporting, the Employer members stressed that reporting provided an important basis for developing policy on occupational safety and health.

The Employer members stated that it could be dangerous to mix inspection duties with other remunerated activities. The Government had stated that the labour inspectors took on other paid work because they needed the extra income. Working conditions of labour inspectors needed to be adequate to guarantee their independence. In this case, material conditions of work were not sufficient and a danger existed that the inspector could be influenced. But it was difficult to verify.

Independence had to be guaranteed, but one had to be realistic. The regulations in Uruguay had the advantage of transparency – the practice was known, and the extent, content and possible conflicts were verifiable. Such a practice could be permitted if the supplemental employment was carried out in an entirely different area from the inspector's official duties. Lastly, they agreed with the Committee of Experts on all other points raised in the observation.

The Worker members noted that Convention No. 81 was important in itself, but also for implementing many other international labour standards such as safety and health, payment of wages, and the rights of indigenous peoples. They noted the new developments mentioned in the statement of the Government representative, wondered why this information had not been included in the report, and reserved comment for after the Committee of Experts' review.

Concerning Articles 3 and 6, they stated that safeguards could be created to ensure the independence of labour inspectors. Nonetheless, if an inspector had two jobs, it was doubtful that he or she could perform both well, particularly in the light of the heavy workload inspectors carried. The Worker members were struck by the figures given on the number of inspectors, which did not match those figures given by the Committee of Experts. They noted in particular the spectacular decrease in the coverage of the population by labour inspectors.

The Worker members attached great importance to Government reports on the labour inspectorate, as they provided a chance to see what was actually going on from the statistics provided. Consequently, there was a great need for reliable statistics.

The Worker member of Uruguay emphasized the strategic importance of Convention No. 81 which provided for the existence of a body supervising compliance with the rules for the protection and defence of the rights of workers. In order to ensure the proper execution of this function, the respective bodies should be composed of staff with political and technical independence, enjoying stability of employment, technical training and the necessary means of transportation. The low salaries of labour inspectors and the lack of interest by the Administration in this Convention had resulted in the adoption in 1991 of Act No. 16.226 allowing labour inspectors to have a second employment in the private sector, with the exception of advising on labour matters. This clearly demonstrated that the salaries of inspectors were insufficient to meet their basic needs, that the administration was not interested in this matter and that, in practice, the real second employment was that of labour inspector, that the Ministry of Labour and Social Security did not have a mechanism to ensure that such second employment did not consist of advising enterprises, with all the implications which this might have. Labour inspectors were willing to work only as inspectors, receiving an appropriate salary for their level of responsibility, without suffering discrimination in respect of other inspectors in the public administration. Another aspect which showed the Government's lack of interest in labour inspection was that the current number of inspectors was 100 for the whole country, 30 of whom were assigned to inspecting occupational safety and health conditions in all the enterprises in the national territory, with the remaining 70 inspecting general labour conditions. The number of inspectors was insufficient, aggravated by budgetary constraints, which meant that inspection could not be carried out in rural areas. This year, the monthly budget for travel to carry out inspections in rural areas amounted to one-third of the respective budget three years ago. The lack of interest in labour inspection was aggravated by the policy of deregulation and the increased flexibility of laws protecting workers. In recent years, in the construction sector, due to the labour conditions and the absence of safety measures, many accidents had occurred, which had increased social concern on this subject, with the result that the Government had had to create stricter inspection mechanisms drastically reducing attention in other areas of inspection. He requested the Government to make efforts to extend inspec-

tion to all areas and activities in the country, and especially rural areas, where the highest accident rates were found.

He indicated that there were no legal provisions giving effect to Article 21 of the Convention, in particular with regard to industrial accidents and occupational diseases. The Government did not publish statistics of industrial accidents, which made it more difficult to implement protection and prevention programmes in that field.

The Worker member of France deeply regretted the excessive time constraints which had restricted the discussion in the Committee and asserted that the Government of Uruguay should not be surprised by the fact that it had to appear before the Committee, taking into account the consequences that the non-application of Convention No. 81 could have on the application of many other ILO Conventions. The reply by the Government representative, which did not contain any figures, merely confirmed the validity of the Committee of Experts' observations. It was undeniable that the necessity for labour inspectors to take up another job was in flagrant contradiction with the principle of their independence. Moreover, the necessity for public officials to work longer than their normal 40 hours proved that their conditions of work were deteriorating. Such a situation was undeniably a symptom of disregard for the Convention.

The Government member of Argentina, speaking on behalf of the MERCOSUR countries, welcomed the efforts made by the Government of Uruguay to improve its national standards. He emphasized that Uruguay had always complied strictly with its international obligations. He indicated that, within the framework of the regional system, joint measures had been taken in four countries to improve the system of labour inspection in agriculture and construction, with the objective of establishing common administrative procedures for these activities, as well as a set of requirements for the recruitment of labour inspectors. He expressed his firm hope that, taking into account the tradition of compliance in Uruguay, these discrepancies between the legislation and the Convention would be resolved in the very near future.

The Government representative indicated that he did not agree with the statement made by the Worker member of his country, and undertook to provide full information concerning the application of Articles 20 and 21 of the Convention. He added that his Government would respond appropriately to the questions raised after conducting the necessary tripartite consultations.

The Committee took note of the oral information provided by the Government representative and of the discussion which ensued. The Committee noted the legislative provisions which authorized labour inspectors to carry out another professional activity. It requested the Government to take the necessary measures, including in respect of conditions of work, to ensure that labour inspectors were assured, in law and in practice, of stability of employment and were independent of improper external influences, in conformity with Articles 3, paragraph 2, and 6, of the Convention. Such measures should aim at ensuring equality of treatment with other comparable inspection services. The Committee also considered it urgent that the Government took measures with a view to reinforcing the facilities and staff of inspection services, not only in the construction sector, but also in other economic sectors involving risks to the health and security of workers employed there. The Committee also recalled the Government's obligation to ensure that the central labour inspection authority published and communicated to the ILO, within the required time limits, an annual inspection report, the objectives of which, at both the national and international levels, were clearly described in paragraphs 272 et. seq. of the Committee of Experts' General Survey of 1985. The Committee finally emphasized the importance of the Convention for the application of other ILO Conventions. The Committee requested the Government to provide full information, including statistics in its next report, on the progress achieved in the application of the Convention.

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

Belarus (ratification: 1956). See Part One: General Report, paragraph 182

Colombia (ratification: 1976). **A Government representative**, Minister of Labour and Social Security, indicated in respect of bringing Colombian labour legislation into conformity with the ILO Conventions that Act No. 584 of 2000 had reformed the labour system in several respects:

- it confirmed the right to organize and freedom of association, giving full freedom to the trade unions to draft their statutes;
- it removed from the Ministry of Labour the authority to intervene and investigate trade union organizations;
- it allowed trade union organizations to call strikes for non-payment of wages by employers;
- it broadened the guarantee of trade union rights to public servants;
- it granted public servants the right to time off for trade union activities; and
- it provided for the resolution of collective labour disputes by minority trade unions through arbitration tribunal.

For its part, the Constitutional Court, through various executive orders, had derogated several provisions of the Substantive Labour Code that had not been in conformity with the political Constitution and ILO Conventions. In this way, several provisions relating to the intervention of the Ministry of Labour into the internal affairs of trade unions, such as the adoption of their statutes and intervention in trade union meetings, had been declared inapplicable in order to strengthen the principle of trade union autonomy. It also permitted workers to join several trade unions. Applying the principle of equality, the provisions that made a distinction between the activities of trade unions of enterprises and those of professions and industries had been derogated. In case of the coexistence of a number of minority trade unions in one enterprise, all of them could be represented in collective bargaining. The rights to hold sympathy strikes and to strike, not only for the non-payment of wages, but also for non-observance of any contractual obligation by the employer, were provided for. The Labour Appeals Tribunal of the Supreme Court of Justice, in its decision of 1998 interpreting the provision, had recognized the existence of circumstantial rights for all workers involved in collective labour disputes.

He indicated that the Ministry of Labour and Social Security had held a number of seminars with the territorial directors and labour inspectors in order to bring their competency and functions into conformity with the Conventions. Furthermore, several directives relating to the observance of the principles of freedom of association had been adopted. For example, the administrative act that provided for registration in the register of trade unions was not subject to appeal and, in the event of disputes, the usual jurisdiction was applicable. The same rule was applicable to the resolutions which prescribed the rotation of trade union office. Similarly, directives concerning the mandatory character of collective bargaining for public employees had been issued, in conformity with Conventions Nos. 151 and 154. Protest actions by workers had been respected and none of them had been declared illegal. Arbitration tribunals had only been convened at the request of trade union organizations. Social dialogue and collective bargaining had been promoted as a mechanism to resolve disputes and conflicts. The 200 or more collective agreements, arbitration awards or agreements signed over the past 12 months illustrated this dialogue.

The Ministry of Labour had defended the trade union activity as a fundamental element of democracy, had condemned the assassinations and death threats against trade unionists, had publicly demanded the paramilitary groups to stop this assassination in the same way as it had demanded guerrilla groups to release numerous persons being held in captivity.

He emphasized that, in respect of the protection of the life of trade unionists, the national Government, at the initiative of the President and with the participation of delegates of trade unions, was developing a national programme of protection for trade unionists under the responsibility of the Minister of Interior. On the other hand, the Congress of the Republic, at the initiative of the Government, and with previous consultation with trade unions of public employees, had adopted, on 12 June 2001, the new Act on administrative careers, which provided mechanisms for entry, promotion and work in the public administration which were much more favourable and democratic for workers.

With respect to regulation of the right to strike in essential public services, the Government hoped that the legislation governing this right would be the result of a process of dialogue between employers, workers and the Government. He emphasized that the right to strike and to social protest were guaranteed by the national Constitution, and that the Government fully respected this right and had not declared illegal any type of strike or work stoppage.

The Minister of Labour indicated that he was approaching the end of his tenure and expressed his gratitude to all the members of the Committee for its collaboration in endeavouring to bring the labour legislation in Colombia into conformity with the democratic principles of the ILO and freedom of association including the life of trade unionists which needed to be respected, not only as an integral part of democracy, but also as a guarantee for the establishment of a new type of labour relations. He indicated that in the current conditions of acute and degrading violence, worsened by the criminal activities of the paramilitary groups, drug traffickers and organized crime, the best contribution that the ILO could make

would be to strengthen the programme of tripartite cooperation with Colombia and encourage workers, employers and the Government to have the political will to put the objectives of this programme into practice.

The Employer members recalled that the Committee had examined the application of the Convention for a number of years and that a long debate had been held on the subject the previous year. The case raised two issues. The first related to law and practice, which were contrary to the principles set out in the Convention concerning freedom of association, and the second related to the climate of violence which existed in the country and which constituted a very serious obstacle to the exercise by employers and workers of their rights under the Convention. The situation also raised the question of the relationship between a climate of violence and legislation which was not in conformity with the requirements of the Convention. It was clear that inadequate labour legislation did not of itself generate violence. However, the existence of a climate of violence did not encourage the amendment of the legislation. Although the question of violence was not directly within the mandate of the Committee and the ILO was not in a position to take the necessary measures to put an end to the violence, the Committee was faced with a dilemma, since the actual development of labour legislation was influenced by the overall situation prevailing in the country.

With reference to the long list of points covered by the comments of the Committee of Experts in the past, the Conference Committee had noted at its session last year the progress achieved by the Government. With regard to the remaining limitations on the right to strike, the Government representative had indicated that draft legislation had been prepared to resolve the problem. However, recalling their position on the right to strike in relation to the Convention, the Employer members believed that no legislative action was required by the Government to bring its law into line with the Convention. The outstanding problem was therefore the climate of violence in the country. As illustrated by the long list of victims read out the previous year, the trade unions were principally affected by the personal attacks, murders and kidnappings, although other sectors of the population, including employers, judges, doctors and the police were also affected. Over the past six years, there had been 200,000 victims, which was a truly horrifying figure. As its name suggested, freedom of association presupposed a minimum degree of freedom and could not prosper in a climate of threats and violence. The Committee would therefore need to express its deep concern and sympathy for the victims and their families in its conclusions, and should call on the Government once again to do everything within its power to achieve a lasting improvement in the situation, which was indispensable if freedom of association was to flourish.

The Worker members thanked the Minister for his speech. Exactly one year ago, figures had been provided for the number of trade union leaders murdered in Colombia. Between January and May 2001, 46 trade unionists had lost their lives. In 2002, the information received was a matter of grave concern: 72 trade unionists had already been murdered. Between June 2001 and May 2002, 176 women and men who were active as trade union leaders had been murdered, without counting the attacks and various crimes committed in relation to trade union activities. Between 4 and 6 June, three more trade unionists had been killed. The level of violence in Colombia was unequalled and principally affected trade union leaders. One Colombian trade unionist had indicated that "the best trade unionist appeared to be a dead trade unionist. The best trade union was the trade union that no longer existed". There could be no doubt that this violence was intended to undermine the trade union movement by preventing any expression of discontent towards policies of exclusion. Attempted murders, kidnappings and disappearances, death threats, persecution, detentions, dismissals, failure to pay the wages due to trade union leaders, restrictions on access to workplaces, and worse, murders and impunity, were the principal cases addressed by the Committee on Freedom of Association over recent years and in respect of which it had constantly urged the need for the full application of the guarantees set out in the Convention. The Committee of Experts cited the Committee on Freedom of Association that regretted that "in most cases of murder, murder attempts or disappearances of trade union officials and members, those responsible have not been arrested and punished". Impunity persisted in the immense majority of cases. Attacks against trade union leaders were increasing further in numbers. The alarming figures provided reflected an increase that was extremely worrying. Last March, the Committee on Freedom of Association had expressed its deep concern:

> The Committee deeply regrets that the Government has not answered the recommendations of the Committee, nor has it sent its observations on the serious allegations presented by the complainants, concerning a serious increase in the violence. The Committee also deeply regrets that it cannot but conclude that, since this case was last examined at its March 2001 meeting, there has been no sign of progress in reducing the violence against the trade union movement, its representatives and members. (…) The Committee repeats once again that "freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed" and that "the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected". (…) The Committee stresses that impunity, whether it is perpetrated or condoned by governments or others in relation to extreme or widespread violations of fundamental rights of freedom of association, is a clear threat to essential trade union rights and the very basis of democracy itself. (…) The Committee also requests the Government to relate all the facts available to it which could help to explain the impunity of the acts of violence against trade union members. The Committee once again reminds the Government of its responsibility for the protection of workers against acts of violence and for a responsible factual and analytical assessment of each and every crime committed.

The Committee on Freedom of Association had also emphasized the need for the Government to provide information to shed light on the motives and circumstances in which acts of violence had been committed. Based on the numerous complaints received from workers' organizations in recent years, the Committee had emphasized specific sectors such as education, the oil industry, the health services and municipal and departmental administrations. These services were greatly affected by most restructuring policies and had a high social cost and a high level of social conflicts. Legal provisions infringing the essential prerogatives of freedom of association also remained, such as restrictions on the right to strike and the submission of disputes to arbitration. The Committee of Experts had been commenting on these points for many years without any change being made.

The Worker members indicated that it was possible to go into great detail on the situation in Colombia, which merited such treatment. The facts were accompanied by clear conclusions and precise demands from the ILO's supervisory bodies. They had been ascertained in the country the previous year by the Special Representative of the Director-General, representatives of the United Nations Human Rights Committee and many trade union missions and delegations sent by several ILO member States, and were sadly eloquent. In Colombia, the right to organize, to collective bargaining and to strike in the public sector and in private enterprises were almost impossible to exercise. Trade union leaders were murdered, received death threats, were unjustly dismissed or persecuted as delinquents, while the murderers of trade union leaders went completely free. Trade unionism in the country had been hit by a real wave of crime. Trade union organizations were weakened, disjointed and were often disappearing. Workers ran the risk of progressively finding themselves without any form of social protection or of organization.

One year ago, it had been decided to establish an ILO programme in Colombia. This had not yet been established, which was highly regrettable in view of the critical situation that had just been described. The Worker members called for the programme to be launched as rapidly as possible and urged the Government to accept the Office's proposal of technical assistance to undertake a factual evaluation of cases of violence, which should make it possible to overcome the issue of impunity and ascertain the real causes of the violence. The previous year, the Worker members had called for a Commission of Inquiry to be sent to Colombia. They reiterated this call once again this year. The Commission of Inquiry should not be an end in itself, but a mechanism of extreme importance in improving respect for trade union freedoms in Colombia. It was needed to respond without any further delay to the many demands and conclusions made by the Committee on Freedom of Association and the Committee of Experts concerning the application of the Convention in law and practice.

A Worker member of Colombia indicated that the exercise of trade union activities in his country had never been easy due to the continuously hostile attitude of employers and governments. From the beginnings of the twentieth century, there had been a massive number of murders of workers, including the massacre of hundreds of workers in 1928. The most recent stage of anti-union persecution had begun in 1979 with the adoption of the so-called Security Charter, which encouraged the violation of premises and the detention and torture of many trade unionists. At the end of the 1980s, the

assassinations had begun. During its 15 years of existence, the Workers Central of Colombia (CUT) had recorded the murder of over 3,500 leaders, activists and members. In the year 2000, there had been 128 murders, and the figure had risen to 192 in 2001. During the Conference in 2001, a list had been read out of the 46 trade union leaders murdered during the first five months of that year. In 2001, over the same period, there had been 85 murders. Since the departure of the Colombian delegation to attend the 90th session of the Conference, three more leaders had been killed. To this should be added an interminable list of threats, attacks, displacements, exiles, kidnappings and disappearances which painted a picture of horror for the Colombian trade union movement. In short, during the period between the 89th and 90th Sessions of the Conferences, 420 acts of violence had been perpetrated against the right to life, physical integrity and personal freedom of trade unionists. As an explanation for this dramatic situation, the Government and employers affirmed that there was a general situation of violence in the country which affected many citizens, including trade unionists, and that the Government was making every effort to prevent it. Although the gravity of the violence and its impact on practically all the activities of the country could not be denied, the Government could not use that situation to avoid its responsibilities.

The crimes were shrouded in a thick cloak of impunity. In comments sent to the Committee of Experts this year by the CUT, the conclusions of the Committee on Freedom of Association had been endorsed and it was pointed out that the issue of impunity was aggravating the situation of trade union members. The figures spoke for themselves: there had been over 3,500 murders and only five convictions between August 1986 and April 2002.

The measures taken by the Government to protect trade unionists were very precarious. The programme adopted by the Ministry of the Interior for the protection of trade unionists and human rights defenders was dysfunctional in view of the bureaucratic procedures and lack of resources. The persistent calls for the programme to be restructured, decentralized, the risk evaluation systems modified and sufficient resources allocated, had fallen on deaf ears. The same had occurred with the Inter-Institutional Commission for the Promotion and Protection of the Human Rights of Workers, established in 1997, in view of the lack of support by the various State bodies of which it was composed. He considered that, even though important protection measures were taken (and it was hoped that they would be improved in all respects), on their own they were inadequate. A state policy was required to reduce impunity and dismantle the paramilitary groups which were responsible for most of the crimes committed. In practice, the paramilitary groups formed part of a campaign intended to eradicate the trade union movement and prevent any form of resistance to the tenets of neo-liberalism.

The United Nations High Commissioner for Human Rights, NGOs, various intergovernmental bodies, the Committee on Freedom of Association, international trade union confederations and all those with direct knowledge of the reality in Colombia, agreed on the gravity of the situation and called upon the Government to take effective measures to bring an end to the barbarity. However, the results obtained up to now had been very disappointing.

He affirmed that Colombian workers were firmly attached to peace with social justice and a negotiated solution to the internal conflict and were opposed to any type of external interference through programmes such as the so-called Plan Colombia, which was aggravating the conflict and threatening to extend it beyond the frontiers of the country. He said that he could not hide the great concern of the workers at the policy announced by the new Government which, in his view, would result in an escalation of the war, the aggravation of the country's economic, political and social problems and would make the situation of workers still more critical. He expressed concern at the tendency for the Government to make use of repression to an increasing extent, as illustrated by the reforms to the Single Disciplinary Code, under which acts which had led to the imprisonment of various workers were criminalized, as well as the emergency legislation announced by the new Government. He welcomed the efforts made by the ILO up to now, including the special paragraphs in the report of the Committee, the two direct contacts missions and the sending of a Special Representative of the Director-General. However, he regretted that the special programme for cooperation with Colombia, approved by the Governing Body a year ago, had not commenced due to lack of resources, and he called for the necessary financing to be allocated as soon as possible to initiate it. In view of the fact that the situation was deteriorating in an alarming manner and the Government was not meeting the various requirements of the ILO adequately, he called upon the Committee to place its conclusions on this case in a special paragraph and expressed his concern to the Governing Body at the delay in addressing the complaint submitted by the Workers in 1998 under article 26 of the Constitution. He reiterated his call for the appointment of a Commission of inquiry, even though the Government and the Employers were undertaking a broad campaign to prevent such a measure, using the argument that it would involve economic sanctions for the country which would aggravate the situation, thereby placing Colombian trade unionists in a difficult situation that could have grave consequences for them.

The ILO had at its disposal standards and measures which could be taken in such critical cases as that of Colombia. He called for the standards to be complied with and the measures adopted to ensure that human rights and trade union freedoms were respected.

Another Worker member of Colombia expressed agreement with the Worker members who had spoken previously and thanked the Minister of Labour for his comments. He indicated that while he had been the Minister he had prevented even more serious acts being committed against workers. He observed that the adoption of the neo-liberal model, with its structural adjustment programmes, privatization, reduction in protection and absence of incentives for national production, the imposition of labour reforms involving greater flexibility, the loss of stability, more precarious employment and the dismantling of social security, had pushed his country backwards in the concert of nations.

He supported the special emphasis placed on the issue of violations of the right to life, personal security and physical and moral integrity of trade union leaders, which were basic requirements for the exercise of the rights set out in Convention No. 87. Nevertheless, he expressed concern at other aspects of freedom of association in the light of the above Convention and other fundamental ILO Conventions. At the present time, it was extremely difficult to establish a trade union organization in view of the anti trade union policy of certain employers, who sought to dismiss anyone who promoted the establishment of a trade union. Furthermore, the deregulation of labour and the proliferation of civil contracts for the performance of services did not facilitate the establishment of trade union organizations. The decline in unionization rates was in large part due to the climate of terror among those who wished to establish a trade union. In practice, there was a policy to eradicate trade unionism by pointing the finger at trade unionists as being those responsible for the economic crisis confronting the country, thereby making them the perfect target for murders of all types.

There were also other violations of trade union rights, such as the undue interference of the authorities in the establishment of trade union organizations and the legalization of intervention by employers in the registration of trade unions, through the acceptance of employers providing resources for the registration of trade union organizations. Mass redundancies for alleged economic reasons were also used to promote the so-called "cooperatives of associated work", consisting of non-unionized workers based on the argument that the workers owned the enterprise and did not therefore need a trade union. It was impossible to enumerate all the violations of the exercise of freedom of association perpetrated on a daily basis in Colombia, and which had been the subject of a large number of complaints to the Committee on Freedom of Association. Indeed, there were currently ten cases before the Committee, and another four that were being followed up, including allegations from many trade union organizations. This demonstrated the difficult situation confronting Colombian workers, not only with regard to fundamental human rights, but also the exercise of freedom of association.

The right to collective bargaining was substantially restricted. Many employers proposed alternative pacts, both in the public and private sector, as a means of undermining collective agreements. The fact that, after much effort on the part of the workers, Convention No. 151 had been ratified, despite the fact that the Constitutional Court had declared that organizations of public employees did not have the right to collective bargaining, was a clear illustration of the current situation.

The situation of workers in many public and private enterprises, municipal authorities and departments, in the health and judicial sectors in the country, gave rise to great anxiety, particularly since the new economic team had announced greater flexibility, more privatizations, a regressive reform of the pensions system and new sacrifices for workers. The future was not promising. Colombia urgently needed to adopt measures to lay the basis for the development of a new country in which peace was the product of justice.

The Worker member of the United States referred to his statement to the Committee the previous year concerning his special responsibility and burden to intervene in this case, as a trade unionist and citizen of the United States. Although it was Colombia and not the United States whose case was under consideration, it was his Government's military assistance implemented through Plan Colombia which was contributing to the armed conflict, thereby augmenting the physical terror directed against Co-

lombian trade unionists. Under Plan Colombia, financial assistance was provided to the Colombian armed forces, some of whose personnel and resources were interchangeable with the paramilitary forces responsible for many of the assassinations of Colombian citizens and trade unionists. He emphasized the special responsibility of the Conference and the Governing Body in solving the problems in Colombia.

He referred to the conclusion of the Committee on Freedom of Association in Case No. 1787 on Colombia, in which the Committee had deplored that no significant progress had been achieved in the cases pending before it and trusted that the Governing Body would take this into account when coming to its decision on whether a Commission of Inquiry should be established. Since November 1999, the Committee on Freedom of Association had reached this conclusion. This Committee had reviewed the case of Colombia, the Governing Body had considered it in nearly all of its sessions, a direct contacts mission had been dispatched and the special technical cooperation programme had been designed. Over 128 Colombian trade unionists had been assassinated in 2000, over 194 in 2001 and over 80 in the first six months of this year, not to mention more than 3,500 murdered since 1985, according to the estimates of the Colombian Confederation of Trade Unions. Yet, between 1986 and 2002, the Colombian National Prosecutorial Unit on Human Rights concluded that guilty verdicts had been found in only five of these cases.

The destruction of Colombian trade union organizations was also being carried out by the application of flexibilization and the inadequate enforcement of labour laws, often driven by IMF prescriptions for structural adjustment and the lobbying and pressure of employers. He indicated that Colombian law permitted the conclusion of direct collective pacts between employers and groups of individual employees, effectively thwarting trade union organizations. Massive lay-offs, followed by the creation of cooperatives in which the workers were made into so-called "owners" was another effective tactic used for the destruction of Colombian unions. Section 46 of Act No. 50 of 1990 gave the Colombian Labour Ministry and the administrative authorities the power to deny otherwise legitimate registration requests for new trade unions, while the administrative authorities often permitted employers to challenge trade union registrations.

Referring to the issue of the physical destruction of trade unions and assassinations of trade unionists, he indicated that the Interior Ministry's protection programme had proven to be dysfunctional for reasons of budgetary constraints, administrative inefficiency and bad faith on the part of the administrative and enforcement personnel. He referred to a recent UNHCR report confirming that the Government had adopted policies and measures which made the judicial apparatus weaker and more ineffective, thereby further contributing to the extremely high levels of impunity for those responsible for the violence committed against trade unionists. Further powers were also being sought to interfere in investigations of those who had murdered trade unionists.

He called upon the ILO and the Governing Body to seize the moment and apply all available means and mechanisms, including the dispatch of a Commission of Inquiry. The Committee should also place its conclusions on the case in a special paragraph of its report.

The Worker member of France stated that he would make a brief intervention so as to allow the Committee to examine all the cases before it. He deplored that the members of the Committee made excessively lengthy interventions and called upon the Chairperson to make sure that such abuses did not recur.

The violations of the Convention in Colombia were extremely serious and no progress had been made. The laws in Colombia did not respect the ratified Conventions. Furthermore, the violence that prevailed in Colombia was so widespread that the right to life could not be safeguarded and other rights, including the rights to freedom of association and collective bargaining, were jeopardized. All the successive Governments of the country had put the blame on armed and paramilitary groups, drug mafias or organized crime. And, even though they had sometimes undertaken to adopt laws to prevent violations of trade union rights, such draft laws were never submitted to Congress. Impunity persisted and, without counting the eventual role of the International Penal Court, it was up to the Government to make every effort to bring its law and practice into conformity with its international obligations set out in Conventions. French workers expressed their solidarity with the Colombian trade union movement and with its brave militants. Their actions contributed, along with those of other actors of civil society, to the strengthening and consolidation of democracy and the rule of law through their active defence of workers' rights. It was necessary to bring an end to a fully fledged genocide of the trade unionists of Colombia.

The Worker member of Cuba expressed the solidarity of Cuban workers with Colombian workers in view of the serious situation under discussion by the Committee. This situation should give rise to the unconditional provision of any necessary assistance. He indicated that he fully agreed with the statements made by the Worker members who had preceded him.

The Worker member of Switzerland observed that the case of Colombia continued to cause consternation to democrats and trade unionists throughout the world. Swiss workers were extremely worried and had expressed their solidarity with the trade unionists of Colombia. The Swiss Trade Union had been approached on several occasions by its members over recent months on the question of what the ILO would be able to do, and what it could not do so as to help recreate the conditions needed to re-establish the exercise of freedom of association and collective bargaining. The violence against, and murders of, Colombian trade unionists had lasted far too long and, sadly, were perpetuated in complete impunity. It had to be noted that the procedures followed up to now had had little impact. The assistance programme envisaged had still not been carried out. It was unacceptable to do nothing when the right to life, ILO Conventions and the Universal Declaration of Human Rights were violated in Colombia. The ordinary procedure should be taken up again and a Commission of Inquiry should be sent to Colombia without delay. The assistance programme should be implemented as soon as possible. It was unacceptable to further delay its implementation under the pretext that its finance was not ensured.

The Worker member of Pakistan reaffirmed that the situation in Colombia, where innocent trade unionists were being brutally murdered, remained of great concern to the people of Colombia and to the international community. There had been no improvement in the observance of the basic rights of freedom of association and collective bargaining. With reference to workers in the public services in particular, he recalled that trade unions were banned in a wide range of services, which were not necessarily essential. Moreover, the legislation provided for the possibility to dismiss trade union officers who called or participated in unlawful strike action. Although the Government had given an undertaking to the Committee to amend the legislation, the relevant provisions remained unchanged. Moreover, recent decisions by two constitutional courts ran counter to the right of collective bargaining. As a result, a large number of workers employed in such public services as banks, financial institutions, transport, telecommunications, electricity, education and public hospitals were unable to present their demands at a time when staff numbers in the public service were being reduced, often within the context of privatization measures. Workers in these services had every right to present their demands and engage in collective bargaining, particularly when their jobs were at threat. However, instead of promoting an agreed solution, workers in non-essential services who took strike action, faced dismissal. This issue had repeatedly been raised by the Committee of Experts.

He therefore strongly urged the Government to amend its labour legislation so as to remove restrictions on trade union activity, including collective bargaining. He also called upon the Government not to undertake restructuring measures in public services, such as hospitals and telecommunications, without providing the necessary safety nets. Workers should not be penalized for taking trade union action. The protection provided for workers should include the prohibition of their being forced to sign contracts in which they undertook not to join unions. He urged the ILO to provide technical assistance to help improve the situation and hoped that the Committee would place its conclusions on this case in a special paragraph of its report.

The Worker member of the United Kingdom recalled that his Colombian trade union colleagues were confronted with violence, murder and grief on a daily basis. Yet, they continued to try to organize and represent their members. Indeed, it was when they performed those basic trade union activities that they were the most likely to be attacked. He recalled that the previous year he had read out the names of the 46 Colombian trade union colleagues murdered in the preceding five months. He would not on this occasion read out the names of all the 192 colleagues who had been murdered in 2001, nor the 85 killed since January 2002. The increasing level of violence against trade unionists in Colombia had been described as an attempt to completely eradicate the trade union movement in the country. To give an idea of the level of brutality facing Colombian trade union leaders and members, he described incidents which had occurred during his visit on a TUC mission to the country in February 2002. Moreover, he had been told of teachers shot in classes in front of their pupils and threats to people connected with the trade union movement. Despite all the Committee's discussions of the case, the violence was not abating, but indeed was increasing. The limited Ministry of the Interior protection programme had come to an end on 31 May for lack of funds. Unfortu-

nately, Governments had not kept their pledge to contribute to the ILO Special Cooperation Programme, which included a protection programme, and had been presented as an alternative to a Commission of Inquiry.

He emphasized that the murders continued with impunity. Since 1986, a total of some 3,500 trade unionists had been murdered. Investigating magistrates risked murder, or were removed, as they investigated their cases. The Office of the Prosecutor-General reported that only 376 investigations had been initiated, of which only three had reached the courts, with a few more being referred to military courts. In only five cases had sentences been passed. This constituted almost total impunity. Regardless of the workers' goodwill towards the country, the fact was that its institutions had proved incapable of dealing with the problem of impunity. Systematic weaknesses undermined efficient and democratic government and there was insufficient will in the body politic. The security forces did not appear to be under the clear control of the Government, and there were links between the paramilitary and some sections of the security forces, even though the nature of such links remained unclear. The Committee needed to ask itself what it could best do to help the Government and the social partners break the hellish cycle of impunity. In this respect, he expressed the firm conviction that only an ILO Commission of Inquiry could help. However, such a measure should not be regarded as a threat or a punishment, but as the most powerful procedure in the ILO's supervisory structures. Such a Commission of Inquiry would undoubtedly uncover truths that were horrible and difficult. But without truth, there could be no reconciliation, and without reconciliation, there could be no lasting peace.

The Worker member of Sweden, speaking on behalf of the workers of Denmark, Finland, Iceland, Norway and Sweden, expressed her solidarity with the workers of Colombia and reiterated their commitment to continue cooperation with the Colombian trade unionists. She stated, with a mixture of fury and profound pain, that the situation of violence was worsening and the number of killings of trade unionists was increasing every day. Despite the promises and apparent goodwill expressed by the Government the previous year in the Committee, the assassinations had continued and the murderers remained free on the streets. There was no doubt that the trade unionists were victims of systematic terror. This constituted a tragedy and in essence represented a far-reaching failure of the Government. Her organization, the Swedish Trade Union Confederation, had on several occasions visited the country. It was difficult to understand and describe the situation of permanent tension in which the trade unionists were living. She expressed her admiration and deep respect for them. This year a decisive step had to be made in order to change the situation of terror and death. The establishment of a Commission of Inquiry and the development of an extensive programme of ILO technical assistance were key elements in starting this process. Her organization called upon the Government of Sweden to speak up in the next session of the Governing Body in favour of the need for full financing of the technical programme for Colombia adopted the previous year. There were ways to bring an end to the violence in Colombia and to guarantee the full exercise of freedom of association. The Government of Colombia had to make the first step and should not shirk its responsibility.

The Government member of Denmark also speaking on behalf of the Government members of Finland, Iceland, Norway and Sweden, referred to the statement made by the European Union in the Committee the previous year, which had called upon the Government to take urgent and effective steps to ensure the legal and physical protection of those affected by the extensive violence in the country. The European Union had taken up this grave matter again at the Governing Body sessions in November 2001 and March 2002. She reiterated her deepest concern at the climate of violence in Colombia. Trade unionists continued to suffer attempts on their lives, physical integrity and security, and on their freedom of movement. In most of the cases of murder, attempted murder or disappearances of trade unionists, those responsible had neither been arrested nor charged. She expressed alarm at the high degree of impunity. The guarantees set out in international labour Conventions, in particular those relating to freedom of association, could only be effective if the civil and political rights enshrined in the Universal Declaration of Human Rights were genuinely recognized and protected. The Government needed to take immediate and adequate measures to guarantee trade unionists the right to life, integrity and freedom of association, including the implementation and respect of the ILO's fundamental Conventions. In this connection, she emphasized the right of workers' organizations to organize their activities in full freedom. For many years, the Government's attention had been drawn to certain provisions of the Labour Code. During the direct contacts mission carried out in February 2000, draft legislation had been prepared to amend these provisions. However, even though the Government had undertaken to submit these draft texts to Congress, this had not yet been done. She therefore called on the Government to ensure that the draft legislation was submitted to Congress for adoption without delay. It was also very important to take measures to give effect to the legislation. Finally, she requested the Government to keep the Committee of Experts informed of the progress made in its next report to the ILO.

The Government member of the United States stated that this case had a long history of review by the Committee of Experts and the Conference Committee. There was progress regarding legislative inconsistencies with Convention No. 87 over a period of years, and the Government had demonstrated a commitment to promoting measures recommended by the Committee of Experts. However, the situation of violence against trade unionists remained serious. Many have died violently, and the death toll continued to mount. The special technical assistance programme for Colombia was designed to promote social dialogue, improve labour relations and protect trade unions at risk. The United States fully supported this programme and endorsed the use of the existing cash surplus to fund it. Freedom of association had a key role to play in Colombia's path to peace, social justice, reconciliation and democracy. The speaker hoped that the incoming Government would continue, with help from the ILO and as a matter of urgency, to take the necessary steps – in both law and practice – to fully protect freedom of association and the right to organize.

The Government representative stated that he had listened attentively to the statements of the Employer and Worker members, as well as those made by the Government members. It was not possible to hide the violent situation in Colombia – the assassination of thousands of Colombians, trade unionists, and children. Thousands had also been kidnapped – six parliamentarians, a governor, 45 members of the armed forces, a presidential candidate. Priests had been assassinated, including the Bishop of Calí, as well as dozens of journalists. Many entrepreneurs had been kidnapped or killed, and threats had been made against judges and mayors. The heightened violence was an affront to human dignity.

The international community had followed the peace efforts under which the President had used all of his prestige to try to engage in dialogue with the FARC and ELN, but the process was eroding. The speaker acknowledged the existence of vigilante and self-defence groups associated with the extreme right.

During the 23 months in which the speaker had been Minister of Labour there had never been a denial of a trade union registration. His Government had abstained from presenting to Parliament a draft law regulating the right to strike in the public services for fear that it would be amended in a way that was contrary to the agreements that should be reached through tripartite consultation.

The speaker stated that he understood the initiatives taken by the Conference Committee, and he had no intention of ruling out any of them. He only wanted to insist that the spirit of the special paragraph adopted by the Conference Committee in 2001 remained in force. During his administration, he had worked in this spirit. A Commission of Inquiry would not end the violence and would create false expectations without stopping the genocide taking place in Colombia.

To stop the genocide, it was necessary to complete political and social agreements between the inhabitants of Colombia. Political agreements should be reached between the State, unions, employers, guerrillas and paramilitaries, together with Colombian society. In the current conditions, a Commission of Inquiry could give an misleading message that could fuel the process of violence.

Trade unions were an important institution in a democracy. Many Colombian employers were also in favour of peace and social dialogue, and some were inspired by the actions of Swedish employer and worker organizations.

The speaker appealed for the special Technical Cooperation Programme cash surplus to be strengthened in order for Colombia to make full use of the resources available from the Office and support a global approach to the problem. The speaker recognized and appreciated the efforts of the Office to tackle the problems in Colombia and pressed for finding a way to overcome the violence and establish lasting peace and social justice.

The Worker members stated that it was difficult to have a debate on a situation for which one could hardly speak of freedom of expression. If, evidently, the present case caused some deep emotions, it was clear that certain facts were at the heart of this. The legislation concerning trade unions remained in contradiction to Convention No. 87. Trade unionists continued to be murdered because of their activities; others were subjected to threats or persecution. The total impunity surrounding the criminal acts perpetrated against the trade unionists flouted freedom of association. The line followed by

the Government amounted to criminalizing freedom of association. Therefore, the Worker members asked the Government to agree to an ILO Commission of Inquiry, which could have an important impact. They also supported the proposal made by the Government member of Denmark on behalf of the Government members of the Nordic countries, to allocate the cash surplus of the Organization to the programme on the protection of freedom of association. In their view, the failure by the Government to apply Convention No. 87 justified the inclusion of the case in a special paragraph of the Conference Committee report.

The Employer members noted that it was apparent from the discussion that the present problem was a wide-ranging one with diverse causes. It was not limited to issues of labour law, but affected all sectors. As such, they cautioned, the problem did not lie entirely within the remit of the ILO, nor did the ILO have the right or the means to undertake to solve it. They noted that, as solutions to the problem were yet to be found, in spite of the measures taken by the Government, proposing new measures may possibly prove counterproductive. They felt it was difficult to identify the correct approach to the problem. In conclusion, they stated that the situation needed to be described in clearer, more objective terms, and the Government should be allowed to develop a proposal, without prejudice.

The Committee took note of the statement made by the Government representative and of the discussion which ensued. The Committee observed with deep concern that the grave situation of violence continued to prevail in the country. It recalled that this dramatic situation has been and continues to be the subject of numerous complaints before the Committee on Freedom of Association and that a complaint by virtue of article 26 of the ILO Constitution was presented in June 1998. The Committee once again condemned in the strongest terms the murders and abductions of trade unionists, as well as the kidnapping of employers. The Committee recalled that workers' and employers' organizations can only exercise their activities freely and meaningfully in a climate that is free from violence. It urged the Government to take the necessary measures urgently to bring an end to this situation of insecurity by restoring respect for fundamental human rights and, in particular, the right to life and security of persons so that workers' and employers' organizations could fully exercise their rights recognized by the Convention. To this end, the Committee urged the Government to establish and strengthen the institutions necessary to put a stop to the intolerable situation of impunity prevalent in the country and which was a serious obstacle to the free exercise of trade union rights. The Committee also noted that the questions concerning the application of the Convention have been placed before the Consultative Commission on Salary and Labour Policies. The Committee made an urgent appeal to the Government to take the necessary measures immediately with a view to guaranteeing full application of the Convention both in law and in practice. It requested the Government to submit a full report in this respect to the Committee of Experts so that it could once again examine this situation at its next meeting. The Committee expressed the hope that the complaint lodged in June 1998 under article 26, which was still pending, would be re-examined by the Governing Body with a view to using all appropriate means at its disposal, especially technical cooperation programmes, which could contribute to the full respect of Convention No. 87 in law and in practice. In the event that the Government did not fully avail itself of this technical cooperation, the Committee would be obliged to consider stronger possibilities when it examines this case next year. The Committee took note of the Government's statement to the effect that the spirit of the special paragraph adopted last year still prevails.

The Worker members agreed to the conclusions, as presented by the Chair of the Committee, and severely condemned the attitude of the Employer members, which prevented a consensus on the inclusion of a special paragraph. They felt that by this attitude, the Employer members implicitly refused to recognize the worsening of the climate of violence in this country. They requested that immediate measures be taken to ensure respect for freedom of association. Finally, the Worker members referred to their previous intervention on the protection of the personal security of the trade unionists and on the use of the cash surplus of the Organization to finance the activities of the special technical assistance programme in Colombia.

The Employer members reserved their position on the previous statement.

The Employer members continued to oppose the inclusion of the case of Colombia in a special paragraph. They protested against the Workers' allegations. The Worker members' declaration was contradictory and wrong in substance. The Employer members had accepted without reservations the conclusions on the case of Colombia which they had elaborated together with the Worker members. They therefore firmly rejected the Worker members' assertion that the Employer numbers would not recognize the realities in Colombia. They observed that for 12 years, a spirit of cooperation, and not one of confrontation, had reigned in the Committee. But it also was with this spirit that one occasionally had to agree to disagree. The Employer members warned against giving up cooperation and jeopardizing this spirit. The consequences would be regretted by all.

After the **Chairperson's** indication that, in essence, the case had already been closed, the **Worker members** took note of the situation and did not wish to re-open the debate.

Ethiopia (ratification: 1963). **A Government representative** stated that the Ethiopian Government had been consistent and clear in all its replies regarding the trial and conviction of Dr. Taye Woldesmiate and the other defendants. As was repeatedly explained by his Government, the issue in question had nothing to do with the individual's previous position and membership in the Ethiopian Teachers' Association (ETA). It was a purely judicial matter and the delay in the appeal process was entirely due to the appellant's failure to lodge his appeal within the period prescribed by law.

The speaker further stated that the latest significant development in this regard was that the appeal proceeding against the conviction of Dr. Taye Woldesmiate and the co-defendants had now been concluded and that a decision of the Federal Supreme Court was rendered on 10 May 2002. Dr. Taye and one of the co-defendants were found guilty under articles 32(1)(a) and 269(c) of the Penal Code of Ethiopia, on a different count than what they were charged with at the outset; namely that of assisting an illegal terrorist organization called "Ethiopian Patriotic Front". The Federal Supreme Court sentenced Dr. Taye and one other defendant to five years' imprisonment as of the date of their arrest. However, since they had already served the time since the day of their arrest, they were released on the date of the final decision of the Supreme Court. The other co-defendants were acquitted as per article 195 (2)(b)(i) of the Criminal Procedure Code. The decision of the Federal Supreme Court, therefore, confirmed the Government's contentions all along that the case had nothing to do with the defendant's trade union activities. The text of the decision would be forwarded to the Office as soon as the translation was ready.

Turning to the issues of trade union diversity, administrative dissolution of trade unions, the right of teachers and other civil servants to unionize, and the scope of the right to strike, he said that the Government had undertaken an extensive process of amendments of the Labour Law and the Civil Service Law. As the task was huge and complex, it had indeed contributed much to the delay of the amendment process. For this reason the Government was unable to meet its commitment to finalize the draft laws in the shortest possible time. In order to address most of the concerns raised and to come up with comprehensive legal texts, the initial draft, after having been examined by the appropriate highest government authority, was now on its final phase of exhaustive review of all the issues involved.

As the first African member State of the ILO in 1923, Ethiopia had ratified an ILO Convention for the first time in 1947. To date it had ratified 19 Conventions. Two Conventions, Nos. 29 and 182, were currently awaiting the approval of the National Parliament, which was the competent authority for the ratification of Conventions. The exercise of amending labour legislation was also part of his country's endeavour to comply with ILO Conventions.

In the human rights field, Ethiopia had acceded to or ratified all core international human rights instruments and at the national level the proclamations to establish the Human Rights Commission and Ombudsperson Office had been promulgated recently. Freedom of association and other fundamental rights were constitutionally guaranteed rights. The implementation of the national poverty reduction strategy was a priority concern to his Government in the achievement of a qualitative improvement in welfare, employment skills and social security schemes and the progress made in this regard was encouraging.

Finally, his delegation solicited the understanding of this Committee that the delay in the finalization of the draft laws was due to the complexity of the issues involved that had demanded a continuous dialogue with the social partners. He further requested the International Labour Office to enhance its assistance to resolve some of his Government's technical expertise constraints.

The Worker members wished to take the Minister's personal participation in the discussions of the Committee as a sign of the importance attached by the Government of Ethiopia to the work of this Committee. They welcomed the information on the release of Dr. Taye from six years in jail. They recalled that his case had been the subject of comments of this Committee and the Committee on Freedom Association. Dr. Taye was not in jail for conspiring to overthrow the government by force. He was imprisoned for his

trade union activities as the President of the Ethiopian Teachers' Association. They wanted to know whether the Government would assure them that Dr. Taye could resume his trade union activities and that the interferences in the work of his union would come to an end too. They wished the Committee of Experts to follow up these questions. His release was made possible because of the impact of the ILO supervisory system, which was effective even if a bit slow.

The Worker members deplored that the Government had not sent the report due last year for examination by the Committee of Experts. In the interest of saving the limited time of the Committee they did not wish to repeat in detail what continued unchanged in the situation in Ethiopia regarding the outstanding points before this Committee. They limited themselves to referring to paragraphs 35-38 of *Provisional Record* No. 19 of the 89th Session of the International Labour Conference. Their own statement from last year was still valid in this case. They only wanted to draw attention to the findings of a recent ICFTU mission, that in Ethiopia the climate was not conducive for the functioning of an independent and democratic trade union movement. They urged the Government to accept ILO technical assistance in drafting amendments to the legislation.

Turning to the explanations provided by the Government for the delay in the amendment process, they indicated that even though consultations were necessary and consensus was desirable, that could not be used to delay action on the part of the Government on matters that were its responsibility. It was the Government that had to fulfil its obligations under the Convention.

The Worker members regretted that, after two decades, there was no real progress in the implementation of Convention No. 87. Despite the personal interest shown by the Minister in the work of this Committee and despite the release of Dr. Taye, everything spoke in favour of a repetition of a special paragraph in this year's report. They noted the Government promised to amend the legislation shortly and that it would accept the assistance of the Office in doing so. They would have preferred to have a commitment to do that before the next session of the Committee of Experts. They regretted that the Government could not meet that deadline. They wanted to know whether the Government would undertake to do the necessary work in the next 12 months and to report on this work to the Conference next year. They also assumed that the Government undertook to submit its regular report for the next session of the Committee of Experts.

The Worker members also urged the Government to cooperate in an investigation by the ILO into the question of the imprisoned trade unionists mentioned last year. Ethiopian trade union leaders in Europe also reported new imprisonments of trade union leaders. This they considered was important for the work of this Committee. They appealed once more to the Government not only to comply with recommendations of the Committee but also to restore genuine trade unions, release all detained trade union leaders, allow previous trade union leaders and activists to return to the country, allow these ex-detainees and ex-refugees to resume their trade union work in normal and safe conditions, and to establish a long overdue independent national commission of inquiry into the murder of trade union leaders. They reserved their position in respect to where the conclusions of the Committee would be placed.

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 five times since 1995. They welcomed that the imprisoned President of the Ethiopian Teachers' Association, Dr. Taye, was released from prison. The Government representative had promised to supply the judgement regarding this case, which would be interesting with regard to the long time the case was pending at court, which, in the past, were deemed to constitute a non-respect by the authorities to guarantee due process to detained or accused persons.

The Employer members referred to the requirement of 20 workers as the minimum number needed in an enterprise in order to establish a trade union, the fact that teachers and public employees were barred from unionizing, and the Minister's right to dissolve registered trade unions, which the Minister did use in the past. They noted that the Government had made promises since 1994 to introduce the necessary legislative amendments. In this light, the promise made by the Government representative could unfortunately not be taken seriously. The Government had in the past failed too often to comply with its international public law obligations deriving from Convention No. 87.

Turning to the right to strike, the Employer members said that their views were well known. It was therefore not necessary to recall their position, which was different from the position of the Committee of Experts on this issue, every time when the Conference Committee discussed one of the numerous cases regarding the application of Convention No. 87.

In conclusion, the Employer members associated themselves with the conclusions which were proposed by the Worker members. They still hoped that progress would be achieved on the case, irrespective of the negative facts the Conference Committee had experienced in the past.

The Worker member of Ethiopia indicated that when this case was discussed in this Committee last year, one of the serious comments made concerned the conviction on charges of conspiracy against Dr. Taye Woldesmiate, the President of the Ethiopian Teachers' Association. His confederation was happy to learn of the decision of the court. He expressed his confederation's commitment to arrange for dialogue between two groups of teachers' associations and resolve their unhealthy differences and help them to work together for the benefit and interest of Ethiopian teachers. He hoped the ILO would support this endeavour. He supported the comments of the Committee of Experts calling for respect for the right of workers, without distinction whatsoever, to join organizations of their choosing. His confederation had sent to the Government proposals for amendments to the law, with a view to removing existing provisions of the law requiring a minimum of 20 workers within an enterprise for the formation of a trade union. The Worker member supported the comments of the Committee of Experts calling for the right of teachers and public servants to form trade unions that was currently prohibited by Proclamation No. 42 of 1993. His confederation had sent proposed amendments to the law in this respect. They regretted delays in enacting these needed amendments and urged once again the Government to speed up the process. He also agreed with comments of the Committee of Experts calling for the repeal of the provisions authorizing the administrative dissolution of trade unions which was a violation of Convention No. 87. Similarly, his confederation had sent proposed amendments to the Government. Also in line with the comments of the Committee of Experts, his confederation had sent proposed amendments to the Government regarding the current exclusions of important sectors from having the right to strike as a result of a wide definition of essential services in the existing law. Sectors such as transport (railways, urban and inter-urban services and airlines), banks, postal, telecommunications and fuel stations were defined as essential under the laws. His confederation was of the view that essential services should be restricted to those whose interruption would endanger the lives of persons. He indicated that delays in court decisions were among the major problems faced by Ethiopian workers. The Government should improve the court system for it to be able to render timely decisions. He appealed for ILO technical support in upgrading the efficiency of labour courts in the country.

Despite the proposals for amending the labour laws made by his confederation, in consultations with stakeholders, the process had taken many years. The Government needed to move faster. Encouragingly, the draft law had been presented to the Council of Ministers, but he feared that the setting-up of another ministerial committee to study it would further delay its enactment. He called for this process to be speeded up and for the ILO to support this effort.

The Worker member of Italy indicated that the three Italian trade union confederations she represented had followed the situation in Ethiopia for a long time. Because of the time constraints she did not read her full statement in which she had listed a series of violations of Convention No. 87 received in the last couple of months. She expressed her solidarity with the workers and trade unions of Ethiopia and supported the views expressed by the Worker members in this case.

The Worker member of Senegal stated that this case had already been discussed by the Committee the previous year and, despite its inclusion in a special paragraph, trade union rights continued to be violated. Convention No. 87 continued to be ignored and ever-greater and harsher restrictions imposed on freedom of association. In this regard, the accusations made by the Committee of Experts were eloquent. There were numerous shortcomings in the Ethiopian legislation. The constitutional principles relating to the right of workers to establish and join trade unions were not applied in practice, and the dissolution of unions remained possible. Teachers and civil servants were excluded from the application of these rights. The Government had not shown any sign of good will. This Committee should ensure that persecutions against workers ceased. For that reason, it was necessary to include this case in a special paragraph.

The Employer member of Ethiopia stated that most of the issues raised by the Committee of Experts were very important and complex. Resolving them would necessitate the overhaul of the existing labour laws. The Ethiopian Employers' group had actively participated in the tripartite process for amending the labour

law. A great deal of the work had been accomplished and the process was encouraging despite some difficulties encountered. He expressed his concern about the delay in finalizing it. He wished to indicate to the Committee that the situation in his country regarding matters covered by this case had improved significantly. Both the release of Dr. Taye and the ongoing process of amendment of the labour law, even if this process was slow, were positive measures. He could not accept the Committee's recommendations regarding the scope of the right to strike, which appeared to lack objectivity and did not take into account the specific situation of his country.

The Government member of Norway, also speaking on behalf of the Government members of Denmark, Finland, Iceland, Netherlands and Sweden, expressed deep concern at the extremely serious situation for trade unions, and particularly the interference of the Government in trade union activities. He welcomed the release of Dr. Taye Woldesmiate, the President of the Ethiopian Teachers' Association. However, he deeply regretted the fact that he had been held in preventive detention for six years. He emphasized the importance of the right of all detained or accused persons, including trade unionists, to be tried promptly through formal judicial procedures. This involved, in particular, the right to be informed of charges, the right to have adequate time for the preparation of their defence, the right to communicate freely with the counsel of their own choosing and the right to a prompt trial by an impartial and independent judicial authority in all cases. This also had to include cases in which trade unionists were charged with criminal offences, whether of a political nature or not, which in the Government's view bore no relation to trade union functions. With reference to the drafting of new legislation over the past seven years, he encouraged the Government to forward a copy of the draft legislation to the Committee of Experts. Finally, he urged the Government to take all necessary measures to ensure the full respect of the civil liberties and rights essential for the implementation of the Convention, and to fully comply with the requirements of the Convention.

The Government representative stated that he had listened carefully to the comments made by the social partners and that he valued this opportunity for a constructive and result-oriented dialogue. He indicated that, despite the economic, political and social challenges his country encountered at different levels, the progress achieved in addressing the Committee's concern was considerable. In addition to the release of Dr. Taye, all the other concerns regarding labour issues required a huge task of amending the Labour Law and the Civil Service Law. He indicated that this process, which involved the social partners, was entering its final phase and the progress attained so far was significant despite the complexity of the issues involved and difficulties encountered in reconciling interests of different groups. Regarding trade union diversity, he said it was difficult to obtain its acceptance by the Workers' group as they indicated last year to this Committee that this would weaken the solidarity of workers. His delegation could cite many such issues of controversy in the tripartite process that were delaying the finalization of the amendment process. It was his Government's conviction that this process would be finalized soon and that most of the issues of concern would be addressed to the satisfaction of the social partners. In view of the progress underscored, he expected constructive dialogue, encouragement and understanding from this Committee. He reiterated his delegation's concern, expressed in the general debate, regarding the criteria for selecting the individual cases for discussion in this Committee that his country had continuously been subjected to. On the allegations made by the Worker members, these were new to his delegation as well as to this Committee. He indicated that his Government did not have information on any person detained in connection with the legitimate exercise of trade union activities. If the Worker members believed they had valid and substantiated allegations, they would have to be first communicated to his Government.

The Employer members referred to their initial statement on the case. In the conclusions, the Government must be urged to rapidly introduce the legislative amendments it had promised, and to report on them to the ILO. With regard to the statement of the Employer member of Ethiopia, they clarified that he had made the statement on his own behalf, not on behalf of the Employer members.

The Worker members indicated that, after hearing what the representative of the Government had to say, the arguments that led to the placement of the Committee's conclusions in a special paragraph of its report last year, remained valid. The Government had to put its house in order for next year's session of the Conference. Unless the Government representative could undertake before this Committee, to do the necessary work to ensure compliance with the Convention within the next 12 months, they would request for the Committee's conclusions to be put in a special paragraph. They also said that the criteria for the selection of individual cases for discussions before this Committee were clear and were set in the paragraphs at the beginning of the report of this Committee.

The Government representative indicated that any progress depended on the cooperation of the social partners. He reiterated his Government's commitment to do its best to resolve the outstanding issues if the social partners would collaborate in this process and that the ILO would provide assistance.

The Worker members said that in light of the reply given by the Government representative they requested a special paragraph in this case.

The Employer members agreed that there was no improvement in the situation from last year and the understanding with the Worker members on this question held true. They wished to hear the proposed conclusions before definitely pronouncing themselves on the placement of the conclusions.

The Committee took note of the statement made by the Government representative and the discussion which ensued. The Committee noted that the Committee of Experts has, for several years now, been commenting upon serious discrepancies between the national legislation and the Convention. These matters concerned the right of workers, without distinction whatsoever, to form organizations of their own choosing and the right of these organizations to organize their activities without interference by the public authorities and not to be dissolved by administrative authority. While noting with concern that no concrete progress had been made on these points, the Committee welcomed the Government's desire to receive in-depth technical assistance in this regard, and made an urgent appeal to the Government to take measures urgently, so as to ensure full conformity with the provisions of the Convention. The Committee especially insisted that teachers' trade union rights be fully respected both in law and in practice. Welcoming the release of the trade union leader Dr. Taye Woldesmiate, the Committee nevertheless reminded the Government that respect for civil liberties was essential to the exercise of trade union rights. It expressed the firm hope that the Government would no longer have recourse to such grave measures as the detention of trade union leaders for the exercise of legitimate trade union activities. The Committee requested the Government to provide detailed information in its next report, in particular on any measures taken to give effect to the comments of the Committee of Experts and to transmit with its report any texts of draft legislation being considered. The Committee decided to place its conclusions in a special paragraph of its report.

After a brief exchange of views between the **Government representative**, the **Worker members** and the **Chairperson**, it was decided to place the conclusions of the Committee in this case, in a special paragraph of its report.

Guatemala (ratification: 1952). **A Government representative** indicated his surprise regarding the fact that his country had been selected in respect to Convention No. 87, since the Committee of Experts had noted in its report the progress made. He expressed his satisfaction for the fact that the Committee of Experts and the Freedom of Association Committee had recognized that amendments to the Labour Code introduced in 2001 complied with many of its requests, and for the fact that it had mentioned the progress made in the country regarding the application of trade union rights. He expressed his country's commitment to continue to collaborate with the supervisory mechanisms of the ILO.

The speaker recognized that the enjoyment of freedom of association in Guatemala had not always been satisfactory, since, from 1954 to 1985, various authoritarian regimes had succeeded each other and there had been an internal military conflict which had lasted until 1996 and had been accompanied by the breakdown of the domocratic constitutional order and of the rule of law. However, in 1986, a democratic transition had been initiated, which had made possible the signing of the Peace Accord of December 1996 and had supported international cooperation. Account had to be taken of the fact that rebuilding the institutional legal order was a task requiring years. In this regard, the reforms recently introduced in the country to guarantee the freedom of association and other labour rights through the amendment of the Labour Code and the reinforcement of the Ministry of Labour were important. The speaker stressed that his predecessor had a vast experience with trade unions and had initiated a movement to defend workers which he would keep up, having defended the workers before from the Congress of the Republic, the Office of the Ombudsperson and the Mission of the United Nations for the Verification of the Peace Accords (MINUGUA). This had allowed to strengthen the verification of the respect of labour rights, the decentralization and increase of the resources of the Ministry of Labour and the ability to set up procedures for the registration of trade union organizations.

One of the major transformations achieved through this labour reform was that it had given the Ministry of Labour the capacity to sanction, that is to facilitate the sanctioning and protection of labour rights through administrative procedures. Last year, on the occasion of the direct contacts mission made to his country by the Committee on Freedom of Association, the Committee had qualified this reform as encouraging with a view to the application in law as well as in practice of Convention No. 87, particularly in Case No. 1970. As an example, the speaker mentioned that in January of this year a sanctions unit had been created, which had made possible the imposition of fines to 800 enterprises which had violated the relevant provisions (40 enterprises in January and 350 in May). In this manner, the Ministry of Labour had increased its efficiency to rectify situations which the labour courts would have taken months or years to resolve.

For its part, the judicial power was aware that international labour standards were indispensable, which was why in April 2002 it had requested technical assistance from the ILO and signed a cooperation agreement to that effect. Moreover, with the assistance of the MINUGUA, the Government was reforming the judicial apparatus of the country to strengthen labour justice. In relation to the fight against labour impunity, the Committee on Freedom of Association had referred to Case No. 1970 in its report of November 2001 and had noted with interest that, prompted by the direct contacts mission, a special unit of the General Ministry, aimed at improving the efficiency of investigations of crimes committed against trade unionists, had begun to function in June of the same year. He indicated that the Government reiterated its commitment to continue to respect the recommendations of the aforementioned mission and of the Committee on Freedom of Association, as well as the observations of the Committee of Experts.

To this effect, on 8 February 2002, a high-level labour committee had been created, integrating ministers and trade union representatives of the Popular and Trade Union Action Unit (UASP). It would deal, amongst other topics, with the new statute of the public service and the right to strike of state employees, which would respect the modifications emphasized by the Committee of Experts, including the repeal of Legislative Decree No. 35-96. In reference to the comments made by the Committee relative to the application of section 390, paragraph 2, of the Penal Code, the speaker confirmed that it had been abridged by the suppression of section 257 of the Labour Code. Moreover, he emphasized that, since the peace accords of 1996, the Government had prohibited the violation of human rights and had promised to construct an institutional democracy that would guarantee the effective exercise of human rights and fundamental liberties, including freedom of association. Aware that the respect of labour standards and rights was not only guaranteed through sanctions but also through initiatives, the speaker indicated having rewarded the Association of Corporations of Exporters of Non-Traditional Products for the concern it had shown regarding labour rights. It also resorted to dialogue with social partners which the Government remained ready to favour through tripartism, and specifically with the technical assistance of the ILO. The speaker hoped that, like the direct contacts mission and the Committee of Freedom of Association, the Committee would note with satisfaction the progress made in the country.

The Employer members observed that the Government had showed its preparedness to take appropriate measures following the comments that had been formulated in previous years by the Conference Committee, the direct contacts mission in 2001 and the discussions held in the Conference Committee. The Government had amended its legislation, which had been the subject of a long list of criticisms by the Committee of Experts. The Committee of Experts had noted the legislative amendments with satisfaction, which represented the expression of highest appreciation. Most of the amendments requested by the Committee of Experts in the past had referred to the right to strike. The Employer members were of the opinion that the Government would not have been obliged to introduce these amendments to comply with the provisions of the Convention, since it was the well-known employers' position that the right to strike did not derive from this Convention. It was, however, to the Government's discretion to decide upon its national legislation.

Only two issues remained the object of criticism by the Committee of Experts. The first issue concerned the requirement of being of Guatemalan nationality to be eligible to join the trade union executive committee. The Employer members noted the Government's indication that this requirement derived from the Constitution. Although it would take time to amend the Constitution, it was nonetheless possible. The Employer members observed that the Government representative had not given any indication in this regard. The second point criticized by the Committee of Experts referred to the requirement to be actually working in the enterprise or occupation in order to be eligible for trade union office. This provision was also known from other countries. Nevertheless, it was contrary to freedom of association, since it clearly was for the trade unions (and the employers' association) to determine who should take office. The Employer members believed that this had to be introduced in the national legislation.

Turning to the Committee of Experts' view on the right to strike, including its definition of essential services, the Employer members recalled their position that the right to strike did not derive from the Convention. In this regard, they did not support the Committee of Experts.

As to the practical application of the Convention, the Employer members observed that the prevailing political climate, characterized by administrative repression of trade unions, did not promote the exercise of trade union rights. The existing unfavourable political climate should therefore be reflected in the conclusions of the Conference Committee. The Employer members indicated that employers' associations were also the object of administrative harassment. A complaint had been submitted by some employers' associations and the Committee on Freedom of Association would examine it in the future. In conclusion, the Employer members did not consider the Convention to be applied in practice. Therefore, the Government had to take appropriate action to allow social partners to exercise their rights enshrined in Convention No. 87.

The Worker members thanked the Government representative of Guatemala for his explanations. This case had been on the agenda of this Committee since the 1980s. Given the fact that the situation was still far from being in conformity with the Convention, the Worker members considered it necessary to discuss it once again. The peace agreements signed in Guatemala in 1996 seemed to permit a passage to a new stage in the process of the pacification of the country. Unfortunately, genuine peace was possible only if social justice was guaranteed. But over the past few years, it appeared that social justice had not been necessarily respected. The exercise of freedom of association was almost systematically hampered. Following numerous cases of violation of freedom of association and multiple complaints examined by the Committee on Freedom of Association over the past few years, a direct contacts mission visited Guatemala in April 2001. This Committee once again discussed the case at the 89th Session of the International Labour Conference. Since then, Ms. Hilani, special representative of the Secretary-General of the United Nations, visited Guatemala in order to analyse the delicate situation of human rights, particularly trade union rights. In addition, over the past few months, other violations of the Convention, had been reported to the Committee on Freedom of Association.

In its latest report, the Committee of Experts highlighted legislative matters and problems of practical application of the Convention. Regarding the legislation, certain gains obtained by the adoption by the Congress of the Republic of Legislative Decree No. 13-2001 of 25 April 2001 and Legislative Decree No. 18-2001 of May 2001 led to progress on certain points. However, the Committee of Experts pointed out that other legislative provisions were still not in conformity with the Convention. Moreover, it requested particulars on the essential aspects related to the exercise of freedom of association which concerned provisions of the Penal Code imposing penalties of imprisonment on anyone engaged in acts paralysing or disrupting the running of enterprises which contributed to the economic development of the country. Reference was also made to compulsory arbitration without the possibility of resorting to a strike in public services which were not essential in the strict sense of the term.

Regarding the application of the Convention in practice, the numerous cases examined by the Committee on Freedom of Association which were referred to in the Committee of Experts' report and evaluated by the direct contacts mission in the country, were unfortunately eloquent. These concerned in particular acts of anti-union discrimination, threats and violence against trade union leaders, violation of rights to bargain collectively and searches of trade union premises.

Regarding the murders of trade union leaders reported in Case No. 1970, the Worker members pointed out that the Committee on Freedom of Association concluded last March that it was important that the procedures relating to acts of discrimination should advance rapidly, since excessive delay was equivalent to a denial of justice. The Committee of Experts emphasized that trade union rights could be exercised only in a climate which was free of violence and pressure. It expressed the very firm hope that the Government would make every effort to ensure the effective observance of human rights and of fundamental freedoms essential to the exercise of trade union rights.

The Worker members wondered whether it was possible to guarantee fundamental human rights in circumstances where the workers' organizations were subject to searches, threats, dissolutions and where the right to strike was systematically under attack.

The Worker members shared the request reiterated by the Committee of Experts for the Government to ensure the application of the principles of the Convention. The Government should, without delay, take the necessary measures with a view to ensuring the following:

– amendment, without further delay, of legislative provisions which infringed the provisions of Convention No. 87;
– the provision, as early as possible, of the information requested by the Committee of Experts as regards legislative provisions concerning arbitration and those of the Penal Code concerning penalties of imprisonment in the case of acts paralysing or disrupting the running of enterprises which contributed to the economic development of the country;
– the provision of a genuine protection of trade union leaders and their activities to ensure them of a climate of peace and security, that guaranteed an impartial, rapid and efficient judicial system and reinforced the social dialogue;
– the lifting of the impunity protecting the perpetrators of physical and intellectual anti-trade unions acts, which included numerous cases of threats against trade union leaders.

The Worker members recalled that the Preamble to the ILO Constitution emphasized that genuine peace could be established only if it was based on social justice. Social justice depended on the free exercise of a fundamental right, freedom of association, which in turn was closely related to the effective observance of human rights and fundamental freedoms.

The Worker member of Guatemala stated that many of the members present at this meeting had witnessed and heard, to the point of saturation, constant denunciations of violations of the human rights of Guatemalan workers, especially those pertaining to freedom of association. He therefore thanked the Committee on Freedom of Association for sending a direct contacts mission last year in order to verify in situ the effect given to the recommendations of Case No. 1970. This case, which was far from being an isolated one, related, among other allegations, to acts of violence, death threats, assassinations, breaking and entry, and attempted abductions, acts of anti-union discrimination, physical aggressions and other violations. The Committee on Freedom of Association had expressed itself carefully on this tragic situation and had stated that it had been profoundly concerned by the excessive length of the proceedings which amounted to a denial of justice. If one day justice were done, it would often be after about three to eight years of slow, non-transparent and exhausting procedures destined to discourage and destruct the unions which had become distrustful of the law, justice and democracy. No doubt, the workers did not ignore the legal and theoretical reforms which had been mentioned on the occasion of the direct contacts mission and introduced by Legislative Decrees Nos. 13 and 18 of 2001 by which the Labour Code had been amended. However, these reforms had been introduced and approved without consulting the trade union movement, contrary to Convention No. 87 and the requests that the ILO had formulated already many years ago. Moreover, they had not led to the introduction of the fundamental changes that had been hoped for and that the national trade union movement had incorporated in the draft reform of the Labour Code to which the previous Labour Minister had adhered at the 88th Session of the Conference. Since the democratic transition had started in Guatemala, eight labour ministers had participated in this Committee, conscious of the tragic conditions surrounding the trade union movement of Guatemala especially in the sectors of agriculture, textiles and public service at the municipal level. The anti-union dismissals, like those complained of in Case No. 1970, remained unpunished in spite of the court orders of readmission. The ministers in charge of implementing the law did not have the necessary support from the police to oblige the employers to execute the court orders but did have such support when it came to proceeding with the removal of workers. The exclusion and privileges were reprehensible and justice delayed was no justice at all. The suffering inflicted upon workers by the violation of freedom of association was not demonstrated only in Case No. 1970, since the Committee on Freedom of Association had heard a whole series of denunciations of violations of Convention No. 87, namely for unjustified dismissals with use of force, abductions and death threats of trade union leaders, and assassinations which had been left unpunished. In the public sector, the Government had issued a government agreement (No. 60 of 2002), which prohibited not only strikes but also collective bargaining in this sector, in order to satisfy the commitments made towards the International Monetary Fund. The corruption and impunity prevailing in the country manifestly put into question the legitimacy of democratic institutions and severely hurt the Guatemalan trade union movement. The speaker thanked the various solidarity missions of the trade union movement all over the world, and asked for the inclusion of his country in a special paragraph.

Another Worker member of Guatemala referred to pages 267-269 of the Committee of Experts' report and stated that the amendments to the Labour Code aimed at adapting its provisions to the Committee of Experts' recommendations did not signify that freedom of association was respected in the country. Indeed, the country had not yet adjusted its legislation on all the recommended points. More particularly, it was necessary to repeal the provision of the Penal Code (section 390(2)) imposing a penalty of imprisonment of 1-5 years for anyone engaged in acts aimed at paralysing or disrupting the running of enterprises which contributed to economic development of the country, with the intention of causing damage to national production. Similarly, it was necessary to repeal the requirement of compulsory arbitration before resorting to a strike in public services such as public transport and energy provision, which were not essential in the strict sense of the term, as well as the prohibition of inter-union sympathy strikes. He underlined the fact that the Government had submitted a series of amendments to the Labour Code which were prejudicial to workers, in that they were denaturalizing the procedural labour law, enlarging the powers of judges and jurisdictional functions of the Ministry of Labour, thus worsening the labour rights situation. Freedom of association only existed on paper, since in practice, workers were victims of dismissals and changes that worsened their conditions of work. The lack of conformity of the national legislation with the international instruments was a violation of Convention No. 87: workers could not establish trade unions, public and private employees were victims of persecutions and threats for their union activities, and certain workers had to wait for more than seven years to be reinstated in their jobs, having been dismissed without a valid reason. In this climate of labour impunity, three workers of the enterprise "Exacta S.A." had been murdered by the national police, and the Public Prosecutor had failed to prosecute those responsible, claiming there was insufficient proof of their guilt. All these allegations were submitted in cases Nos. 2017 and 2202 treated by the Committee on Freedom of Association. The speaker suggested that this Committee should include the case of Guatemala in a special paragraph of its report.

The Worker member of the United States wanted, before proceeding with his intervention, to respectfully acknowledge the tragic passing away of Juan Francisco Alfaro, former Guatemalan Labour Minister and former General Secretary of the United Trade Union Confederation of Guatemala. His death was an irreparable loss for the inter-American and international labour movement. In spite of the conventional wisdom that somehow Guatemala had improved due to the 2001 labour law reforms and due to the interruption of the continued review of this country under the United States General System of Trade Preferences, Guatemala's violations of Convention No. 87 had only worsened. The right to strike in the rural sector could be undercut by the power of the executive to proscribe work stoppages which seriously affected the economic activities essential to the nation. Despite the reform of section 255 of the Labour Code, a judge still had the power to despatch the police to guarantee strike replacement as a "precautionary measure". The new section 216 required written proof of the will of 20 or more workers to form a union, thus making for a written disclosure of pro-union activists and imposing a literacy requirement. The Labour Code imposed a potentially prohibitive threshold of 50 per cent plus one of all workers in an entire industry to achieve industrial union recognition. Section 233 increased the requirement from two to four unions to form a federation and from two to four federations to form a confederation. Finally, the new section 379 imposing liability on individual workers for legal damages resulting from a strike or other collective action created a chilling effect. More importantly, de facto violations of Convention No. 87 persisted due to the state of general impunity for the perpetrators of assassinations and death threats directed against Guatemalan trade unionists, including José Pinzon who had fortunately survived and was present today. This was reflected in paragraphs 85-89 of the November 2001 Report of the Committee on Freedom of Association (CFA). The Guatemalan Labour Justice system condoned this general state of impunity with respect to anti-union discrimination as the Committee on Freedom of Association had concluded in paragraph 91 of its November 2001 report, noting the findings of the ILO contacts mission of 2001. The Guatemalan Labour Ministry itself had admitted in November of last year that very few cases of anti-union dismissals had been sanctioned with financial penalties, even fewer of which had been actually paid. He joined with the other members in calling for a special paragraph in this case.

The Worker member of Norway spoke on behalf of the workers in the Nordic group, who were well acquainted with the oppression of Guatemalan workers by their own Government. Trade unions in Guatemala sent to the Nordic national organizations frequent messages of murders, death threats and serious injuries. On paper the situation might look better as issues earlier raised by the Committee of Experts seemed to have been settled through a number of legislative decrees adopted by the Guatemalan Congress, thus bringing the Labour Code more into conformity with Convention No. 87. There were however still provisions which were not in conformity with the Convention and she shared the Committee of Experts' concern that provisions in the Penal Code might still have full effect in spite of the same provisions having been repealed from the Labour Code. This related, for instance, to provisions giving the right to arrest and put on trial anyone publicly attempting a strike or unlawful work stoppage. The Government had just provided assurances on this matter and she looked forward to seeing a change in practice on the part of the Government. Her greatest concern, however, was whether all these new provisions were just lip service. Workers were being threatened, assassinated, and still dismissed for attempting to set up unions, and bargain collectively. The labour courts were ineffective and cases brought before them could drag on for up to five years. The labour inspectors, far from ensuring respect for workers' rights, were often more likely to persuade workers to renounce their rights. In some cases when the workers requested the inspection of the workplace, the inspectors called the employers in advance to warn them of their visit. These days the State itself was guilty of serious violations of labour rights. One hundred seventy workers had been fired in the *National Banco Crédito Hipotecario* with immediate effect and without consulting the judge in charge of reviewing the institution. In order to avoid communication between the workers and the union, telephone lines and internal electronic mail had been cut and the number of guards had been doubled. In the export processing zones the firms established were notorious for anti-union behaviour and there were no collective agreements for any of the more than 80,000 workers in this sector. Workers who attempted to organize a union were fired immediately. Factories were moved to a new location or given a new name so that workers who wished to organize could be dismissed and new more compliant workers hired for the same jobs. She fully shared the concerns of the Committee of Experts regarding murders, acts of violence and death threats against trade union members as reported by the Committee on Freedom of Association. Through cooperation with organizations like UNSITRAGUA, it had been demonstrated that discrepancies between the newly adopted legislation and the practices of the Government were worse than outsiders were able to comprehend. A country that characterized itself as democratic and had ratified all ILO core Conventions could not allow such actions to take place. This showed lack of respect for the ILO, and contempt towards Guatemalan workers and their fundamental rights. This Committee must urge the Government of Guatemala to bring its practice into conformity with both Convention No. 87 and its own labour legislation. The situation was so serious that she joined the other members in asking that Guatemala be included in a special paragraph.

The Worker member of Brazil recalled that this case had already been discussed by the Committee on eight occasions. The peace accord announced in 1996 had created the hope that Convention No. 87 could finally be fully applied in Guatemala. However, since that date, anti-trade union acts had not ceased to increase. He stated that it must be concluded, in the light of the comments made by the supervisory machinery, that the peace accord did not have any effect in the world of work. The Congress of the Republic of Guatemala had begun a reform of the Labour Code just before the beginning of the 2001 session of the Conference, and had thus modified many sections that were the object of comments made by the Committee of Experts. However, many of the criticized sections remained unchanged, in particular: the imposition of compulsory arbitration (Decree Law Nos. 71-86 and 35-96), the decree maintaining the surveillance service upon the creation of a trade union which could be the source of the interference by the executive authority, the restriction of the participation of foreign workers in the executive committees of trade unions; the requirement of a minimum number of workers for the formation of a trade union, which remained higher than that accepted by the Committee on Freedom of Association; the authority given to the Executive in the registration of trade unions; and the numerical requirements for the creation of federations and confederations. Furthermore, the protection of elected leaders provided for by the amended section 209 of the Labour Code remained insufficient to ensure the application of Article 11 of the Convention. Regarding the possibility of interventions of judicial and executive authorities in the exercise of the right to strike in the essential public services sector (section 243 of the Labour Code), while the amendments introduced appeared to have reduced the scope of this intervention, the Committee of Experts had not specified to what extent the situation had actually changed. The power left to the Executive in this field made it easily conceivable that the police forces would continue to limit the exercise of the right to strike. Moreover, he recalled the frequency with which trade union leaders were threatened, intimidated or detained. The Committee on Freedom of Association had indicated in this regard that the frequent imprisonment of leaders in these circumstances was typical of a restricted situation of freedom of association. Finally, he emphasized, as was done by the direct contacts mission and as was also brought out by the numerous complaints filed to the Committee on Freedom of Association, the slowness with which justical decisions were rendered. In this respect the Committee on Freedom of Association had specified that late justice was a denial of justice. Under these circumstances, the Government should take real action, including measures of judicial reform, so as to ensure the effective application of the rights and principles contained in international Conventions that it had undertaken to respect. The speaker supported the request made to include the case in a special paragraph.

The Worker member of Spain stated that in this case the Committee found itself faced with a typical and frequent situation of a discrepancy between legislation and reality. The legislation reflected in the first paragraphs of the report was due in part to the direct contacts mission headed by the ILO, which in fact had proved to be efficient in changing the legislation, but not the reality. This resulted in a manifest hypocrisy, for legislation that was not reflected in reality was a dead letter. The reality included, in the constant violation of trade union rights on all levels, the infringement of the right to strike and social injustice. Contrary to what had been stated by the Employer members, the speaker affirmed that the right to strike was covered by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and along with the right to bargain collectively, constituted one of the pillars of trade union rights. The systematic violation of the right to strike in Guatemala was due in part to the imposition of compulsory arbitration. In this respect, the speaker demanded that this country be included in a special paragraph.

The Government member of Mexico stated that since the previous session of this Committee, when the Government of Guatemala had been invited to report on the application of the recommendations made by the Committee of Experts, the Government had observed progress in the reform of the Labour Code introduced by the Guatemalan Congress to bring the national legislation in line with Convention No. 87 and, in particular, to comply with the requests that had been formulated by the Committee for a long time. She welcomed that the Experts had mentioned in their report the amendments to the Labour Code which had allowed to adapt internal legislation to the aforementioned instrument. She also noted with interest the commitment of the Government of Guatemala to continue the implementation of this reform and to give workers the necessary means to effectively exercise their labour rights. As in the previous year, the speaker asked that the progress mentioned by the Committee of Experts and confirmed by the direct contacts mission be included in the conclusions of this Committee. She encouraged the Government of Guatemala to maintain its close collaboration with the Office and with the supervisory bodies of the ILO, in the aim of obtaining a true guarantee of the respect of labour rights in the country.

The Worker member of Colombia stated that Guatemala was a country in which 75 per cent of the population was concentrated in the rural area, of which almost 80 per cent lived under the poverty threshold and many died of starvation. Sixty-seven per cent of the population worked in the informal sector. He stated that though it was certain that the Committee of Experts had welcomed the fact that the Government of Guatemala had harmonized its labour legislation with the instruments of the ILO, it was no less certain that in the present day, complex situations preventing the full development of freedom of association in Guatemala still prevailed. Specifically, last year, the Government had expressed its respect to the supervisory bodies of the ILO and had acknowledged the need to improve labour conditions in the country. Despite this, words did not always coincide with facts, which was why Guatemalan workers did not stop asking for assistance from the global trade union movement in the struggle against anti-trade union acts such as the breaking and entering of trade union premises and the detention, disappearance and assassination of trade unionists. The Workers were used to hearing in this forum promises from the Government representatives according to which legislation would be brought into conformity and workers' rights would be protected. Unfortunately, years went by and the situation remained the same. For this reason

the Government of Guatemala should take the necessary measures to answer the workers' requests and fully ensure the right to establish organizations, to bargain collectively and to strike. Nowadays, poverty, unemployment and social instability have aggravated, the number of poor and marginalized people has increased and the number of rich people has decreased.

The Government representative, after having listened to the Worker and Employer members, reiterated his previous statement and stressed, more specifically, that his country was about to leave behind an exclusionary political system that had persisted for more than 100 years, and had given rise to the internal armed conflict, which was why there was no easy way to eradicate the culture of confrontation persisting between social partners, on the one hand, and between social partners and the institutions on the other. In respect of what had been put into question, he referred again to the concrete measures already take by the Special Prosecutor constituted in order to punish crimes perpetrated against trade union leaders, to the creation of the Sanctions Unit responsible for ensuring workers' rights and to the labour law reform. He added that in this effort, his Government had invited the Special Representative of the Secretary-General of the United Nations for the Human Rights Defenders and had undertaken a policy of human rights reparation under which the State had spent a huge amount in order to compensate numerous workers of the Ministry of Culture who had been unfairly dismissed. The speaker again stressed on social justice and the need to rely on ILO technical assistance in order to implement international Conventions. Finally, he referred to: the amendments that were still pending and had been requested by the Committee of Experts, concerning the requirement to be of Guatemalan nationality in order to participate in the creation of an executive committee of a trade union and the obligation to be a worker of an enterprise or of the concrete economic activity to be eligible as a trade union leader; as well as the doubts expressed concerning the enforcement of section 390, paragraph 2, of the Penal Code. He stated that his Government had committed itself to submit these points to a tripartite committee, by virtue of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

The Worker members stated that they could not but observe the existence of serious problems related to the application of Convention No. 87 in Guatemala and the criminalization of trade union activities. The infringements noted concerned the application of the Convention in law as well as in practice. Urgent measures had to be taken. Regarding the legislation, the Government must take steps to amend without delay the provisions violating respective Articles of Convention No. 87 and the right to strike as recognized by the Committee on Freedom of Association; to provide at the earliest possible date the information requested by the Committee of Experts concerning the provisions of the Penal Code imposing compulsory arbitration and a penalty of imprisonment in case of paralysing or disrupting the running of enterprises which contributed to the economic development of the country. Regarding the application of the Convention in practice, the Government must prove a true will to protect trade union leaders and their activities, by ensuring a climate of peace and security, as well as the existence of an impartial, rapid and efficient judicial system, and reinforcing social dialogue. Finally, the Government must lift the impunity which protected the perpetrators of anti-trade unions acts, which included threats against the physical integrity of persons and manslaughter of trade union leaders. Taking into account this difficult and even tragic situation, as well as the absence of real improvements, the Worker members requested that this case be included in a special paragraph and that the Employer members consider such a possibility.

The Employer members stated that this case had two sides: on the one hand, the Committee of Experts had noted considerable progress in its comment under the Convention and in the General Report, and on the other hand, there remained action to be taken by the Government in order to fully comply with the Convention. With regard to the progress achieved, the statements of the Worker members were somewhat strange. The Worker members usually praised the Committee of Experts for their knowledge, wisdom and objectivity. During this discussion, the Workers had adopted a different attitude. The Employer members agreed, however, that the continuing state interference with trade union affairs was not acceptable. The Government had to take the necessary measures and the Employer members noted the Government's preparedness to undertake the necessary amendments to the legislation. They said that legislative action in relation to the right to strike was not needed from their point of view. The Government, however, had to ensure the application of the Convention in law and practice. They recalled that the signed peace agreement could not immediately bring to an end a civil war that had lasted over decades. Moreover, they believed that not every problem could be solved by the adoption of legislation. A trade union-friendly culture had to be established, which would take time. In conclusion, the Employer members disagreed with the Worker members' request to place the Conference Committee's conclusion in a special paragraph. In the light of the legislative amendments which marked a considerable progress, it went against the established tradition of this Committee to include in a special paragraph, a country which had previously been considered as a case of progress by the Committee of Experts.

The Committee took note of the statement made by the Government representative and the discussion which took place thereafter. The Committee welcomed the positive measures taken during and shortly after the ILO direct contacts mission which took place in the country. The legislative decrees adopted on this occasion had allowed to eliminate some of the obstacles to the application of the Convention which had been raised by the Committee of Experts over many years. Nevertheless, the Committee observed that difficulties subsisted in respect of the eligibility requirements for trade union officers. It requested the Government to rapidly take measures to lift these obstacles to the application of the right of trade unions to elect their representatives freely, recognized by Article 3 of the Convention. The Committee also noted with concern that new cases had been submitted to the Committee on Freedom of Association, both by workers' and employers' organizations. These cases revealed significant difficulties for workers' and employers' organizations in the practical exercise of their activities, due in particular to the acts of violence committed against their members. Recalling that the respect of civil liberties was essential for the exercise of trade union rights, the Committee expressed the firm hope that the Government would take the necessary measures, in close collaboration with the social partners so that workers' and employers' organizations could exercise their activities in a climate free from violence and that the Convention could be fully applied both in law and in practice. The Committee requested the Government to provide detailed information in its next report for examination by the Committee of Experts.

The Worker members deplored that there could not be a consensus in favour of the inclusion of this case in a special paragraph of the Committee's report.

Swaziland (ratification: 1978). **A Government representative** thanked the ILO for the technical assistance it provided his Government which had resulted in the adoption of an amended Industrial Relations Act. He wanted to indicate at the outset that his Government had also taken steps to initiate social dialogue in the country, as had been urged by the Committee of Experts.

He recalled that the Committee of Experts had raised two questions in respect to the application of the Convention, in his country. The first concerned the right to organize of the prison staff in defence of their economic and social interests. The second concerned the dispute resolution procedures which accoring to the Committee of Experts were too long. The adoption of the amended Industrial Relations Act incorporating changes under sections 40(13) and 52 as a result of the technical assistance received from the ILO, had been noted with interest by the Committee of Experts.

In respect of the request of the Committee for the amendment of the legislation in order to decrease the length of compulsory dispute settlement procedures provided in sections 85 and 86, read with sections 70-82, of the Industrial Relations Act, he indicated that the purpose of the dispute settlement procedure was not to prohibit strikes, but to permit alternative resolution of the question before resorting to the ultimate measure of a strike. He recalled that no law was perfect and that these provisions were not engraved in stone. He hoped that this Committee, as well as the Committee of Experts, would appreciate the efforts his Government was making to conform to the requirements of the Convention. He requested the Office to assist the Governmen by providing a copy of the General Survery on Freedom of Association of 1994.

The Employer members stated that this case was a familiar one that the Committee had been discussing since the mid-1980s and every year since 1996. They indicated that there were three issues involved. The first concerned the lengthy procedure and complicated balloting requirement to hold a peaceful protest. The Committee of Experts had noted with interest the changes made in the Government's laws in both respects and requested reports on the practical application of section 40 of the Industrial Relations Act. In paragraph 113 of the General Part of the report, the Committee of Experts included Swaziland for Convention No. 87 in the list of cases of progress and this Committee should take note of that fact.

The second issue related to the denial of the right to organize prison staff. They indicated their agreement with the Committee of Experts that such prison staff could not legitimately be considered as part of the armed forces and thus were excluded by the law. The

Committee of Experts had also concluded that there could be restrictions on their right to strike. The Employer members noted this and indicated that this Committee did not have to deal with this question in its conclusions.

The third issue concerned the lengthy procedure required before there could be a legal strike. The Experts provided no procedural information on the process other than regarding its length.

The Employers' well-known view meant that these details relating to the right to strike could not be taken up in the conclusions to this case. Clearly, there was no one size fits all answer to this question. Since the last time the Committee discussed this case there had been some steps forward and the Committee could only be encouraged by these positive steps and urge the Government to keep them up.

The Worker members pointed out that Swaziland had ratified Convention No. 87 24 years ago. Given the serious violations noted regarding the exercise of the freedom of association, this case had been discussed by the Committee since 1996. It presented more specifically a problem regarding the unionization of prison workers. Despite the adoption of Act No. 8 of 2000, modifying many sections of the Act on labour relations, the limitations on the freedom of association and on the right to strike persisted. As such, prison workers did not enjoy the right to organize, which undermined the right to strike of this professional body. The adjusting of the Act regulating trade unions and prison workers was thus necessary, all the more so since this corporation contained particularities which required its personnel to be unionized.

The compulsory procedure prior to a strike had been qualified by the Committee of Experts as a particularly heavy procedure. This procedure was clearly in contradiction with Article 3 of the Convention and aimed to discourage all strikes. The probable objective was to silence trade unions, and in the long run, to make them disappear. A reduction in the length of the compulsory procedure prior to a strike thus was indispensable to ensure a better exercise of the fundamental public liberties that were the freedom of association and the right to strike. The Government thus had to proceed with amendments to legislation regarding the right to organize of prison workers and concerning the settlement of disputes so as to ensure the observance of the Convention and guarantee the freedom of expression of prison workers in particular and of trade unions in general.

The Worker member of Swaziland stated that the correctional service employees were still denied the right to form and join organizations of their choice for collective bargaining purposes. The strike procedure was still too long so that it effectively impeded this right, as it had been when the Committee had advised the Government to shorten the period in question. The civil liability clause still existed and remained a threat and an impediment to workers from addressing their socio-economic issues by way of protest action. In short, in the last year, the attempts made by both employers and workers to amend the law, within the Labour Advisory Board, were always undermined by the Government.

He recalled that Swaziland was appearing before the Committee for the seventh consecutive year for continuous violations of freedom of association, evidencing the obstinacy of the Government. As in the past, the Government had made a host of promises to the Committee that it had not kept. Tripartite advice to amend laws was ignored. On the contrary, the Government had arbitrarily come up with the 1996 Industrial Relations Act that had criminalized industrial relations. Having obtained the assistance of the technical team of the ILO, it failed to amend the Act to render it in conformity with the Conventions. The Government turned a deaf ear to advice that was given to it for several years not to use the emergency orders and decrees against workers and particularly the Public Order of 1963 and section 12 of the 1973 decree. No reports had been made by the Commission of Inquiry established to look into the death of a 16-year-old schoolgirl shot by the police during a peaceful demonstration of the SFTU and into the abduction of the Secretary-General of the SFTU. Despite the adoption of the Industrial Relations Act 2000 under the pressure of this Committee's special paragraphs and the possibility of loss of trade benefits under the United States system of preferences, several developments took place in the country. Mass meetings of workers were banned. Workers were detained and charged for leading peaceful demonstrations and brutalized for participating in them. They were denied the right to address press conferences and the right to present petitions. He stated that there could not be any workers' right without broader human rights and civil liberties and that neither could exist nor be sustainable without freedom of association.

The speaker considered that even though the Industrial Relations Act 2000 was largely in conformity with the Convention, it was null and void in the eyes of the authorities because it contradicted the provisions of the 1973 State of Emergency Decree that was the supreme law of the country. This view was confirmed by subsequent developments. The Government passed Decree No. 2 of 2001 that usurped all fundamental rights and was later repealed due to national and international outcry. The Government later introduced a bill to prevent head teachers in schools from joining the teachers' union. There was also a media council bill designed to muzzle the media and freedom of expression that was still under consideration. Before May this year the executive officer of his union was called and warned not to criticize the Government. Since then, the Government had published a new Internal Security Bill that proposed many draconian constraints and restrictions such as the prohibition of announcements of strikes, and characterizing strikes as economic sabotage. The improvements of the labour laws were simply reversed by other statutes. In effect this was like a situation of permanent state of emergency. Despite Swaziland's ratification of six of the eight ILO core Conventions, the African Charter and Peoples' Right, the African Union Constitutive Act, despite its membership of the United Nations, OAU and the Commonwealth, it was reverting to de-humanizing and archaic laws.

With a view to finding a lasting solution, he called for the ILO to send a tripartite high-level political mission to the country to meet with the authorities in order to impress upon them the urgency of amending the laws in question and of respecting the laws in practice.

The Worker member of South Africa stated that the context in which this case concerning Convention No. 87 was being discussed was set out in Chapter 2 of the Digest of Decisions of the Committee on Freedom of Association. It was clearly stated in paragraph 33 of this Digest that the rights conferred upon workers and employers must be based upon civil liberties enunciated in the Universal Declaration of Human Rights, and the absence of these liberties removed all meaning from the concept of trade union rights. In paragraph 34, it was indicated that a system of democracy was fundamental for the exercise of trade union rights. Swaziland was far from being a democracy. The 1973 decree, which was still in force, banned political parties and had suspended the Bill of Rights contained in the independence Constitution. As a result, trade unions took up the role of fighting for human and trade union rights. If progress was said to have been made in labour legislation without any progress on civil liberties, this constituted no progress at all. Despite Article 8(2) of the Convention, which states that national law should not impair guarantees provided for in the Convention, the Government in Swaziland had been using security laws to do just that. The Internal Security Bill, which was intended for terrorists, severely crippled trade union activities and denied freedom of association.

He recalled that this case had been discussed in this Committee for several years. The Government had been promising the adoption of legislation that would be in conformity with the requirements of the Convention. The Committee had been pressing for the right to organize of the staff of correctional services, while recognizing the possible limitation of their right to strike. The Government had to give justifiable replies to the comments of the Committee of Experts. The Committee had also requested amendments to the legislation in respect to the grievance procedure before strikes. As a result, he considered that the Committee should remain seized of this case through a special paragraph.

The Worker member of Norway expressed solidarity with the trade unions of Swaziland and concern at their situation. The Nordic trade unions had been closely following the political and trade union situation in Swaziland and the behaviour of the Government for some time. She supported the proposal that a high-level political mission be sent to Swaziland as soon as possible to assist the Government to bring the legislation into compliance with the ILO's fundamental Conventions.

The Worker member of Senegal recalled that it was not the first time that the case of Swaziland had been examined by the Committee. Even so, the report of the Committee of Experts only reflected part of the situation. The system was clearly anti trade union and continued to track down trade union leaders, harassing them with judicial action for exercising their right to strike. This state of emergency under which all constitutional freedoms were suspended had existed since 1973 and was still in force. The only efforts made by the Government to amend the Act adopted in 2000 had been undertaken out of a fear of losing trade privileges, especially those relating to the general system of preferences. In violation of Article 3 of the Convention, the legislation in Swaziland contained a large number of restrictions, and particularly the exclusion of prison staff from a fundamental human right, namely the freedom to establish a trade union. The Committee of Experts had drawn attention to the fact that the Government had adopted measures which had removed the substance of Article 3 of the Convention and which denied trade union organizations their rights. There was no other way

to explain why peaceful protest action had been made subject to holding a ballot. The repressive powers provided for in Decree No. 2 had been repealed by Decree No. 3, which had however maintained the denial of bail for some offences. The current system attempted to control the SFTU in a more visible manner than in the past. The lengthy procedures preceding the calling of a strike had this implicit function. The Government was no longer able to hide its intention to dismantle trade union organizations. The case of Swaziland should be set out in a special paragraph of the Committee's report.

The Worker member of Japan recalled that, even though the case had been examined by the Committee on several occasions and the Government had adopted the recommendations made by the Committee, the civil liability clause still existed and remained a threat and impediment for workers to express their opinions without any restrictions. He emphasized that freedom of association was based on the right of expression which should be fully secured by the Government. He emphasized that there could be no trade union rights without the right to freedom of association, peaceful assembly and freedom of expression. Referring to the reports of Amnesty International, he noted that these rights remained restricted in Swaziland. Government action still threatened the independence of the judiciary and undermined court rulings, and there were a number of reports of torture and ill-treatment by the police.

He cited a number of concrete examples and asked the Government to provide detailed information on these cases to the Committee. He indicated that Mr. Mario Masuku, President of the People's United Democratic Movement, had been arrested once again on 4 October 2001. He had previously been arrested in November 2000 on charges of sedition and had been released under restrictive bail conditions, including the requirement to obtain the permission of the Commissioner of Police when he intended to address any public gathering and to obtain the permission of the High Court to travel abroad. He had required treatment in the hospital because of the poor prison conditions. He also cited the deaths of Edison Makhanya and Sisbusiso Jele, which had occurred within hours of their arrest by the police on 20 March 2001. These were only examples of many reports of torture or ill-treatment by the police.

On 19 October 2001, the police had broken up the news conference organized by members and affiliates of the Swaziland Democratic Alliance to protest against the detention of the opposition leader, Mario Masuku. Several journalists had also been harassed by the police because of their work and a number of publications had been banned. The Government had also threatened to reintroduce a Media Council Bill to tighten restrictions on journalists and publications.

He called upon the Government to give effect in law and practice to the promises that it had made in this Committee. The duty of the Government was not to avoid being criticized, but to take direct steps to build a democratic country in cooperation with the trade unions. He also hoped that the Government would stop antagonizing the trade union movement and would accept the ILO tripartite delegation, which would assist the social partners to engage in dialogue with a view to finding solutions to the human rights problems in Swaziland.

The Worker member of Côte d'Ivoire stated that the case of Swaziland was of prime importance because it dealt with freedom of association, which was the cornerstone of trade union rights, and the concomitant right to strike. Freedom of association and the exercise of the right to strike were inextricably linked, and were among the fundamental public freedoms that each State had to guarantee. The situation in Swaziland was symptomatic of that prevailing in a number of countries, especially in Africa. It was part of a logic intended to silence trade unions and their claims. But Article 2 of the Convention was clear, and unequivocal. This Article provided that all occupational sectors, without exception, had the right to organize. The militarization of some occupational categories had the sole aim of preventing them from establishing trade unions and making their claims. The legislation in Swaziland should therefore be amended to allow prison staff to organize.

With respect to Article 3 of the Convention, the compulsory dispute settlement procedure provided for in sections 85 and 86, in relation to sections 70 to 82 of the Industrial Relations Act was outdated and dangerous for trade unions. It was in direct violation of the provisions of Article 3 of the Convention and threatened trade union action by making it difficult, or even impossible to call a strike These procedures were a violation of freedom and the Convention, and were an obstacle to trade union action. They should be withdrawn. Several States had such procedures, which denied the right of workers to strike, even though this was the only weapon they could use. Furthermore, heavy sanctions were imposed in the event of non-observance of these procedures, which further aggravated the situation. The Committee had been discussing the case of Swaziland for seven years and should support the position of the Worker members and of the Worker member of Swaziland.

The Worker member of the United States expressed the solidarity of AFL-CIO with the workers of Swaziland and its deep concern about the deteriorating political situation in the country, particularly with regard to civil liberties, which undermined freedom of association. He indicated that AFL-CIO intended to renew its efforts to bring a GSP complaint against the Government of Swaziland because of the deteriorating political situation.

The Employer member of Swaziland indicated that it was clear from the discussion with respect to this case that Swaziland was in dire need of the continuation of social dialogue. The labour reforms that had occurred in Swaziland with the assistance of the ILO technical advisory team bore testimony to the power of this process. He emphasized that the employers had driven such dialogue and some of the gains that had been achieved were a result of their relentless efforts to promote dialogue between the social partners. He therefore called upon the ILO to continue assisting his country to accelerate the process of social dialogue, particularly at the national level. He also appealed to the other social partners to renew their commitment to the process. Finally, he expressed the conviction that, with the assistance of the ILO in promoting dialogue, his country would be able to report significant progress in the current year in addressing its problems.

The Government representative expressed his gratitude to all speakers for their statements in relation to the case. In view of the political content of some of these statements, he believed that it was important to provide some background on the political context in his country. He indicated that the Government had established a committee to draft the national Constitution in conformity with international standards. Referring to the Internal Security Bill, he emphasized that proposed legislation of this nature was an internal matter that did not call for discussion by the Committee. He added that the legislative process in his country allowed for a 30-day period following the publication of draft legislation in which views on the proposed texts could be made known.

He emphasized that it was misleading to suggest that his country was moving backwards. He added that it was important to follow due process before the ILO's supervisory bodies. The next step in the process would be for the Committee of Experts to analyse the information provided by the Government and to request any further information that was required. It would then be possible to consider the progress made. He reaffirmed the commitment of his Government to taking advice from the supervisory bodies and entering into discussions with the social partners at the national level with a view to taking the necessary action. He further emphasized that statements to the effect that workers were denied their essential freedoms in Swaziland were untrue. He affirmed that no one was in prison in Swaziland on account of trade union activities. Moreover, there had been many applications under the new legislation to establish new organizations. He reaffirmed the commitment of his country to conform with its international obligations. However, he believed that it would be premature in the process of dialogue with the supervisory bodies to send a high-level mission to his country at the present time.

The Worker members expressed their gratitude to the Government representative for his statement and the information provided. Swaziland had ratified the Convention 24 years ago and the case had been examined by the Committee on several occasions. Since 1996, the issue of the difficulties of application of the principle of freedom of association in Swaziland had been examined at every session of the Committee. Serious violations had been noted, which still persisted. The Worker members took note of the observation of the Committee of Experts and the adoption of Act No. 8 amending sections 29, 40 and 52 of the Industrial Relations Act of 2000. Restrictions on fundamental public freedoms existed in Swaziland with respect to freedom of association and the right to strike. In fact, the prison staff did not have the right to organize. The absolute nature of this restriction violated Article 2 of the Convention and severely restricted the right to strike of this occupational category. Amendments to the law governing the right to organize of this occupational category were required. The right to organize and the parallel right to strike needed to be freely exercised by prison staff.

With respect to protest action, it had to be noted that the mandatory procedure for the settlement of disputes prescribed in sections 85 and 86, read in conjunction with sections 70-82 of the Industrial Relations Act, was lengthy. The Committee of Experts referred to this procedure as "particularly lengthy". Such a procedure was in violation of Article 3 of the Convention and was intended to discourage all protest action. The direct consequence was the silencing of the trade unions, their inability to act and their disappearance in the long term, which was probably the desired result. Such regulations were not only unacceptable to the Worker mem-

bers on the basis of their convictions and their trade union commitment, but also in the light of internationally recognized fundamental human freedoms. This procedure was clearly in violation of the Convention. A reduction in the length of the compulsory procedure prior to protest action was required to improve the observance of the fundamental public freedom of association and the right to strike.

The legislation governing the right to organize of prison staff and the dispute settlement procedure had to be changed so as to comply with the Convention and respect the freedom of expression of prison staff and trade unions in general. In the event that the Government did not accept a high-level mission, the Committee's conclusions should be set out in a special paragraph of its report.

The Employer members appreciated the expression of good will and intention by the Government representative. They called upon the Government to take action to bring national law and practice into conformity with the Convention. However, if progress were not made, they warned that the Committee might have to look at the case differently next year. They also recalled that the Committee's discussion of the case needed to be based closely on the comments made by the Committee of Experts. If the Committee of Experts were to identify further issues in relation to this case, it could request additional information. They reminded the Government that it needed to take action to ensure that it achieved compliance with the Convention in both law and practice. A Convention could not just be applied through the adoption of appropriate laws, but measures also needed to be taken to ensure its application in practice. They urged the Government to take seriously any issues identified by the Committee of Experts in its analysis of the information provided and to follow the advice given. Although they would normally have considered a technical advisory mission to be premature at this stage, in view of the background to the present case they called upon the Government to give strong consideration to the proposal to send a technical assistance mission to the country. However, they believed that it would be premature on this occasion for the Committee to place its conclusions on this case in a special paragraph of its report, as suggested by the Worker members.

The Committee noted the statement made by the Government representative and the discussion which took place thereafter. It noted with interest the adoption of Act No. 8 of 2000, modifying sections 29, 40 and 52 of the Industrial Relations Act, 2000, which appeared to bring the legislation into greater conformity with the provisions of the Convention while, according to the Committee of Experts, certain problems with the application of the Convention remained. It also noted that a certain number of concerns had been raised during the discussion concerning the practical application of this legislation and requested the Government to provide the information requested by the Committee of Experts in this respect. The Committee further noted with concern the statements to the effect that a Bill on internal security had been drafted which would place serious restrictions on the right of workers' and employers' organizations to exercise their activities. It requested the Government to transmit a copy of this Bill to the Committee of Experts, and any other relevant information concerning developments in this respect, so that the Committee could examine the Bill's conformity with the provisions of the Convention at its next meeting. Recalling that respect for civil liberties was essential to the exercise of trade union rights, the Committee expressed the firm hope that it would be able to note a significant improvement in the application of this Convention in the near future, both in law and in practice. To this end, the Committee once again suggested that the Government consider the possibility of a high-level mission aimed at collecting information on the practical application of the Convention and contributing to a better implementation of the Convention.

Venezuela (ratification: 1982). **A Government representative** referred to the direct contacts mission from 6 to 10 May this year, the report of which had just been received. He noted the support of this supervisory body and the Committee on Freedom of Association for democracy and fundamental freedoms which his Government, which had been democratically elected, continued to promote despite the failed coup d'état of 11 April 2002. His country had continued to make progress in compliance with international labour standards, as illustrated by the recent ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). It was also promoting the freedom of trade unions and employers as an essential instrument of participatory democracy, as set out in the Constitution. For this purpose, the Government had developed a plan of public investment and the training of officials for the defence and promotion of human rights, including freedom of association.

At the legislative level, the Government agreed upon the need to amend sections 404, 408, 409, 418, 419, 637 and 639 of the Basic Labour Act of 1990 in order to bring them into conformity with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). This legislative reform was being realized with the help and advice of the direct contacts mission. In accordance with the provisions of the Constitution and in view of the growing activism of human rights NGOs and the trade union movement, other provisions would also have to be reformed relating to matters such as the legal status of international labour Conventions, the exercise of the right to strike and the supervisory powers of labour inspectors. A Bill to reform the Basic Labour Act, which provided for the amendment of sections 404, 407, 418, 419, 637 and 639, and the repeal of sections 408 and 409, had just been submitted to the National Assembly and undoubtedly constituted a partial reform, which would be completed subsequently.

The last legislative reform was made in 1997, when those later involved in the coup d'etat of 11 April this year played a star role in changing the law, to flexibilize and deregulate the conditions of work, but never to give effect to the recommendations of the Committee of Experts.

With regard to article 95 *in fine* of the Constitution, the law should make it possible to develop its content in accordance with Conventions Nos. 87 and 98. A political debate on the direct election of trade union leaders in workers' organizations, in relation to the intervention of the Workers Confederation of Venezuela (CTV), had been initiated. The Government of the time, with the support of the trade union leadership of the CTV, had illegally detained some of its leaders, and had made others disappear, while persecuting workers' leaders, affecting more than 20,000 workers. The above debate had resulted in section 434 of the Basic Labour Act of 1990, which provided that the executive boards of trade unions should discharge their functions for the period set out in their by-laws, but in no case for longer than three years. In view of this experience the Government was amending section 434 in order to set forth the principle of democratic alternation, with the obligation for second- and third-level trade union organizations (federations and confederations) to institute authentically democratic, free and transparent electoral processes.

With regard to trade union officers, he indicated that they should remain subject to self-regulation through the by-laws of trade union organizations. In this respect, section 8 of the by-laws of the CTV restricted the mandates of trade union officers to two consecutive periods, with them automatically leaving office upon completion of the second period. With regard to the functions of the National Electoral Council with regard to trade unions, the Government was bound to respect the independence of the electoral authority. All electoral rules, as well as the technical assistance of the Council, and its intervention as an electoral arbitrator and tribunal, had to be voluntary and freely requested by the trade union organizations. The Government agreed that the general electoral rules could not affect the right of trade union organizations to regulate their internal affairs and could not involve a violation of the right of workers to draw up their own rules. He noted that before approving the Constitution, the CTV had requested the intervention and participation of the National Electoral Council under the terms of the Basic Act respecting political suffrage and participation, which had shown that there was a strong citizens' movement of the workers in the principal trade union organization demanding free and transparent trade union elections.

With regard to the Decree issued by the constituent National Assembly respecting measures to guarantee freedom of association, this was an instrument intended to unify the country's fragmented trade union movement through an electoral process. This objective was not shared by the Government, which supported democratic pluralism and the participation of all social categories. The decree was not applied and had no legal force in practice. There were four trade union confederations, tens of federations and thousands of trade unions with very different ideologies within the country, almost all of which had held elections the previous year. It was therefore unclear which trade union unity the Committee of Experts was referring to.

With reference to the draft texts respecting the protection of trade union guarantees and freedoms and the democratic rights of workers in their unions, federations and confederations, he shared the concern of the Committee of Experts and welcomed the fact that its comments had helped to erode the extreme positions of trade union leaders and politicians who did not wish to gain their respective offices through democratic, transparent and free elections. In accordance with the recommendations of this Committee,

the Government would shortly inform the legislative authority of the incompatibility of both draft texts with the obligations deriving from the Convention. The two draft texts, which dealt not only with trade union guarantees and freedoms but also with democratic rights in unions, federations and confederations, were being archived and removed from the agenda of the National Assembly.

On the subject of the requested repeal of resolution No. 01-00-012 of the Office of the Prosecutor of the Republic requiring trade union officials to make a sworn statement of their assets at the beginning and end of their mandate, the Government understood that the objective of this text was to establish guarantees to prevent corruption and the misuse of trade union office for financial rather than social purposes. The same requirement is also to be found in the by-laws of the Venezuela Workers' Confederation. In order to bring the national provisions into closer conformity with the relevant Conventions, a procedure would need to be followed similar to that envisaged in section 442 of the Basic Labour Act, under which the intervention of the Prosecutor of the Republic would occur after all the internal channels of regulation respecting financial matters in the trade union movement had been exhausted.

In conclusion, he reaffirmed his country's commitment to social dialogue and the participation of all categories of society. He welcomed the role played by the Committee in encouraging further institutional changes in his country in defence of human rights, and particularly social, economic and cultural rights, which were so excluded and overlooked in the current process of globalization.

The Worker members stated that this Committee had been discussing the application of Convention No. 87 by Venezuela for a number of years. In 2000, the Worker members of Venezuela had indicated the total absence of progress and of any signs of Government willingness to improve the situation. The case was included into a special paragraph of the Committee's report and a joint letter by the Worker and Employer Vice-Chairpersons was addressed to the President of the Conference. In 2001, this Committee had again expressed serious concern about the absence of tangible progress. The Government then was requested, on one hand, to urgently amend the legislation in order to allow workers and employers to establish organizations of their own choosing and to elect their representatives in full freedom and, on the other hand, to repeal the excessively long and detailed list of duties entrusted to, and aims to be achieved by, these organizations. The Committee also referred to the acts of interference by the authorities into the internal affairs of trade unions, as well as to certain provisions of the Constitution which were not in conformity with the Convention.

A direct contacts mission had visited Venezuela last May, after having been postponed several times. It had observed that the political situation was highly polarized and had noted numerous problems of interference by the authorities, as well as a total absence of social dialogue and consultation of social partners. The Government undertook to submit a draft law answering to the requests of the supervisory bodies. The social situation had deeply deteriorated. Over the past few months, workers had lost their jobs and numerous conflicts in various sectors witnessed their anxiety and discontent. That was why it was appropriate to insist once again on the fundamental role of a social dialogue in order to guarantee a climate of peace and social justice, as well as on the importance of observing freedom of association without interference by public authorities into the trade union activities.

The Employer members observed that the case of Venezuela in relation to the application of Convention No. 87 had been examined by the Conference Committee seven times since 1995. In the last two years, the Conference Committee had placed its conclusions in a special paragraph. Since this was a long-standing case, the Committee of Experts had requested a direct contacts mission to the country to collect information on the application of the Convention and to prepare amendments to ensure its full application. After some hesitation, the Government had received a direct contacts mission, whose report had drawn clear conclusions regarding the situation in the country.

The Employer members stated that all discrepancies in law and practice persisted. The State continued to undermine the rights enshrined in the Convention of both the workers and employers. The Government representative had announced the Government's intention to introduce some changes. The extent of such possible changes was, however, unclear. They further observed that tripartite consultations were never held in the country. There were no representatives of employers and workers on the Commission on Social Dialogue. The Employer members considered it a good sign of social partnership that the employers had refused to participate in the work of the Commission on Social Dialogue, because the workers' union, CTU, had not been included in the Commission. It was regrettable that laws had been adopted recently without prior consultations with the social partners. Further massive violations of the right of freedom of association were based on the new Venezuelan legislation of 1999, e.g. elections of occupational unions were regulated and supervised by the National Electoral Council. The Employer members observed a tendency of favouring unified trade unions.

Referring to resolution No. 01-00-012, the Committee of Experts requested that it be repealed since it required trade union officials to make a sworn statement of assets at the beginning and at the end of their mandate. The Government representative had first defended this resolution and subsequently he had said that amendments to it were possible. This contradictory statement of the Government representative was similar to the previous attitude the Government had shown in this Committee. The Government had appeared prepared for changes, but subsequently it had never taken any action.

In conclusion, the Employer members stated a clear deterioration in developments concerning freedom of association. The draft law mentioned by the Government representative, which had been prepared after the direct contacts mission, went in the opposite direction from safeguarding freedom of association. The Government apparently did not want to understand that it was not the task of the State to issue detailed regulations for organizing the election of occupational unions and associations.

The Worker member of Venezuela stated that he unreservedly supported the request made by the Committee of Experts in its report (of the current year) to modify sections of the Organic Labour Act, concerning the high number of workers required to form a trade union, as well as the excessively long period after which foreign workers could join the executive body of trade unions. He called upon the Government representative, as had been done for over ten years, for the immediate amendment of the Act, to put it into conformity with the Conventions of the ILO. He also called for the modification of the other sections indicated by the Government representative. He thanked the Venezuelan Government for the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which consolidated the rights enshrined in the new Constitution.

In respect to the electoral process of 2001, between August and October of 2001, elections of 3,000 grass-roots trade unions and 95 federations, as well as three of the four important trade union centres, that is, CTV, CODESA and CGT, had taken place. However, the elections of the executive committee and other bodies of the CTV had been hindered by innumerable irregularities that had led to the resignation of the electoral committee of the CTV and the interruption of the electoral process. It was deplorable that there had still not been a clarification of this process, that had left the sector of workers without just representation, to participate in social dialogue under the best conditions possible. The entire electoral process had been regulated by an agreement signed by the CNE and the CTV. In this way, all trade unions and federations and two centres had been legally constituted by the agreement.

Furthermore, no government had the power to choose to recognize the executive board of the workers. The main obstacle to the recognition of the joint executive board of the CTV was of another nature and was basically due to the fact that: (1) in violation of article 37 of the Electoral Statute of the CTV, the joint executive board was constituted with barely 48 per cent of the total votes, which represented less than 50 per cent of those registered; (2) the composition of the internal electoral committee of the CTV had been unilaterally changed following the finalization of the voting process; and (3) the strategic corporate and trade union sectors of the country (petrol, electricity, transport, iron, aluminium, communications, public services, amongst others) grouped in this confederation, did not recognize the actual executive board of the CTV which had been elected in fraud of the law .

Consequently, the workers were now profoundly divided and did not have a national representation. A low level of unionism persisted, which was inferior to 12 per cent of active workers. The situation was aggravated when last 11 April this trade union sector of the CTV, in alliance with enterprise, political and military sectors, had instigated a coup against the Constitution and legitimate national institutions, with the support of the communication media, particularly television. The speaker profoundly deplored the instrumentalization of the corporate and classist fight of the main trade union confederation to serve political and economic interests of privileged sectors, to destroy popular participation and thereby scorn the rights and interests of workers. He stated the need for an autonomous front against governments, employers and political parties, and deplored that worker representatives who had participated in this Committee last year had participated as ministers in the short-lived de-facto Government which had been installed after the coup. Having come to the Conference was not for polemicizing

among workers, employers and the Government, but to strengthen dialogue and social justice.

Finally, the speaker recognized the important role that the ILO played in the process of democratization and requested the Government to send complementary information to the Committee of Experts in the aim of promoting the development of social dialogue, and re-establish the legitimacy of the main Venezuelan trade union, without interference of bodies or institutions outside the trade union movement, following the international standards.

A representative of the ICFTU, after having stated that the previous intervention did not really represent the workers in his country, stated that the report of the direct contacts mission accurately reflected the existing situation in Venezuela with regard to freedom of association. He emphasized that the current regime had repeatedly violated these freedoms, despite the fact that it "had been democratically elected". In fact, today many cases on violations of trade union rights were pending before the Committee on Freedom of Association (Cases Nos. 1952, 2058, 2067, 2160, 2191). Despite this, the Government had authorized the mission to examine only the questions related to the report of the Committee of Experts but not the serious violations of freedom of association. Moreover, more than 90 per cent of the persons interviewed by this mission considered that there existed grave violations of Conventions Nos. 87 and 98. In the same way, there was no social dialogue in the country, and, consequently, no tripartism. The Government had not amended, as had been requested by the Committee of Experts, those articles of the political Constitution that permitted the National Electoral Council to intervene in trade union activities. Moreover, the electoral Bill which was currently being discussed in Parliament was still very interventionist. Finally, the speaker requested that the case of Venezuela be included in a special paragraph.

The Worker member of the United States stated that, unfortunately, nothing in the report of the Committee of Experts or the report of the ILO direct contacts mission indicated that anything had changed in Venezuela regarding non-compliance with Convention No. 87. However, what had changed in the situation in Venezuela was the coup d'état of 12 April of this year. He indicated that at the outset the AFL-CIO and the entire United States labour movement condemned the coup attempt of two months ago. He also pointed out that strikes and demonstrations organized by the Venezuelan trade union movement with other representative organizations in Venezuelan civil society were legitimate expressions of freedom of association that could not and should not be equated with forcible ouster or seizures of power executed by the armed forces.

The Worker member indicated that the Committee of Experts had cited four general instances of how the Venezuelan Organic Labour Act violated Convention No. 87. The Committee of Experts had continued to ask the Government for many years, but without success, to remedy these violations. The Government responded saying the matter would likely be submitted to a national plebiscite. The last time these questions were submitted to a plebiscite the Government was confronted with a 70 per cent abstention as well as with the condemnation on the part of the international labour movement and the ILO. Even though some of the language in the Bolivarian Constitution especially protected freedom of association, it was totally overridden by articles 95 and 293, as was observed by the Committee of Experts and the direct contacts mission. Article 293 gave the National Electoral Council (CNE) the power to effectively dictate the substance and process of internal union governance, in total contradiction with Article 3 of the Convention. Despite these violations of the Convention, the CTV, Venezuela's largest representative labour federation, attempted to advance with its own internal democratization process. The Minister of Labour reported to the direct contacts mission that the CTV voluntarily called on the CNE to conduct their elections. The Worker member indicated the CTV did not have much choice if its internal election process were to be allowed and recognized. Even this attempt to play by the Government's rules was thwarted and on 14 July 2000 the CNE halted the CTV national elections until the following year. The elections were held in October and November 2001 when hundreds of thousands of CTV members voted in 9,100 polling stations throughout the country, and despite this election being found free and fair by independent observers from the Catholic University and the international labour movement, the Venezuelan authorities refused to recognize the CTV Executive on the grounds of alleged irregularities. The ILO direct contacts mission indicated that such recognition should not be denied in the absence of judicial invalidation of the elections. In conclusion, he urged for national reconciliation that was so vital for the survival of the Venezuelan nation, and that required constructive dialogue and recognition between the tripartite partners. Given the gravity of this case, he joined those who called for a special paragraph to be adopted in the Committee's report.

The Worker member of Swaziland supported the statement made by the Worker members. The Government of Venezuela had, 20 years ago, voluntarily ratified Convention No. 87 and had a particular duty and obligation to apply both in law and practice the provisions of the Convention. The universality of the Convention provided a benchmark and it was important that provisions of national legislation and national practice should conform with the Convention and not vice versa. Article 8, paragraph 2, of the Convention provided that national laws should not impede the exercise of the rights enshrined in the Convention. Article 3, paragraph 2, of the Convention provided that public authorities should refrain from interference that would restrict the lawful exercise of this right. Social dialogue was important and should be encouraged. Having ratified the Convention, the Government should realize that compliance was not negotiable but an obligation undertaken 20 years ago. He called for the amendment of the constitutional provisions that were incompatible with the Convention, as recommended by the Committee of Experts.

The Worker member of Cuba stated that he did not consider it very appropriate to include Venezuela in a special paragraph, before having exhausted all the available means of dialogue for resolving the conflict and the difficulties in the application of Convention No. 87. The employers played a key role in this process and he trusted that social dialogue would facilitate the implementation of the observations of the Committee of Experts in national law in favour of the workers as well as the trade union movement, including at the international level. The restrictions of the exercise of liberties were not the principal feature of the Government of Venezuela, quite the contrary. Since it came into power, it had been attacked to an incredible degree, in spite of the fact that it maintained dialogue and offered great hopes to the workers of Latin America.

The Worker member of Chile stated that according to the Committee of Experts and the report of the direct contacts mission, the situation in Venezuela remained generally worrying. Indeed, Convention No. 87 required that workers themselves, without interference of the employers and governments, freely choose the manner in which they organize, function and conduct elections. In this respect, various provisions in the national legislation continued to contradict freedom of association, such as those which required an excessively high quorum to establish trade unions and an exhaustive list of duties and aims of the trade unions to be laid down. Furthermore, trade union unity imposed by law was also contrary to the Convention because it had to be decided upon by the workers themselves. The Government of Venezuela had good knowledge of all these facts, highlighted by the Committee of Experts and the direct contacts mission which had recently visited the country. In the face of the incompatibility between the national legislation and Convention No. 87 ratified by this country 20 years ago, it was necessary that the legal provisions concerned be revoked or modified.

The speaker stressed that the highest Venezuelan authorities had interfered in the activities and functioning of the Confederation of Workers of Venezuela (CTV) by not recognizing its executive board and trying to put pressure on its leaders, which was absolutely contrary to Convention No. 87. In effect, according to the Convention, the workers' right to establish an organization of their own choosing and to elect their leaders in full freedom should be protected. The speaker stated that he was aware of the situation of Venezuelan workers, which was analogous to that in Chile in 1973, when the Chilean Government interfered in the trade union affairs by nominating their leaders.

The speaker therefore urged the Government of Venezuela to introduce all the legislative amendments required by the Committee of Experts in order to ensure that trade union leaders could be nominated without interference by the authorities and employers and that trade unions could organize their administration and activities in full freedom. Finally, the speaker stated that his country had recently carried out a labour law reform which provided for all the abovementioned rights.

The Worker member of India insisted that the Government of Venezuela should not be allowed to act against the provisions of Convention No. 87 which it had ratified in 1982 by invoking the argument that it had to respect its own Constitution. While he wanted the Government to respect its own Constitution, it should not be at the cost of its respect for the ILO's core Convention No. 87. If its Constitution authorized it to interfere in the legitimate and rightful functioning of trade unions, the Government should duly amend the Constitution. The Committee had already indicated that the referendum evoked by the Government was a violation of trade union rights, and more particularly of Article 3 of Convention No. 87. Indian workers, in solidarity with the struggle of the Vene-

zuelan workers, wished to call upon the Government of Venezuela to comply with the conclusions of this Committee and take the necessary steps to bring the country's legislation and practice into line with Convention No. 87. He supported the CTV's action aimed at securing the abrogation of the laws that were incompatible with freedom of association. He called upon the ILO to continue putting pressure on the Government to stop interfering in trade union organizations and to ensure that it fully respected the results of trade union elections.

The Government member of the United States stated that, over the years, the Committee of Experts had noted a number of legislative and constitutional provisions that were not in line with the provisions of Convention No. 87. When that Committee had discussed the case last year, the Government of Venezuela had indicated that it would accept an ILO direct contacts mission. He welcomed the fact that the mission had taken place and that the report was available. He hoped that with the help of the ILO, and on the basis of enhanced tripartite dialogue, the necessary amendments would be achieved. As noted by the Government representative of Venezuela and other speakers, the right of workers' and employers' organizations to organize and conduct their activities without government interference was central to the principle of freedom of association. This applied in particular to the manner in which those organizations elected their officers. He indicated that trade union unity should, in all cases, be the prerogative of the workers themselves, and not imposed by law. He hoped that this would be the focus of the amendment process.

The Government member of Sweden, speaking on behalf of the Governments of Denmark, Finland, Iceland, Norway and Sweden, noted with deep concern that this case had been examined on several occasions in this Committee without much progress being seen. Referring to the serious discrepancies between the national legislation and the requirements of the Convention, she urged the Government to take the necessary action to amend the national legislation to ensure the rights of workers and employers to establish organizations and to freely decide the regulations on their election procedures and arrangements, without any interference by public authorities. She noted with interest that the Government had accepted a visit of an ILO direct contacts mission and she also noted the report of this mission. She expected that the cooperation with this mission and the Office would help the Government to bring its national legislation and practice into conformity with the provisions and requirements of the Convention. She stressed the importance of implementing the legislation in practice, and encouraged the Government to fully comply with the requests made by the Committee of Experts and the direct contacts mission as soon as possible and to submit a time frame indicating when the necessary amendments would be adopted.

The Employer member of Venezuela thanked the Worker member of Cuba for his intervention and indicated, in reply to the Government representative of Venezuela, that in this country there had been not a coup d'état, but a vacuum of power due to the resignation of the President of the Republic. Regarding a manifestation which took place in Caracas on that occasion, the speaker indicated that a million persons had taken part in it. He also pointed out that his country had ratified Convention No. 169 and the Government had submitted a draft labour law applicable in this case without consultations with employers, which was contrary to the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). On behalf of the FEDECAMARAS, he added that it was necessary to give effect to the principle according to which the rights of employers' and workers' organizations might be exercised only in a climate free of violence, and this should be guaranteed by the Government. Finally, the speaker endorsed a proposal to include Venezuela into a special paragraph and expressed the hope that the recommendations of the direct contacts mission would be complied with.

The Government member of the Dominican Republic stated that the social dialogue promoted by the ILO was an ideal way to come to an understanding and he hoped that the technical assistance of the ILO would facilitate reconciliation among the three parties. According to a famous verse: "there is a time for everything under the sun. There is a time to destroy and a time to build. There is a time to wage war and a time to make peace". The moment had arrived for the workers, employers and the Government to achieve an understanding through social consultation.

The Government representative indicated that a number of issues addressed during the discussion required clarification. With regard to the alleged intervention of the National Electoral Council in the election process of workers' organizations, he indicated that the by-laws of the Venezuelan Workers' Confederation (CTV), as amended in 1999 and which were currently in force, provided for a universal, direct and secret ballot for the election of trade union leaders. According to the by-laws, the first general trade union elections were to be held in October 1999 and would be afforded the technical and logistical assistance of the National Electoral Council. Before the elections, there would be a process of trade union unity and of the promotion of the reunification of workers' organizations, thereby openly combating the so-called trade union parallelism. He emphasized that the by-laws of the CTV had been prepared before the constitutional reform process which had resulted in the new Constitution adopted in December 1999. Nevertheless, the trade union election process had been postponed until 2000. In view of the delay in holding trade union elections, an open popular referendum had been held in December 2000 which had been open to the criticism in that, with a view to increasing participation, it had involved persons other than workers who were members of trade union organizations. In March 2001, the trade union organizations had drafted the main lines of the Electoral Charter. Finally, with the financial and logistical support of the National Electoral Council, as requested by the workers' organization, trade union elections had been held from July to November 2001 and had constituted a democratic festival with the broad participation of workers and had resulted in a deep-rooted renovation of the trade union leadership.

With regard to the alleged non-recognition of the CTV by the Government, he maintained that the Government recognized the CTV as the most representative trade union organization in the country and affirmed his recognition and consideration for the organization. However, he indicated that the current members of the Executive Committee of the CTV were currently under challenge by various affiliated workers' organizations. The rules in his country provided for a legal system for the public registration of trade union organizations by the Ministry of Labour. This legal system corresponds to sections 425, 430 and 589 of the Basic Labour Law of 1990, which in fact goes back to 1937. He added that, following the visit by the ILO direct contacts mission, his Government, with a view to complying with the recommendations of the mission in terms of accrediting the Worker representative to the 90th International Labour Conference, had managed to find a solution outside the National Electoral Council. In view of the absence of entries in the corresponding file for the CTV, the Government had referred the matter to the Supreme Court of Justice for endorsement of the representative nature of the CTV, without deciding upon the substance of the issue with regard to the electoral process which had still not been completed. The Court had determined that, as Mr. Ortega appeared to be President of the organization, he should be accredited as a delegate to the International Labour Conference. The Government had complied with this finding. The last entries in the file of the CTV refer to Messrs. Ramírez León and Urbieta, and there is no entry relating to Mr. Ortega. The last entry registered in the file dates from 9 January 2001.

With regard to the alleged violations of freedom of association in Venezuela, he indicated that the very constitution of his country's delegation to the Conference, which included persons against whom there existed some proof of their participation in the coup d'état of last April, was a clear indication of his Government's commitment to the process of rebuilding dialogue. He point out in this regard that his Government's respect for the principles of freedom of association and collective bargaining was evident from the fact that members involved in the failed coup d'état were included in both the Employers' and Workers' delegations. He added that his Government planned to undertake a serious reform of the Basic Labour Act to bring its provisions into compliance with Conventions Nos. 87 and 98, and that this reform enjoyed the support, not only of the Government, but also of the National Assembly, and had been prepared with ILO technical assistance. Both the Government and the National Assembly rejected any system of imposed trade union monopoly. He emphasized that the National Electoral Council had to discharge its functions within the limits of respect for the independence and freedom of trade unions. The Government would work alongside the General Inspectorate of the Republic to repeal the decision respecting the declaration under oath of the assets of trade union leaders. Finally, he undertook to work for the strengthening and deepening of sincere and broad social dialogue with all the social partners.

The Employer members observed that the debate of this year was following similar lines to that of the previous year, as illustrated by the statement of the Government representative. The latter had quoted extensively from the by-laws of a trade union in order to prove that State interference was the fault of the union. Only at the end had he admitted that the Constitution contained provisions empowering the State to interfere in trade union matters. This attitude betrayed a lack of willingness to collaborate with the ILO. The Employer members recalled that for many years changes had been required in law and practice. They also noted that the Government representative had distributed documents to the members of the

Committee intended as a type of counter-propaganda in defence of its policy, even though such distribution was counter to the practice of the Committee, the sessions of which were not public. Moreover, the promises that had been made by Government representatives over recent years were far too vague.

In conclusion, they called upon the Committee to recall in its conclusions the violations in the country of the right to freedom of association, with particular reference to state interference in the internal affairs of trade unions and employers' organizations.

The Worker members recalled that the situation of trade unionists in Venezuela was very difficult. They expressed their disappointment that the Minister of Labour had left the room before the end of the discussion. The principal issue of this case was the interference of the authorities in the functioning of trade unions, in violation of Article 3 of Convention No. 87. They requested the Government to amend its legislation in order to bring it into conformity with the provisions of the Convention. Social dialogue played a fundamental role in ensuring a climate of democracy, peace and social justice. Practical measures needed to be taken to give effect to freedom of association in all circumstances. Taking into account the gravity of the case, and in order to support the call for true social dialogue, the conclusions of the Committee should be placed in a special paragraph.

The Committee took note of the statement made by the Government representative and of the discussion which ensued. It also noted that a direct contacts mission went to Venezuela in May 2002 and it took note of the conclusions of the mission report. The Committee pointed out that the Committee of Experts had been making comments for many years concerning serious violations of the Convention. These important problems in application concerned, in particular, the right of workers and of employers to form organizations of their own choosing, as set forth in Article 2 of the Convention, the right of these organizations to elect their representatives in full freedom and their right to draw up their rules, as provided in Article 3. The Committee also observed with deep concern that, according to the report of the ILO mission, the authorities did not recognize the executive board of the Venezuelan Workers' Confederation (CTV) and that, as a result, there was no meaningful consultation with the social partners on the subjects that concerned them. Moreover, the Committee deplored that allegations of acts of violence committed with Government backing had been presented to the ILO mission by workers' and employers' organizations. The Committee took note of the will expressed by the Government and the National Assembly to adjust the legislation to the requirements of the Convention and that a draft concerning some aspects of the Committee of Experts' comments had been prepared. The Committee made an urgent appeal to the Government to commence without delay an in-depth dialogue with all social partners without exclusion so that solutions could be found in the very near future to the serious problems of application of the Convention. Recalling that respect for civil liberties was essential to the exercise of trade union rights, the Committee urged the Government to take the necessary measures immediately so that workers' and employers' organizations could fully exercise their rights recognized by the Convention in a climate of complete security. The Committee requested the Government to furnish a detailed report, including the texts of any new draft elaborated, so that the Committee of Experts could examine the situation once again at its next meeting. The Committee decided that its conclusions would be included in a special paragraph of its report. It also decided to mention this case as a case of continued failure to apply the Convention.

The Government representative expressed his disagreement with the Committee's conclusions since, as indicated in his previous intervention, the Government had initiated a legislative reform process and would not support any draft law imposing trade union unity or the draft laws on trade union freedoms and guarantees and on democratic rights of workers in trade unions, federations and confederations which contained provisions that had been the subject of comments by the Committee of Experts. He added that these measures revealed a sincere willingness to make progress and considered that the situation did not justify the inclusion of this case in a special paragraph.

The Worker member of Cuba reaffirming his proposal made before the adoption of the conclusions, expressed disagreement with the inclusion of the Committee's conclusions on this case in a special paragraph of its report.

Convention No. 90: Night Work of Young Persons (Industry) (Revised), 1948

Paraguay *(ratification: 1966). See under Convention No. 79*

Convention No. 95: Protection of Wages, 1949

Republic of Moldova (ratification: 1996). **A Government representative,** Minister of Labour and Social Protection, reviewed the measures taken by the Government in the course of the last 12 months in order to resolve the problem of wages arrears, which had occurred chronically over many years. Recently, the Government and Parliament concluded, with the Confederation of Trade Unions of the Republic of Moldova, an agreement for the progressive elimination of these arrears. In May 2002, an Act was adopted on the compensation of wage earners victimized by this problem. Amendments have been made to the Labour Code to address this problem, in particular to redress arrears owed to civil servants and retired employees, and to put in place a labour inspection service. The total amount of the wage arrears decreased by 26.3 per cent, with a decrease in the average length of delay from four months to one month. As regards the payment of wages in kind, the Government stated that, in the country, the payment of wages in the form of alcoholic drinks, tobacco or narcotic substances was no longer in use.

The Employer members noted that this problem had been repeatedly raised over the last few years, and wondered why the Republic of Moldova had even ratified the instrument in 1996 when it had already been experiencing problems in payment of wages. They drew attention to the conclusions of the Governing Body report concerning a representation made by the General Federation of Trade Unions of the Republic of Moldova alleging non-observance by the Government of Convention No. 95. Those conclusions pointed to the need for a wide range of reforms, legal and administrative, in order to ensure the regular payment of wages. They stated that although the Government's report included figures indicating progress on the problem, such as a 14 per cent reduction in the overall amount of wage arrears, the question remained as to whether any reliable signs of positive development existed; on this point they noted the Committee of Experts' request calling for an improved supervisory structure and the establishment of a labour inspectorate. In regard to the problem of payment of wages in kind, such as in the form of alcohol and tobacco, they stated that this was a violation of Convention No. 95 in spite of the Government's indication that this was done upon the request of workers. This type of violation needed to be urgently combated by establishing the necessary framework for a market economy, one which would foster fair competition and provide appropriate rules and sanctions on the problem of in-kind payments. Expressing doubt as to whether the Government's statements on this problem would change, they stated that a solid basis for improved economic growth would be necessary in order to effectively ensure compliance with Convention No. 95.

The Worker members stated that they had a much more pessimistic interpretation of the observations of the Committee of Experts in this case than the Government. The Conference Committee was not in a position to evaluate the reliability of the Government's statistics, but they hoped that the Committee of Experts would test them against reality as much as possible. Protection of wages was a key right of workers. Therefore, they were deeply concerned over the worsening trend of non-payment of arrears, and payment in kind for a significant number of workers. The Government had stated that the situation of arrears was due to the economic situation. The amount of arrears had declined by 14 per cent, and certain measures had been taken including improvements in the public sector. Nonetheless, the amount of arrears remained very high, with an average delay in payment of two months. Furthermore, arrears were increasing in some sectors. For instance, in the agriculture and food production sector, which constituted 58 per cent of the economy, the average delay in payment had increased from three to four months. Although legislative provisions existed in this area, the prevalence of arrears indicated that application of the Convention was still weak in practice. They stressed that the Convention required application both in law and in practice. Not all possible effective measures had been taken to strengthen the application of the Convention in practice; in particular the Government had yet to establish an effective labour inspection service.

The Worker members also stressed that payment in kind was against the provisions of the Convention, although it was common in practice. The Government had stated that these cases were isolated and payment in kind was done at the request of the worker. The Worker members stated that nonetheless Article 4, paragraph 1, prohibited the practice of in-kind payments under all circumstances and the Government must end it. In conclusion, they urged the Government to assume its responsibilities under the Convention in full, and to provide detailed information in its next report.

The Worker member of Romania stated that, although it was a country in transition confronting serious difficulties, this did not

constitute a sufficient excuse for non-application of Article 4, paragraph 1, and Article 12, paragraph 1, of Convention No. 95. The trade unions of the country had indicated that the Government tolerated the general practice consisting of substituting, in various enterprises, alcoholic drinks for money wages. According to the most recent information, these practices persisted. Moreover, the argument forwarded by the Government, that this form of remuneration was based upon a written request by the worker, did not stand up to reality. In any case, Article 4, paragraph 1, of the Convention prohibited such a practice in an absolute manner. On the basis of these considerations, the speaker immediately asked that the Government commit to end this widespread violation of the Convention and to do everything in its power to ensure that the partial payment of wages in kind, when authorized, met the strict requirements laid down in the Convention.

The Worker member of Hungary expressed her support for the Republic of Moldova's workers, noting that Hungarian workers had suffered through similar wage payment crises during their nation's structural adjustment phase. She emphasized that the regular payment of wages formed an essential element of decent work and even represented a matter of life or death in Moldova, where workers were generally their families' sole breadwinners and possessed little assets. Although the Government's report estimated the average length of delays in payment at two months, the General Federation of Trade Unions of Moldova placed the length of the delays at 6-12 months. This constituted a serious violation of Article 12 of Convention No. 95. Observing that the adoption of resolutions aimed at urging companies to pay wages on time had proven largely ineffective, she stated that the enactment of legislation alone would only scratch the surface of the problem. Only a more complex approach involving an analysis of the problem's social and economic background would produce an acceptable solution to it.

The Government representative stated that he had taken note of the observations formulated by the Committee of Experts, as well as those of the Conference Committee. He recalled that the information submitted encompassed all the measures taken in the course of the past year to give effect to Convention No. 95. He reiterated his Government's commitment to put in place all the means within its power to respond satisfactorily to the problems raised, in accordance with the recommendations of the Committee.

The Employer members took note of the Government's statements and referred to their previous comments. They hoped that the measures described would have an effect. They intended to keep an eye on developments in the case and hoped to see progress.

The Committee noted the oral explanations given by the Government representative and took note of the ensuing discussion. The Committee observed that the situation related to the practical application of the principles set out in Article 12, paragraph 1, and Article 4, paragraph 1, of the Convention dealing with the payment of wages at regular intervals and the prohibition of payment of wages in the form of liquor of high alcoholic content or of noxious drugs. The Committee took note of the information supplied by the Government concerning the legislative measures aimed at reducing the wage arrears, in particular the new Wage Act, which have allowed a reduction of outstanding wage debts by 26 per cent as of 1 May 2002. The Committee also noted that, according to the indications provided by the Government, the payment of wages in kind represented only 2.8 per cent of the wage bill and that the new Wage Act provided for a general prohibition of wage payment in kind. The Committee stressed the importance that it attached to the Convention which related to a fundamental workers' right affecting their day-to-day life and that of their families. It reiterated that the problems of delayed payment of wages or the payment of wages in the form of allowances was inconsistent with the Convention and called for sustained efforts, open and continuous dialogue with the social partners, and a wide range of measures, not only at the legislative level but also in practice, in order to ensure effective supervision through labour inspection. The Committee strongly urged the Government to implement efficiently the recommendations of the Committee set up by the Governing Body under article 24 of the ILO Constitution, which were adopted by the Governing Body in June 2000. It also invited the Government to supply the Committee of Experts with a detailed report containing relevant and up-to-date information on concrete measures taken to ensure the application of the Convention in practice. Such information should include all relevant data, for instance, the number of workers affected and the amount of accumulated wage arrears, inspections made, penalties imposed and the timetable for settlement of outstanding wage debts, as well as information on the number and nature of the establishments reported to practise partial payment of wages in the form of alcoholic drinks, tobacco products, or any other allowances in kind which would be in violation of the Convention.

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

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

At the 89th Session of the International Labour Conference in June 2001, the Committee on the Application of Standards formulated conclusions, after having examined the application by Costa Rica of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In its conclusions, the Committee notes a divergency between the provisions of the Convention and national practice. Therefore, the Government of Costa Rica requested ILO technical assistance and, in agreement with the Minister of Labour, a technical assistance mission was sent from 3 to 7 September 2001.

The Government of Costa Rica, desirous of complying with the recommendations of the technical assistance mission and firmly convinced of the necessity to set up institutions permitting workers to work in the full exercise of their rights, has attempted to implement actions to modernize relations among the Government, the unions and the employers.

The efforts undertaken by Costa Rica to reach these goals can be summarized as follows:

1. Constitutional reform recognizing the right of collective bargaining in the public sector

The government party group in the Legislative Assembly has prepared a draft constitutional reform of article 192 of the Constitution through which the right of collective bargaining in the public sector will be recognized at the highest level.

The proposed reform expressly provides:

> Article 192. With the exceptions that this Constitution and the civil service statute may determine, public employees shall be appointed on the basis of proven ability, and may be removed only on the grounds for justified termination as set forth in the labour legislation; or in case of a forced reduction in services, either because of lack of funds or in the pursuit of a better organization of such services. **Except for high-level public servants of the public administration and those in charge of public administrative management, as designated by law, public sector employees have the right to negotiate collective agreements** (the part in bold characters is the proposed amendment).

The purpose of this reform of the political Constitution is also to put an end to jurisprudential criteria which, according to the observation of the Committee of Experts, can create "confusion, uncertainty, even legal insecurity", the right of negotiation being henceforth clearly set forth in the Constitution.

It must be noted that the draft amendment is the result of dialogue between the principal trade union organizations and a committee appointed by the Government and later brought into the Legislative Assembly, for the purpose of constitutional reform. This was demonstrated by the announcement presenting this reform, made during a press conference by the leader of the Social Christian parliamentary group, Mario Rodondo, a representative of the "National Association of Public Sector Employees" and a representative of the "Federation of Public Service Employees", which considered these events as "an important sign of the support of the Government to strengthen trade unionism". (*La Nación* Sat., 11 May 2002 (p. 6A), a widely circulated national newspaper reporting this news, announced by two trade union representatives and the head of the government party in the Legislative Assembly.)

In addition, and as a necessary complement to facilitate the prompt and effective implementation of this important constitutional reform, the Executive proposed a legislative reform in order to introduce the right of collective bargaining in the General Law on Public Administration and to raise the provisions of Executive Decree No. 29576-MTSS of 31 May 2001 (on negotiating collective agreements in the public sector) to legislative rank.

2. Legislative reform relating to collective bargaining

Under the title, "Legislative reform relating to collective bargaining" of 23 April 2002, the Executive presented the Legislative Assembly with a draft reform including adding a fifth paragraph to article 112 of the General Law on Public Administration (No. 6227 of 2 May 1978) which states:

> 5. All public sector employees who are not involved in public administration management as set forth in the special law pro-

mulgated to that effect, have the right to negotiate collective labour agreements, in conformity with article 62 of the Political Constitution, in both public enterprises and economic services of the State as well as in the rest of the public administration.

This general standard is complemented by the abovementioned draft "Law on the negotiation of collective agreements in the public sector" intended to regulate provisionally the dispute settlement regime and the collective bargaining of civil servants who do not exercise a public function in the administration.

The draft law provides that all employees of the State, of state enterprises as well as workers who do not exercise functions linked to administrative management can negotiate collective agreements. According to the draft, principally those who exercise administrative functions are not covered by this right: ministers, vice-ministers, senior public servants, the Attorney-General and Deputy Attorney-General, the Comptroller General and Deputy Comptroller General, Public Mediator and Deputy Public Mediator, the personnel of enterprises or institutions referred to in the preceding article when they are members of the Board of Directors, Executive-President, Executive Director, manager or deputy manager, auditor or deputy auditor or in charge of the management of public monies. It is the same for public servants exercising advisory functions in the fiscal services who are involved in collective bargaining. This exception for public servants in the State administration is set according to Article 6 of Convention No. 98 applicable to persons employed by the State and acting on behalf of the organs of public authority.

This draft also defines the subject matter of the negotiations (including trade union rights and guarantees, understood as being those in ILO Recommendation No. 143 concerning workers' representatives, as expressly defined by the text) as well as, inter alia, the application of disciplinary sanctions, the income tax regime, the preparation of job descriptions, procedures for awarding grants, and measures for occupational safety and health. On the other hand, the draft identifies the persons empowered to negotiate and resolve conflicts, as well as the procedure to follow for negotiation (including sessions, necessary conditions, acts).

As this concerns statutory relations, and budgetary relations in most cases, the pre-existing norms, directives and generally the legal regime, cannot be altered by negotiation. A high-level committee on negotiation policy has therefore been created in a collegial body on which different directors sit. The latter should set directions to be followed during negotiations. The purpose of creating this Committee is to fully implement negotiations by avoiding that the agreement between the parties cannot be executed due to legal or budgetary impossibility. The proposed text also sets the internal procedure of the Committee, its obligations and those of the interested parties, and the deadlines for its implementation. It is important to note that the text envisages sanctions for non-implementation, both on the part of management, as well as the Committee.

The draft Law in addition determines the validity of agreements and excludes the application of the Law to municipalities and State universities, given the full autonomy that the latter exercise, as provided in the political Constitution.

It is necessary to note that the text of this legislative reform has been elaborated by a bipartite committee – Government and trade union organizations – which implies acceptance of this process.

3. Reform of various articles of the Labour Code relating to freedom of association

Article 60 of the political Constitution provides for freedom of association both for employers and for workers. This fundamental right has influenced the entire legal system of Costa Rica with a view to genuine protection of freedom of association.

The year 1993 marks a special date for trade union rights with the incorporation of Law No. 7360 of 4 November in the Labour Code, creating Chapter 3, concerning trade union protection. The same year, the Constitutional Chamber of the Supreme Court of Costa Rica recognized a special right of protection for unionized workers generally and that trade union leaders were irrevocable, benefiting from full and complete stability, with the only exception being dismissal for justified reasons as provided for by law. Aware of the need to improve the regime of trade union protection, the Executive has, in addition, presented the Legislative Assembly with a draft reform of the chapter on freedom of association of the Labour Code, which is presently on the parliamentary agenda. This draft is intended to expand the legal protection of unionized workers and workers' representatives, in order to reinforce and guarantee the right of union affiliation for Costa Rican employees, as well as the free exercise by the leaders of representative functions. The possibility is thus given to unions to give their opinion concerning the formulation and application of government policies which could affect their interests, ensuring that they are given a major role during conciliation procedures in economic and social collective disputes. The framework for the action of unions and their representatives is thus enlarged.

On the other hand, the draft reform tends to establish a procedure at the management level which should be observed by every employer prior to a justified dismissal; the dismissal being null and void in the event that the aforementioned procedure has not been respected. In such a case, the worker would be able to request reinstatement with entitlement to unpaid wages. An accelerated judicial procedure is also being introduced which can be used by both union leaders and affiliated members in case of dismissal for reasons linked to their union activities, and which would reply to the comments of the Committee of Experts concerning the slowness of procedures in case of anti-union discrimination and the need to expand the legal protection of union representatives. The introduction of joint liability of unions, federations and confederations of workers or employers for damages and prejudice that they have caused constitutes another innovation which will be made by the reform.

The proposed reform thus tends to include all situations relating to freedom of association which occur in practice by establishing special protection and legal security for persons exercising the fundamental right of trade union membership.

4. Reforms to the chapter concerning hours of work in the Labour Code

Along with the draft relating to freedom of association the Executive has presented to the Congress of the Republic a proposal for reforming one of the institutions of labour law: the hours of work, with a view to introducing greater flexibility.

Article 58 of the Constitution sets the limit of the workday, while giving the legislator the possibility for exceptions to this limit in very specific cases. On the basis of this constitutional authorization, two new ways of organizing working time have been proposed: the workday of 12 hours and the workday annualized. The first can be used – by way of exception in order to respect the constitutional rule – in enterprises where there are market variations which affect their supply and their production, or also in enterprises which require continuous-flow process**.** Under these circumstances, overtime would be prohibited, and the constitutional limit of 48 hours per week would be respected. This means one or two extra days of rest for the worker, who would thus work four days and rest for three days. The second type of organization of working time is annualization – also provided for as an exception in cases authorized by law. The annualized accounting of working time must always respect the weekly limit of 48 hours. In this way, during peak periods of work the workday could extend to ten hours and during slack time it would not exceed six hours. In this way, a compensation schedule is set between hours worked during each of these periods. The principal guarantee of the annualized day is to give the worker stability: if an employer were to dismiss a worker before he/she had worked for one year, the employer would have to pay (as overtime) the hours worked beyond the ordinary workday.

The reform sets further guarantees in cases where the aforementioned modalities are used, such as: promotion of training; rest during the workday; supply of transportation by the employer where required; and special flexibility for pregnant women. The reform also governs the additional weekly day which existed in practice, but was not governed by legislative provisions and according to which when an employee works more than five days a week, the employer is required to remunerate at 150 per cent all work carried out beyond the fifth day. A generic exception is moreover included as regards the workday of adolescent minors, as set forth in the special provision of the Code of Childhood and Adolescence, Law No. 7739 of 6 February 1998.

In general, the proposed reform respects the general principles set forth in the Constitution and legislation, updating them so as to be compatible with current requirements.

5. Bipartite dialogue: Enterprises-unions

In 2001 organizations belonging to the Costa Rican Union of Chambers and Associations of Private Enterprises (UCCAEP) and the trade union movement, represented by the Trade Union Organization Movement of Costa Rican Workers (CMTC), the Rerum Novarum Confederation of Workers (CTRN), the Costa Rican Confederation of Democratic Workers (CCTD), the Unitary Confederation of Workers (CUT), the Confederation of Workers of Costa Rica (CTCR), the National Association of Teachers (ANDE), the Association of Secondary School Teachers (APSE) and the UNDECA joined forces to reactivate the process of social

dialogue between the two partners drawing on an ILO project entitled: "Tripartism and social dialogue in Central America: Strengthening the process of consolidating democracy" prepared by the International Labour Organization. This process benefited from State technical support and aid.

The principal objective was to reach a series of concrete and concerted proposals, which should be favourable to productive investment and the creation of quality jobs. Three themes were retained, clearly distinct but having a close tie among them: economic policy, teaching policy and employment policy. The long-term strategy which must be defined for promoting investment and employment relies on the convergence of these three elements. Among the earliest results of this tripartite dialogue, it is appropriate to note, in particular, agreements in sight on the reform of instruction in Costa Rica, consultation for fiscal reform, the elaboration and implementation of a national employment policy and, finally, the promulgation of a Law creating an economic and social council, analogous to that which exists in Spain.

6. Tripartite dialogue: Government-trade unions-employers

With the help of the ILO and the enthusiastic support of the Government, Costa Rica has taken significant steps to strengthen social dialogue. Costa Rica has thus been able to set the basis of decisive agreements in the economic and social fields.

In the framework of the RELACENTRO project "Freedom of association, collective bargaining and labour relations in Central America and the Dominican Republic", a tripartite delegation from Costa Rica met in the Dominican Republic with other tripartite delegations from countries in the region. This conference took place from 22 – 24 May 2002. The Government delegation of Costa Rica was headed by the Minister of Labour and Social Security, Mr. Ovidio Pacheco Salazar. The importance of this meeting was that trade unions, organizations of workers, employers' associations and Ministers of Labour from countries in the region met for the first time to set a common work programme, taking into account the particularities of each country in social, political and economic terms.

In the context of each of these major themes, the questions of employment, of modernization of the labour administration and the promotion of social dialogue, were discussed with a view to consensual solutions. This tripartite regional meeting, held in Santa Domingo, had an important precedent at the national level with a meeting held in Costa Rica several months earlier which also had reached certain points of agreement.

The Government reaffirms its will, already demonstrated, to continue to make the Higher Council of Labour the tripartite body par excellence in which different proposals and other elements originating from the three partners are analysed.

7. Submission of Conventions Nos. 151 and 154

The Government announced the submission to the Legislative Assembly of draft laws ratifying the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

Recently the Minister of Labour and Social Security, Mr. Ovidio Pacheco Salazar, sent a letter to the President of the Congress, with copy to the heads of the political groups represented, drawing their attention to the high priority that this ratification represents in the national interest. This initiative of the Minister must be understood, naturally, as being in the spirit of the separation of powers set forth in the Constitution. Presently Congress is in a period of ordinary session until August and during that period, the initiative on the legislative level belongs exclusively to the deputies and not to the executive. This set of elements demonstrates, if it were necessary, the will of the Government to ensure the setting up of collective bargaining in the public sector, according to the principles of the ILO.

As the six points set forth above demonstrate, the Government of Costa Rica has deployed targeted and observable efforts to give effect to the recommendations made by the various ILO bodies, with the firm conviction of thus contributing to furthering social peace within its borders. It will pursue its efforts focusing on the protection of workers' rights. This commitment, along with ongoing efforts in favour of decent work and social well-being, is part of the desire for a competitive and dynamic economy which is the best guarantee of the pursuit of progress, already appearing from the transformations under way. Realizing the need to improve daily the mechanisms leading to the full exercise of the rights of workers, Costa Rica recognizes the full value of the advice and support that the different bodies of the ILO have given, always towards the same goal. In that spirit, Costa Rica desires a strengthening of the cooperation and the pursuit of an open dialogue on these questions about which it shares the same values and the same concerns.

In addition, before the Conference Committee, a **Government representative** (Minister of Labour and Social Security) expressed the firm desire of his Government to respect the fundamental and inalienable rights of workers, in the spirit of democracy and solidarity which characterized Costa Rica. The speaker recalled that his country had abolished its army more than 50 years ago in order to invest resources in education.

The speaker recalled that a situation of legal uncertainty had been created through the decisions of the Constitutional Chamber which resulted in an interpretation which hindered collective bargaining in the public sector. To overcome this situation, the Executive Authority had proposed to introduce the right to collective bargaining in the public sector through Executive Decree No. 29576-MTSS of 31 May 2001. Nonetheless, this Executive Decree was criticized for not having the status of law and of being subject to possible reforms through further Decrees by the Executive Authority. Consequently, a new legislative Bill – which was submitted before the Legislative Assembly in April 2002 as Bill No. 14675 – introduced a reform of collective bargaining.

In this context, the speaker recalled the technical assistance mission by the ILO which took place with the approval of the Government from 3 to 7 September 2001. The speaker noted with appreciation that the hard work and the quality of the report presented by the technical assistance mission had dealt with all pending questions. The conclusions of this mission pointed out that Executive Decree No. 29576-MTSS provided a wide scope for the right to collective bargaining which only excluded public servants at the highest level. The scope of the workers covered by this Executive Decree was in conformity with the requirements of Convention No. 98. Collective bargaining was allowed in public sector enterprises of the State. Moreover, the technical assistance mission had invited the Government to ratify the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154).

In relation to Conventions Nos. 151 and 154, the speaker recalled that for many years the parliamentary procedure for their ratification had been suspended. In his capacity as a parliamentarian and President of the Legislative Assembly, the speaker had had the opportunity to meet with the technical assistance mission and to be convinced of the importance for Costa Rica of ratifying these Conventions. The speaker thus noted with satisfaction that through Bills Nos. 14542 and 14543, Conventions Nos. 151 and 154 were before the Legislative Assembly, having received a favourable review regarding their ratification by the Committee on International Affairs. Nevertheless, the plenary session of the Legislative Assembly could still not approve them, in spite of the clear compromise between the majority and the opposition.

The speaker also recalled the recommendation of the technical assistance mission to establish a Permanent Roundtable for Dialogue and Coordination and a Permanent Training Forum on questions related to trade union freedoms, freedom of association and collective bargaining in order to promote, with the assistance of the ILO and in the framework of the Tripartism and Social Dialogue Project in Central America (PRODIAC), initiatives to strengthen the relations between the social partners. The speaker regretted the fact that this question could not be treated and resolved at the national level and that it had to be discussed in the Conference Committee. The speaker stressed that the government sector and the business sector had accepted the proposal of the technical assistance mission, and he urged the representatives of the workers' organizations also to join this initiative.

Concerning the legislative reform regarding collective bargaining, the speaker recalled that it was the intention of his Government to encourage the adoption by the Legislative Assembly of an amendment to article 112 of the General Law on Public Administration through which a subsection 5 would be introduced which would provide the right to negotiate collective agreements to all public employees who were not engaged in the administration of the State. A draft bill on the negotiation of collective agreements in the public sector was to establish machinery for conflict settlement and collective bargaining of employees who did not exercise public functions in the administration. Included in the definition of employees exercising public functions were public servants at the highest level, in conformity with the exceptions provided for in Article 6 of Convention No. 98. Furthermore, the amendment covered negotiation, the modalities of applying disciplinary sanctions, control of wage rates, the elaboration of job description manuals, procedures for awarding grants and occupational safety measures. The validity of collective agreements and certain exclusions were defined as well. The speaker also recalled that his Government planned a major reform of the Labour Code through Bill

No. 14676, which extended many of the already established trade union rights.

Within the subregional framework, the speaker emphasized that in the last ministerial meeting, a tripartite subregional agenda was established which gave priority to solving all suspended questions related to collective bargaining and freedom of association. The speaker reiterated his desire to resolve any future problems through tripartite consultations.

In this context, the speaker recalled that the Political Constitution of Costa Rica already contained two provisions which referred to freedom of association: article 62 gave the force of law to collective agreements, and article 60 established the right to join a trade union. His Government also sought to promote a new constitutional amendment to incorporate in article 192 a phrase allowing all public employees, except public servants of the highest level in the public sector and public servants engaged in the administration of the State, to enjoy the right to negotiate collective agreements.

The speaker informed the Conference Committee that the Director-General of the ILO had transmitted to him a communication in which he offered the technical assistance of the ILO in order to address the pending questions. The speaker also wished to express to the Conference Committee the willingness of his Government to accept the technical assistance offered to overcome the current problems, to reinforce the legal clarity in the area of collective bargaining and to establish decent working conditions. His Government was willing to create all necessary means to promote social dialogue in an atmosphere of confidence and tripartite collaboration, and he hoped all interested sectors would fully participate in this dialogue.

The Worker members stated that they had taken note of the oral explanations presented by the Government representative and the written information provided. The information given by the Government representative did not contribute much new, only an enumeration of a simple set of draft reforms. The observation of the Committee of Experts raised ambivalent feelings because it showed that measures had been taken but that, at the same time, fundamental problems persisted and what was even worse, that new problems of application were arising. In effect, new aspects had been added to those already evoked in 1999 and 2000, which, as Case No. 2104 of the Committee on Freedom of Association demonstrated, concern the freedom to bargain collectively in the public services. The observation of the Committee of Experts, which was based on the Government's report, the conclusions of the Conference Committee, the report of the technical assistance mission of September 2001 and the communications made by the trade unions of Costa Rica, articulated four specific components.

With regard to recourse procedures in the event of anti trade union acts, the Worker members emphasized the point that the Government should be requested to keep the Committee informed, on the one hand, of the exact terms of the Act which needed to be adopted, and on the other, of its application in practice. Their cautiousness seemed to be justified by the fact that a Bill improving freedom of association, which had been negotiated satisfactorily by all parties, had eventually been amended without consultation and had established henceforth the legal responsibility of trade unions in the case of a strike, a stipulation which was all the more serious because in Costa Rica strikes were very often declared illegal.

Concerning the right to collective bargaining in the public sector, the Worker members shared the concerns expressed by the Committee of Experts with regard to a situation that constituted a serious violation of Convention No. 98. Moreover, from their point of view, the adoption in the future of a Bill approving the ratification of Conventions Nos. 151 and 154 would contribute to resolving the difficulties. They, therefore, asked that the Government be requested to furnish information in this respect.

Concerning the criteria of proportionality and rationality in collective bargaining in the public sector, the Worker members, recalling the interference demonstrated by the Constitutional Chamber with respect to the content of collective agreements, considered that such practices, as noted by the Committee of Experts, could "give rise to a loss of autonomy of the parties and the devaluation of collective bargaining itself". They asked that the Government be requested to refrain from such practices.

As regards the difficulties touching upon collective bargaining in the private sector, the Worker members regretted, like the Committee of Experts, the enormous imbalance in the private sector between collective agreements concluded by trade union organizations and the direct contracts concluded by non-unionized workers. They were keen to underline that Convention No. 98 advocated that the State should promote collective bargaining. They called upon the Government of Costa Rica to follow this direction rather than devoting itself to practices that render the principles of freedom of association devoid of meaning proclaimed by the fundamental instruments. They asked that the Government be requested to furnish concrete information on the measures taken in this regard. However, since tripartite consultations only made sense if freedom of association truly existed, no lasting solution could be envisaged in this area as long as there was no legal obligation to reinstate the workers who had been dismissed for reason of their engagement in trade union activities. The Worker members emphasized that the Government should supply tangible proof of the goodwill it claimed to have had for several years. From this viewpoint, they would be in favour of mentioning this case in a special paragraph.

The Employer members organized their comments in reference to four points raised in the Committee of Experts' report. Regarding the report's first point, which concerned the inadequacy of government measures dealing with anti trade union acts, they stated that the Committee of Experts had noted with interest several positive developments in this area and expressed support for these developments. They observed that judicial slowness had also been cited as one aspect of the Government's shortcomings with respect to this issue, and welcomed the fact that the judicial workload had been greatly reduced. Nevertheless, they emphasized the importance of continuing to bring about judicial reform, specifically with regard to the acceleration of judicial procedure and the clarification of legal principles.

With respect to the report's second point, which concerned the right to collective bargaining in the public sector, they noted several positive developments in this area – including the Government's acceptance of an ILO technical assistance mission and the drafting of a Bill supported by the parliamentary opposition and the social partners. They cited the Committee of Experts' report, which had noted actions taken by the Government respecting this issue, and expressed support for these developments.

Turning to the report's third point, which involved an individual case regarding the extent to which the government may interfere in collective bargaining, they observed that Convention No. 98 offered little guidance on this issue. Although noting that a minimum of judicial procedure must be adhered to, they felt that it was difficult to state to what extent Government interference would be deemed permissible, based on this individual case.

On the report's fourth point, concerning collective bargaining in the private sector, they stressed that, although the trade unions considered direct pacts between individual enterprises and individual, non-unionized workers unacceptable, these sorts of agreements were wholly appropriate in light of the fundamental, inalienable right to freedom of contract. Although the use of direct pacts to prevent collective bargaining would be problematic, they stated that this did not appear to be the case and also underscored the fact that Convention No. 98 did not prohibit direct pacts. Furthermore, they expressed their belief that Costa Rican workers possessed a certain preference for direct pacts, which was possibly due to the fact that in the past trade unions had refused to participate in tripartite collaborations.

In conclusion, they reaffirmed their support for the positive steps taken by the Government and requested that acknowledgement of this progress be reflected in the Committee's conclusions.

The Worker member of Costa Rica recognized that the present Government's administration had taken up its functions from 8 May 2002. Nonetheless, he recalled that the questions discussed had been pending for many years. Hence, it should be considered a problem of the State and the current administration should make a great effort to obtain a concrete solution.

Referring to the observation of the Committee of Experts on the application of Convention No. 98, the speaker shared its views concerning the slowness and inefficiency of the procedures for recourse against anti-union acts and took the opportunity to note the report of the technical assistance mission.

In the speaker's opinion, Bill No. 14676, which was brought before the Legislative Assembly, was introduced by the previous administration, contained provisions which affected the freedom of association enshrined in Conventions Nos. 87 and 98 and included provisions in contradiction with the Hours of Work (Industry) Convention, 1919 (No. 1). The legislative reforms sought to penalize the actions of workers' organizations by making them responsible for harm done to an employer who claimed to be affected by the actions of a union, federation or confederation. In cases of strike, a workers' organization could run the risk of bankruptcy in the face of a claim by an employer. Working hours have also been made more flexible and 12-hour days have been introduced with cumulative weeks and years, which involved the loss of the rights of workers enshrined in Convention No. 1. In this sense, the speaker recalled that the observations of the Confederation of Workers Rerum Novarum (CTRN) were communicated to the Committee of Experts which had observed the non-compliance of Convention No. 1.

The speaker also mentioned the recommendations of the Committee on Freedom of Association concerning Cases Nos. 1483, 1780, 1678-1695-1781, 1868, 1875, 1879, 1984, and 2024, which had been reproduced in the corresponding reports. Most of these called for the reinstatement of workers, and nonetheless none of them had been reinstated. The speaker also referred to the failure to reinstate the Secretary-General of the Union of Tropical Fruit Workers (SITRAFRUT) and workers in an automobile manufacturer. The Union of Banana and Plantation Workers witnessed acts of anti-union persecution and the blacklisting of workers, resulting in the loss of work for affiliates and other workers.

The speaker shared the considerations contained in the observation of the Committee of Experts in relation to the restrictions on the right to bargain collectively in the public sector. In his opinion, difficulties still existed in the Legislative Assembly for ratification of Conventions Nos. 151 and 154. The ratification of the said Conventions had been promised since 1993. The authorities persisted in undermining collective bargaining, as was the case in the Banco Crédito Agrícola and in the civil aviation sector. The Deputy Ombudsperson would bring charges again before the Constitutional Chamber to have declared unconstitutional certain clauses of the few collective agreements in force.

The speaker recalled that the Superior Labour Council was not operational. Its existence was sporadic, and hardly appeared to justify itself in the application of the Tripartite Consultation Convention, 1976 (No. 144). The speaker mentioned the activities of the project PRODIAC which also had demonstrated tripartism in Costa Rica. The ILO Office in San José had played an important role in facilitating social dialogue, both at the subregional level and in each country. The speaker welcomed the proposal made by the Government representative to search for solutions within Costa Rica.

In conclusion, the speaker observed that the draft constitutional amendment to grant the right to foreign workers to form part of the council of unions was not going anywhere, to the detriment of an important segment of the working population of Costa Rica.

The Worker member of Guatemala reiterated in his own words, the arguments and the position of the Worker Member of Costa Rica. He stated that the democratic system was in bad shape in countries in which the freedom of association and the right to strike were restricted. The comments of the Committee of Experts and the information supplied by the Costa Rican trade union movement regarding the violation of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), demonstrated that this was a case of serious violations of freedom of association. Even though the practice of substituting collective bargaining with direct agreements concluded with non-unionized workers, which was conducted by the permanent workers committees, was in conformity with the Labour Code, it was nonetheless in contravention to Convention No. 98. The speaker mentioned the concern expressed by the direct contacts mission which had noted the disproportion between the number of collective agreements registered with trade union organizations (12) and the direct agreements concluded with non-unionized workers (130). He deplored that this disproportion was aggravated by the interference of solidarity associations which were a kind of fifth column in the world of work, not only in Costa Rica, but also in all of Central America, thus creating confrontations by substituting trade unions. The speaker requested the Government to take into consideration observations made by the direct contacts mission concerning the prejudice caused by direct agreements in violation of Convention No. 98. He called upon the political will of the Government to take into account the systematic denunciations of freedom of association violations and the requests for the reinstatement of laidoff workers. If the labour legislation was put into conformity with ILO standards, Costa Rica could have the democratic system of which it already boasted.

The Government representative clarified that the mission which took place had been a technical one, not a direct contacts mission.

The Employer member of Costa Rica expressed his surprise regarding the statement made by the Worker member of Costa Rica and stated that the Government was ready to ameliorate the national policy on collective bargaining. He indicated that this operation would be difficult, given the structure of social cohesion which characterized his country. As Winston Churchill aptly put it, democracy was the worst system but nothing better existed. As a result, the Congress accorded numerous legal protections to benefit employment, where a voice was given to all social partners. He considered, however, that the principle of section 19.3 of the ILO Constitution had to be recalled, under which "In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries."

Regarding solidarity organizations, the speaker stated that the views expressed consisted of unfounded accusations, since cooperative organizations and trade unions counted on their intervention.

On the other hand, the speaker expressed concern at the slowness of collective bargaining in the private sector and at the judicial system which did not favour progress. In fact, there were several decisions that hindered productivity and foreign enterprises in the country. International organizations had indicated that the proliferation of litigation cases by mistreated workers, many of which were unfounded, hindered production. Currently, the State worked to overcome the situation with the assistance of the International Bank for Reconstruction and Development (IBRD).

In respect of direct agreements, the speaker pointed out that they were not an invention of the employers, since theye were provided for in the Labour Code due to a decision by the workers, desirous to resolve disputes through this process of conciliation. He pointed out that in this respect, workers even called a general assembly to nominate the Committee that would represent them during this conciliation process.

Some might even resort to this machinery not out of fear, but because of past unreasonable acts of trade union leaders in bargaining with private enterprises in the Southern Zone of his country where their excessive demands made those companies withdraw, leaving behind the population in unemployment and, of course, poverty.

In addition, the speaker referred to the statements of a well known trade union leader in the country, that three factors currently explained the limited scope of trade unionism, especially in the private sector. The first was the negative view that enterprises had of trade unions. The second was the bad image recognized by the leader himself, which was projected by trade unionists and which was partly their fault because of opportunism, and lack of vision, and also because of cases of corruption. The third aspect was the need to introduce judicial and procedural reforms to facilitate and render effective the supervision of rights and the resolution of conflicts between employers and workers.

Finally, the speaker stated that globalization was a unique opportunity for Cost Rica which could benefit all its citizens, strengthen competitiveness of the national production apparatus. He underlined that it was indispensable to render more flexible the standards related to hours of work, to layoffs and to employment with the objective of combating unemployment as many industrialized countries had done with success, with the support of the majority of workers.

The Worker member of Colombia stated that it appeared from the Committee of Experts' report and the discussions which took place in this Committee that, the right to bargain collectively was hampered by all kinds of obstacles. The workers could not content themselves with the legislative provisions on freedom of association and collective bargaining. They also needed the effective application of the relevant Conventions. Costa Rica was the focus of much criticism for the anti-trade union behaviour of authorities, of several employers, as well as for the sympathy shown by certain employers' circles for the "solidarism". The right to collective bargaining in the public sector could not remain the object of distortions and evasions. According to the information contained in the Committee of Experts' report, a draft law was under examination by the National Assembly providing for the ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154), which could become, in principle, a guarantee for workers.

On the other hand, the speaker expressed serious concern about the fact that numerous historical achievements of the labour movement, obtained through collective bargaining, were now subject of revision by the Constitutional Tribunal. This could only privilege an enriched minority as opposed to a great majority of the poor and socially excluded, thus negating all principles of justice and possibly entailing unpredictable consequences.

The Worker member of the United States noted that for more than a decade Costa Rica had been asked by the Experts and by this Committee to bring its legislation and practice into conformity with Convention No. 98. Every time, the Government of Costa Rica had said that it would do so and each time it went unfulfilled. Regarding the delay and ineffectiveness of available recourse for anti-union reprisals mentioned in the Report of the Committee of Experts, it was important to mention that the ILO technical assistance mission of September 2001 had found that the available procedures involving the labour inspectorate and the judiciary, generally totalled three years on average, a delay absolutely fatal to the success of any union organized campaign or other collective action. The Experts' reference to a decrease in acts of anti-union discrimination between

1996 and 1999 needed to be qualified in light of the findings of the technical assistance mission which had concluded that there had been a verifiable increase in acts of anti-union reprisals against Costa Rican workers over the last decade.

The Experts' reference to the bill pending in the Costa Rican Parliament intended to eliminate defects in available remedies for anti-union discrimination in conformity with Convention No. 98, also needed to be put in perspective. In addition to observing that the reform bill had not yet been passed, the technical assistance mission had mentioned in its report that the Minister of Labour had stated that the negotiation and processing of these issues in the Legislative Assembly could prove to be difficult and that an additional part, which had not been communicated to the mission, would be incorporated in the project. The pending additional part of the project, authored by the former administration, altered the eight-hour working day and imposed liability on both unions and individual union members for strikes and other collective action which allegedly harmed employers. This was a Trojan horse which effectively undermined and derailed a consensus to truly protect and make whole the victims of anti-union discrimination.

Regarding collective bargaining in the public sector, the Government of Costa Rica had promised to enact a new public employment law in 1992 but had failed to do so. Despite the May 2001 decrees, both the Experts and the technical assistance mission reminded this Committee that the Constitutional Chamber had ruled that all public employees with statutory employment status should be denied their guarantees under Convention No. 98. In the private sector, the Government of Costa Rica continued to accept the formation of Solidarista associations under the 1984 Solidarista Associations Act. Although explicitly banned from collective bargaining under Act No. 7360, Solidarista associations had taken over the functions properly belonging to trade unions thus leading to an enormous imbalance between collective agreements and employer-brokered arrangements. He joined the other members in calling for a special paragraph in this case.

The Government member of the Dominican Republic indicated that during the period from 22 to 24 May of this year a tripartite meeting on freedom of association, collective bargaining and labour relations in Central America and the Dominican Republic took place in his country. A subregional programme on labour matters, which took into account social, economic and political features of each country of the region, was elaborated at this meeting. The speaker who chaired that meeting supported the Santo Domingo declarations and praised the willingness and the positive action of the Government of Costa Rica in favour of social dialogue, freedom of association and collective bargaining. He had no doubt that the Minister of Labour of Costa Rica would contribute notably to this process.

The Government member of Panama, after reading the report of the technical assistance mission requested by Costa Rica which had visited the country from 3 to 7 September of last year considered that the mere fact that this country had requested assistance in order to adjust to ILO standards demonstrated its political good will. Moreover, since 1991 considerable progress had been made. Concerning the two bills mentioned in the report of the mission, the first, which aimed at identifying acts which constituted anti-trade union discrimination and interference, enjoyed the support of trade unions and the principal parties represented in the national Parliament. The second, aimed at the ratification of Conventions Nos. 151 and 154, had the support of the social partners, the Government, the President of the Parliamentary Assembly and the main opposition party, which was an encouraging sign. Finally, the speaker considered to be reasonable the mission's proposal to examine the various problems pending in Costa Rica in a tripartite body that the Government had accepted to create as a permanent one. This would promote social dialogue and the adoption of agreed solutions.

The Government representative stated that the inclusion of his country in a special paragraph would be unacceptable in the light of the information obtained during the technical assistance mission and the progress noted by the Committee of Experts in the area of collective bargaining and freedom of association. In fact, on this day the Constitutional Chamber of his country had proposed the amendment of the relevant legislation through a reform of article 192 of the Supreme Law that would allow the constitutional recognition of collective bargaining in the public sector. It was therefore obvious that this task would take time as it represented a democratic process in which all the social partners would participate.

The speaker noted that after the mission of 20 November 2001, a change in government had taken place in his country which had resulted in changes and improvements in the relevant legislation, with the help of the ILO, and in particular with a view to the ratification of Conventions Nos. 151 and 154.

The Employer members said that the report of the Committee of Experts constituted the basis for the discussion of the case in the Conference Committee as this Committee drew its conclusions from the points made by the Committee of Experts in its report. The Committee of Experts had raised four issues in its report, and had noted progress on two points. As far as the issue under point 3 of the report was concerned, the Employer members thought that it referred to an isolated case. The questions examined under point 4 still needed to be resolved. The Government had already adopted legislative measures and had moreover requested technical assistance from the ILO in order to overcome the remaining problems. However, the discussions had demonstrated that the prevailing climate among the social partners in Costa Rica was not characterized by social harmony. The trade unions had refused to participate in consultations on several occasions in the past. Therefore, this Committee should call for a strengthening of cooperation in this field between the social partners and the Government. The requested technical assistance was a valuable tool to this end.

The Worker members stated that a show of good will on behalf of the Government did not suffice, and neither did the improvisation of measures outside the obligations undertaken. What counted was the application of standards. In this instance, the observations made by the Committee of Experts, as well as those of the technical assistance mission, revealed serious disfunctionings that undermined the principles of collective bargaining set by the Convention and distorted the conditions in which it took place.

The Worker members hoped that the tripartite dialogue suggested by the mission and supported by the Committee of Experts would help find a solution to these disfunctions. Naturally, such a dialogue could only take place under conditions that guaranteed freedom of association. The fact was, that if until now certain organizations appeared hesitant and industrial relations were tense, it was precisely due to the consequences that such participation could have for trade unionists regarding their employment in a country where freedom of association as provided for by the standards, remained a dead letter.

Considering the seriousness of the situation and the persistence of the Government to limit itself to promises without any follow-up, the Worker members would have wished this case to be included in a special paragraph of the report of the Committee. This being impossible, they hoped nonetheless, that the examination of this question would continue.

The Committee took note of the written information submitted by the Government, of the statement made by the Government representative, and of the discussion which ensued. The Committee noted with interest the technical assistance mission which went to Costa Rica to examine the issues raised by the Committee of Experts in respect of the application of the Convention. The Committee observed that the Committee of Experts has commented on the application of Article 1 of the Convention concerning protection against acts of anti-union discrimination and of Article 4 concerning the promotion of collective bargaining, which have posed problems both in the public and the private sector. The Committee noted with interest that a draft law aimed at strengthening protection against acts of anti-union discrimination has been submitted to the National Assembly. It expressed the hope that this draft would be rapidly adopted. As concerns the promotion of collective bargaining, the Committee noted that serious problems remained in the way of the effective recognition and implementation of the rights of workers to bargain collectively their terms and conditions of employment. It noted the Government statement that draft amendments to the Constitution and to the legislation concerning the public sector have been presented to the National Assembly. The Committee recalled in this respect that the Convention applies to public servants who are not engaged in the administration of the State. It also underlined that Article 4 of the Convention is aimed at encouraging and promoting collective bargaining between workers' organizations, on the one hand, and employers or employers' organizations, on the other. Taking note of the Government's desire to cooperate with the International Labour Office, the Committee requested the Government to take the necessary measures, in full consultation with the social partners and with ILO assistance, to ensure that the right to collective bargaining is fully recognized not only in law, but also in practice, for all workers covered by the Convention. The Committee requested the Government to provide detailed information in its next report for examination by the Committee of Experts.

Fiji (ratification: 1977). **A Government representative** stated that the Government had been slow to respond to the Committee due to the devastating upsets to the economy and the country in 1987 and more recently in the year 2000, which required the Government's full attention to restore economic growth in the shortest

possible time. Consequently, many statutory bodies were unable to meet, including the Labour Advisory Board, a tripartite body of workers, employers and the Government. Nonetheless, the speaker reassured the Committee of his Government's commitment to the supervisory functions of the ILO and untiring resolve to fulfil its obligations under the ILO Constitution.

The speaker declared that the observations of the Committee of Experts concerning Convention No. 98 were factually inaccurate and did not reflect the developments in Fiji over the past decade. The Government had taken serious remedial actions to ensure full compliance with the provisions of the Convention.

Referring to Article 2 of the Convention, dealing with the protection of workers' organizations against acts of interference, the speaker stated that section 33 of the 1997 Constitution provided guarantees for the existence of trade unions and the rights of workers to join trade unions of their own choosing. This was reflected in the recent ratification of Convention No. 87 and in current law and practice as provided for in section 59 of the Trade Union Act, which protects the rights of workers to join trade unions and makes it an offence for an employer in any way to prevent the setting up of trade unions in their workplaces. There was absolutely no interference by the Government or the employers' organizations in the existence and of pursuit trade union activities.

The speaker then turned to Articles 3 and 4 of the Convention and the comments of the Committee of Experts in regard to Vatukoula Joint Mining Company. The speaker stated that the Company had requested a judicial review of the Commission of Inquiry report and as such, a stay of execution order issued by the High Court remained in place. The Government had decided to have the order struck and legal proceedings had already commenced. The Committee would be informed in due course of the Court's decision.

The observation of the Committee of Experts stated that the Trade Union Recognition Act was silent as to the position of a union that did not represent at least 50 per cent of the employees in a bargaining unit. This may have been the case with the old legislation on recognition, but it was repealed in 1998 when the new Trade Union Recognition Act was enacted. The new Trade Union Recognition Act, 1998 provided recognition of minority unions for the purposes of collective bargaining. The Government had also made provisions for the protection of workers during the period in which recognition was sought. Under the Trade Disputes Act, trade unions had the right to use the trade dispute machinery if their members were terminated during the period in which recognition was sought.

Referring to the Committee's criticism of the Counter-inflation Remuneration Act, the speaker stated that this restriction had been lifted more than ten years ago and collective bargaining was freely undertaken. It was necessary only to enable the economy to achieve stability after the period of political upheaval.

In conclusion, the speaker reiterated that the Government of Fiji was fully committed to ensuring that workers' rights were protected, that collective bargaining was promoted and that the Convention was applied both in law and in practice.

The Worker members began by noting that several encouraging developments had taken place regarding the right to organize and collective bargaining, specifically mentioning the settlement of a long-outstanding dispute between Airports Fiji Limited and the Fiji Public Service Association.

The Worker members observed that this case involved four distinct violations of Convention No. 98: the Government's failure to adopt measures adequately protecting workers' organizations from acts of interference by employers or their organizations; weaknesses in the legislation relating to union recognition; the Government's failure to secure employer recognition and respect for the workers' right to organize in the Vatukoula Joint Mining Company; and restrictions on the right of unions to negotiate wage increases. These violations had been discussed by the Committee of Experts over a period exceeding ten years, and the fact that the Committee of Experts had repeated its requests several times underlined that little progress had been achieved.

With respect to Fiji's violation of Article 2 of the Convention, they stated that the Government had yet to institute measures protecting trade unions from employer interference, in spite of repeated requests by the Committee of Experts to do so, and that over this period of inaction companies had sponsored in-house unions in order to dilute the power of independent trade unions. Noting the Government's statement that a report on labour reforms would be produced by the Labour Advisory Board later this year, they called upon the Government not to procrastinate any further on this matter and expressed the hope that the report would fully address their concerns regarding employer interference in the right to organize.

The Government's lack of political will to ensure the rights enshrined in Convention No. 98 was further reflected in the lack of progress respecting the Vatukoula Joint Mining Company and its alleged violations of Articles 3 and 4 of the Convention. They expressed frustration with the fact that the High Court had yet to hear this case on its merits, although ten years had passed since the Court invalidated a compulsory recognition order against the company, and stated that this persistent delay also reflected a weakness in the legislation respecting labour rights violations.

In regards to section 10 of the Counter-inflation Remuneration Act, which restricts the right of unions to negotiate wage increases, they noted that the Committee of Experts had deemed this provision inconsistent with Article 4 of the Convention and urged the Government to take corrective action on this matter.

They concluded by calling for greater efforts from the Government to ensure compliance with Convention No. 98, including the adoption of provisions penalizing employers for violations of the right to organize.

The Employer members noted the lack of measures to guarantee adequate protection to workers' organizations against acts of interference by employers or their organizations. The report of the subcommittee of the Labour Advisory Board of 1996 which addressed the issue was not available, and the Government representative had not provided any information. Neither had the Government provided a court decision on the refusal by a mining company to recognize an independently registered union. They observed a lack of willingness by the Government to collaborate with the ILO. As to the requirement to represent at least 50 per cent of the employees in a bargaining unit, the Government had indicated that the Act providing for this requirement had been amended in 1998, without, however, providing any details in this respect. With regard to the possible interference of the Price and Incomes Board in relation to collective agreements already in place, the Government had indicated that the relevant Act had been suspended. They wondered whether the remuneration guidelines nevertheless remained applicable. Moreover, the Government had not indicated the criteria according to which interference by the Price and Incomes Board was permitted. Limitations on voluntary collective bargaining were not completely excluded. However, they had to be subject to strict criteria which were verifiable. In conclusion, the Employer members called on the Government to provide the necessary information in a comprehensive report to the ILO, which was long overdue. The Employer members observed that the discussion had not brought up new elements. Therefore, they referred to their initial statement and urged the Government to report without any delay to the ILO on legislative changes already undertaken or envisaged in order to bring its legislation in line with the requirements set forth in the Convention.

The Employer member of Fiji reassured the Committee that the Employers supported the Government's statement and were satisfied with the consultative process. The Government had been democratically elected, and tripartite principles had been adhered to, in compliance with the law. In the speaker's opinion, the actions of some trade unionists created a conflict between genuine trade union issues and the political agenda of others who took extreme positions in order to discredit the legitimate trade union movement and harm the economy.

The Government representative stated that the Committee of Experts' observation was mainly of historical importance as the Government was making a fresh start. He supported the Employer members' comments. The difficulties of the last few years were due to the inability of the Labour Advisory Board to obtain a quorum; but two meetings had been held recently, and another is scheduled for next month. The Government would therefore be able to give a more detailed report by August. As to the ruling of the High Court and the delay in ruling on the case, this was outside the Government's control. Finally, the speaker stated that the Government intended to undertake a tripartite review of legislation to move forward on these issues.

The Worker members expressed unhappiness at the Employer member of Fiji's comments on the trade unions as these fell outside the Committee's deliberations. They stated that since no new points had been made in the Government's oral reply, they must repeat their call for a detailed report and government action as soon as possible to bring the law and practice into conformity with the Convention. The Government was democratically elected; therefore it had a moral imperative to put into place structures to strengthen democracy in the workplace.

The Committee took note of the statement made by the Government representative and the discussion which ensued. It observed that the comments of the Committee of Experts dealt with Article 2 of the Convention, concerning protection against acts of interference, and Article 4 concerning promotion of collective bar-

gaining. The Committee regretted that the Government did not send a report for examination by the Committee of Experts at its last meeting. The Committee expressed the firm hope that measures would be taken without delay for the full protection of workers' and employers' organizations from acts of interference and to enable workers' organizations to bargain collectively with employers and their organizations with a view to regulating their terms and conditions of employment. It asked the Government to take measures to permit organizations representing less than 50 per cent of workers to participate in collective bargaining. The Committee urged the Government to provide detailed information in its next report, in particular as concerns the measures taken to ensure that the Convention is fully applied, both in law and in practice.

Japan (ratification: 1953). **A Government representative** recalled that his Government had always shown due respect for international labour standards and had made sincere efforts for the application of ratified Conventions, and particularly the fundamental labour rights. With regard to the existing restrictions on the fundamental labour rights of public employees, he referred to the views expressed in previous government reports under article 22 of the Constitution and at previous sessions of the Conference. He focused his comments instead on the current civil service reform.

With regard to the background of the ongoing civil service reform, as explained to the Committee last year, he indicated that the Government was pursuing the reform within a process of general administrative reform aimed both at the efficient use of public employees' abilities and at responding to the diversifying needs of public administration. The Outline of the Administrative Reform, which served as a basis for the current process, had been adopted by the Cabinet in December 2000. More recently, in June 2001, the Government had adopted the Basic Outline of the Civil Service Reform, and then in December 2001, the Plan for the Civil Service Reform. In doing so, it had conducted negotiations and consultations in good faith with employees' organizations in each case.

He said that the Plan for the Civil Service Reform set forth the objectives of: establishing a new personnel system that properly reflected competences and achievements; securing diverse human resources, including from the private sector; and establishing appropriate rules of outplacement, which was an issue of great public criticism. The Plan also envisaged that the law to amend the National Public Service Law would be submitted to the Diet by the end of 2003.

Regarding restrictions on the fundamental labour rights of public employees, the Plan stated that, "comprehensively taking into consideration concerns about ensuring a stable and continuous public service, the impact on the life of Japanese people and other relevant issues, the Government has decided to retain the current restrictions on the fundamental labour rights, while ensuring corresponding compensatory measures". The Plan also indicated that the National Personnel Authority (NPA) would continue to be properly involved in matters relating to the setting of working conditions, such as salaries, reflecting the Government's intention to maintain an adequate compensation system in accordance with the restrictions placed on the fundamental labour rights.

He emphasized in this respect that the Government had always been aware of the importance of the issue of the fundamental labour rights of public employees. Under the current process of civil service reform, this had been examined before the Cabinet's adoption of the Plan. However, the Government had not resulted in a change to the present restrictions. He said that the compensatory measures of the NPA, such as its recommendation system, had been functioning appropriately under the current restrictions on the fundamental labour rights, taking into account the principles of the ILO. For example, the working conditions of public employees had been kept at the same level as in the private sector on the basis of NPA surveys and recommendations. He therefore affirmed that the rights and interests of Japanese public employees were reliably protected. It was the Government's intention to ensure that compensation for the restrictions placed on the fundamental labour rights remained guaranteed under the current reform process by maintaining the NPA's compensatory functions.

While recognizing the ILO's views on the fundamental labour rights, he said that ways of addressing the issue of the rights of public employees should be decided upon taking into consideration the specificities of each country, such as its historical and social background. In view of the distinctive status of public employees in Japanese society, this issue required careful treatment. He hoped the Committee would understand the reasons why the Government had reached the conclusion that restrictions on the fundamental labour rights should remain as they were. He stated that measures to compensate for such restrictions would of course continue to be ensured, and that the Government would ensure to keep such functions effective, taking due account of the ILO's principles.

He concluded that the Government had been negotiating and consulting faithfully with the parties concerned, such as employees' organizations, as indicated to the Committee the previous year. Since its establishment, the Administrative Reform Promotion Bureau had held such negotiations and consultations on 91 occasions. The Government was currently in the process of making the Plan for the Civil Service Reform into a legislative form and designing the details of the system. In this process it had been holding negotiations and consultations on this issue in good faith with employees' organizations, and would continue to do so in the future.

The Worker members recalled that, as they had indicated during the presentation of the list of individual cases, they would also like to have discussed the application of Convention No. 29 by Japan, particularly as regards the compensation of victims of forced labour which took place several decades ago. Regarding the application of Convention No. 98, the violation of the right to bargain collectively in Japan was a serious breach of one of the fundamental ILO Conventions. It was regrettable to have to discuss once again the problems of application by Japan of a Convention relating to trade union rights. In the same way as the discussion the previous year of the application of Convention No. 87, the problem was related to the public sector.

Regarding protection against acts of anti-union discrimination, Article 1 of the Convention provided that "workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment". This provision was designed to protect trade unionists against all the acts of anti-union discrimination. The Government indicated that there was machinery to relieve victims of unfair labour practices intended to prevent discriminatory treatment for participating in union activities. But this machinery did not work in practice, and the rights protected by Article 1 of the Convention were not guaranteed to all Japanese workers. As the Committee of Experts had pointed out, "legal provisions which provide for such protection are adequate only if they are coupled with effective and expeditious procedures and with sufficiently dissuasive sanctions to ensure their application".

Regarding the promotion of negotiation rights of public employees who are not engaged in the administration of the State, the workers had emphasized in 2001, when examining the application of Convention No. 87 by Japan, that public employees' organizations should be fully involved in the public service reform which could directly affect the conditions of work of their members. One year later, they had to observe that the situation had not changed. The Japanese Trade Union Confederation RENGO reported that the Japanese Government had been unilaterally pursuing its work of the revision of the public service legislation in a manner which was even more contrary to the ILO's principles. The report of the Committee of Experts described the present state of the negotiation system between the authorities and trade union organizations representing public employees: there was only a system of consultations without any obligations in the sector. If even there were contracts and discussions between employers and workers in the public sector, that did not mean that the unions' views were taken into consideration. The information contained in the Government's report, as well as the verbal explanations furnished by the Government representative, were not convincing in this regard. Moreover, the Committee of Experts had requested the Government "to consider the measures that could be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation of collective agreements, in conformity with its obligations under Articles 4 and 6 of the Convention". The public service reform, approved by the Parliament and put into practice, would only worsen the situation of obvious violation of Convention No. 98. The Government needed to comply fully with the Committee of Experts' observations in this regard. In 2001, the Worker members had already requested the Government to involve the workers' organizations in the public service reform, thereby taking the opportunity to improve social dialogue. This appeal was becoming increasingly urgent. The Government had to change its position in this regard.

The third point on which the Committee of Experts had made comments concerned collective bargaining in national medical institutions. The problem revealed by a workers' organization (JNHWU) concerned two points. The first was the absence of collective bargaining bodies in the majority of these institutions. The Government's reply on this point was not convincing. The second point concerned the subject of collective bargaining. Article 4 of Convention No. 98 provided that the objective of negotiation between employers' and workers' organizations was the regulation of terms and conditions of employment by means of collective agreements. The Government needed to commence dialogue with the trade unions on this subject in order to reach an understanding.

The Employer members noted that the present case had been the object of comments by the Committee of Experts for a number of years and of observations by trade unions. With regard to the question of protection against anti-union discrimination, the allegations concerned acts carried out in two enterprises. The Government had indicated that the necessary legislation existed and that if its provisions were applied the situation would be resolved. The Committee of Experts had recalled that legal provisions providing the necessary protection were adequate only if they were combined with effective and expeditious procedures and with sufficiently dissuasive sanctions to ensure their application. As the Committee of Experts had taken up no clear position on whether or not the legislation was applied, the Conference Committee could go no further on the matter until further information was provided.

The second point raised by the Committee of Experts concerned the rights of public employees who were not engaged in the administration of the State to engage in collective negotiations. The Japanese trade unions indicated that workers' organizations were only consulted, but had no right to collective bargaining. They said that the consultations with the National Personnel Authority and with local communities led up to the adoption of recommendations, which the Government was free to implement or not as it wished. The position of the Government was that such decisions were only taken after carefully weighing up the situation, on the basis of surveys and statistical comparisons with the objective of reducing differences between conditions in the public and private sectors. The Committee of Experts had requested the Government to consider the measures that could be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation with a view to the determination of terms and conditions of employment. In this respect, the Committee of Experts had welcomed the Government's indication to the Committee on Freedom of Association that a reform of the public service personnel system was under consideration. However, in the plan that had been endorsed for the reform of the civil service, differences would still exist to a certain extent between the Convention and national practice in the public sector. The Government could be requested to provide detailed information to the Committee of Experts on the envisaged reform and the case could be re-examined on the basis of such information, where appropriate.

A third point raised by the Committee of Experts concerned the exclusion of certain matters from negotiation in national medical institutions. The trade unions contended that there were too few opportunities for negotiation. The Employer members noted the Government's position that for the unions the principal objective of collective bargaining was the abolition of the two-shift system, instead of negotiating on the respective working conditions. Nevertheless, the Government had introduced a number of training measures to instruct directors of medical institutions to promote voluntary negotiation of terms and conditions of employment. The Employer members welcomed the action taken and endorsed the request by the Committee of Experts that the Government should indicate in its next report any further progress made in promoting collective bargaining for these workers.

The final matter raised by the Committee of Experts concerned the exclusion of certain matters from negotiation in state enterprises. Although it had not been mentioned by the Worker members, the trade unions and the Government had now agreed upon a new law. The Employer members noted with satisfaction that the revised labour relations law now included matters related to working conditions in state enterprises within collective bargaining. The Employer members believed that the Government should be requested to report further on these positive developments in a number of areas so that the Committee of Experts could examine the progress made.

The Worker member of Japan emphasized that the Committee had been discussing the issue of the fundamental trade union rights of public service employees in Japan for many years. The Committee had been forced to re-examine the case once again this year because of the insincerity and faithlessness of the Government, which had impeded the settlement of the issue. He therefore called upon the Government to take the issue seriously and earnestly for its total solution.

He said that the General Principles of Administrative Reform, or what the Government called the Plan for Civil Service Reform, adopted in December 2001, envisaged that the current restriction of fundamental trade union rights would remain intact, despite the many recommendations to the contrary by the Committee on Freedom of Association and the Committee of Experts. The broad and grave violations of the Convention would therefore be maintained in the future in clear defiance of the spirit of the ILO. Moreover, the decision by the Cabinet had been taken unilaterally, without any negotiations with the unions concerned on the issue of fundamental trade union rights. In spite of repeated demands, the Government had refused to negotiate, and had merely informed the trade unions of its decision shortly before its adoption. Subsequent demands for a postponement of the decision had been to no avail. This was what the Government had described as sincere negotiations or consultations. The undertaking made by the Government to the Committee the previous year had been totally ignored, showing disdain for the ILO.

The General Principles also contained proposals to diminish the capacity of the National Personnel Authority (NPA), the defects and shortcomings of which had been pointed out by the Committee on Freedom of Association on many occasions. While maintaining the existing restrictions on fundamental trade union rights, this initiative would therefore also result in a further deterioration in the compensatory measures offered. Japanese trade unions would never accept such initiatives, which would lead to a full denial of the rights of public service employees. He explained that the NPA currently had four areas of competence as a compensatory mechanism in the public service system. The first was to develop a system of wages and employment conditions; the second to set the efficiency rating standards of public employees; the third to make recommendations to the Cabinet and the Diet on the revision of wages and employment conditions; and the fourth to exercise "relief competence" in the case of labour disputes. The General Principles proposed that the first and second competences be transferred to the Government as an employer, with only the third and fourth competences remaining with the NPA. Once again, he affirmed that this deterioration in the system, in violation of ILO principles, would never be accepted by the trade unions.

Finally, he emphasized that infringements of the trade union rights of public service employees in Japan was an ongoing process, as well as a violation of ILO Conventions. The Government intended to worsen the situation without any negotiations with the trade union organizations concerned. The Bill to revise the relevant legislation was to be submitted to the Diet in January 2003. If the Government had any intention of respecting ILO Conventions and trade union rights, he called upon it to withdraw the General Principles immediately and to start sincere negotiations with the trade unions to reform the public service system in Japan and bring it into conformity with ILO Conventions.

The Worker member of the United States recalled that the previous year the Government had indicated that it was planning to reform the public service system in Japan in consultation and negotiation with the trade unions. Unfortunately, in practice, this reform would reduce the system's conformity with the Convention even further. The proposed reforms would maintain the existing legislation regarding the collective bargaining rights of public employees, despite the fact that the Committee of Experts had once again rejected the Government's justification for denying public employees the right to bargain collectively at both the national and local levels. Indeed the Committee of Experts had once again requested the Government to consider measures to encourage and promote the full and effective development and utilization of machinery for voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements for public employees who were not engaged in the administration of the State, in conformity with its obligations under Articles 4 and 6 of the Convention. In this respect, he emphasized that under the current system neither national nor local employees had the right to negotiate collective agreements. Moreover, the Committee of Experts had expressed the hope that the existing limitations on the collective bargaining rights of public employees not engaged in the administration of the State would be lifted in the near future. He explained that current national and local public service legislation excluded from collective bargaining all matters relating to the administration and operation of government business, and that the Government appeared to have sole discretion to determine what constituted the administration and operation of government business.

He regretted that the Japanese model of severely prescribing the scope of public sector bargaining was spreading throughout Asia. In the Republic of Korea, for example, any attempt by trade unions representing workers in state enterprises, and not even public servants, to raise any issue other than wages and working conditions, defined in the narrowest of senses, was clearly illegal and this prohibition was strictly enforced. Unable to bargain, unions in state enterprises often had to resort to collective action and hundreds of trade unionists in the country had been arrested for participating in peaceful, but "illegal" action.

Japanese trade unions were merely seeking the right to negotiate wages and working conditions, issues affecting wages and working conditions both directly and indirectly, and issues upon which both parties could agree to negotiate. The Government had an obligation under the Convention to move in this direction. He therefore urged the Government to take action rapidly by proposing new

legislation, reviewing its proposals in accordance with its commitments under the Convention and negotiating with the trade unions.

The Worker member of the Republic of Korea said that trade unions throughout Asia were concerned by Japan's violations of Conventions Nos. 87 and 98. Moreover, the planned total revision of public service legislation in 2003 would further deviate from these standards. Such serious infringements of the ILO's principles in Japan were likely to raise major obstacles to the improvement of the labour rights of public employees in other Asian countries, such as the Republic of Korea, where there were some cultural, institutional and legal similarities with Japan. It was therefore urgent to address the serious situation in Japan which involved a deterioration in the application of the principles of decent work to public employees.

In view of the proposed timetable for public service reform in Japan, he hoped that the complaints filed by several workers' organizations on this matter would be examined by the Committee on Freedom of Association in November 2002. The current collective bargaining system had no influence on the determination of wages and other working conditions through negotiation. The definition of persons engaged in the administration of the State should be substantially reduced. Furthermore, the Government should extend collective bargaining to the matters set out in section 8 of the Law concerning Labour Relations at National Enterprises and Specified Independent Administrative Institutions. The Government should also take prompt steps to remedy the current system of determining wages and other working conditions of public service workers through the recognition of their collective bargaining rights. He therefore called on the Committee to urge the Government to stop working on its current revision of the public service system, which violated the principle of freedom of association, and to reform the system in accordance with international labour standards. He also called upon the Government of the Republic of Korea to enter into comprehensive dialogue and sincere negotiations with the trade unions concerned in the tripartite commission established to protect government employees' basic labour rights, as well as to recognize their trade unions. He also urged the Government of the Republic of Korea to pursue the universal application of international labour standards by ratifying Conventions Nos. 87 and 98 as soon as possible.

The Worker member of Germany said that for a number of years German trade unions, which faced similar problems, had been observing developments in Japan with great concern. Recently, a representative of his trade union, which also covered the public service, had been sent to Japan to obtain up-to-date information on the current situation. He indicated that he would refer in particular to the National Personnel Authority (NPA) and the arbitration awards system. Although the Government evidently considered the NPA to be an appropriate instrument of compensation for the far-reaching limitations on the trade union rights of workers in the public service, the view of the trade union movement was very different. The present legislation in Japan relating to the national and local public service only contained vague indications respecting the establishment of salaries through the NPA and the local authorities. In many cases, the NPA had provided its recommendations concerning salary levels, but these recommendations had not been taken into account in the determination of salaries. Moreover, such recommendations had been limited or postponed. For example, the recommendation in 1997 to increase the wages of certain categories had been postponed for one year. In 1999, higher administrative personnel had been excluded from the proposed salary increase. Finally, the NPA recommendation in 2000 for a change to the wage system had not been implemented. Existing differences between the private and public sectors had merely been mitigated through the granting of additional family benefits. Moreover, in many cases, agreements that had been concluded at the local level had been entirely or partially changed by decision of local authorities.

He also referred to the situation with regard to the arbitration award system. The implementation of agreements concerning workers in the fiscal services and the forestry services concluded in 1998 had been postponed for several months. This constituted an inadmissible interference in the right to collective bargaining. Substantive improvements were therefore required, as clearly requested by the Committee of Experts, in the envisaged legislative process. It was to be deplored that, even though the Government representative had given explicit recognition to the ILO's principles, it was not the Government's intention to comply with the provisions of the Convention. The Government had been criticized by ILO bodies on this matter for over 35 years. He therefore called upon the Government to give effect to the justified demands of the Japanese trade unions, which related to points raised by the ILO supervisory bodies. For this purpose, the Government would need to enter into serious dialogue with the trade unions.

The Worker member of Pakistan recalled that this serious case concerned an Asian country that was a member of the G8 and therefore had a responsibility to set a good example. In view of the fact that it had ratified both Conventions Nos. 87 and 98, it should restructure its system so that it granted the fundamental rights of collective bargaining to all workers. He expressed strong disagreement with the statement by the Government representative that such fundamental rights needed to be adapted to the specific conditions in each country. He emphasized that the fundamental trade union rights were of a universal nature and could not be made subject to national conditions in either developing or industrialized countries. While everybody agreed that it was necessary to improve the efficiency of public servants, this should not be at the expense of their basic rights. The Government had previously said on many occasions that it took seriously the recommendations of the Committee of Experts and the Committee on Freedom of Association, but was showing that this was not the case through its proposed legislation, which reduced workers' rights still further. The Government's obligations under the Convention required the full development of voluntary negotiation and, as emphasized repeatedly by the Committee on Freedom of Association, in the case of workers engaged in essential services, the development of alternative independent and impartial recourse machinery in the event of disputes. He therefore urged the Government to review its position on collective bargaining in the public service in accordance with the Convention, and to enter into meaningful dialogue with the trade unions concerned with a view to bringing its legislation into conformity with the obligations under the Convention.

The Worker member of France stated that he was speaking on behalf of the French trade unions on the effective exercise of human rights and fundamental freedoms. The Conventions on freedom of association did not limit or exclude the categories of workers referred to in the observation of the Committee of Experts on the application of the Convention in Japan. This Convention also provided safeguards against any form of anti-union discrimination and protected all workers, including public service workers and workers in the local public service or in state employment, and especially workers in national hospital services. Freedom of association, which was protected by the Convention, constituted a universal and an imprescriptible human right, as set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966. Freedom of association was an essential component of the right to organize because it required respect for the freedoms of opinion and expression, the right to establish trade unions, political and social associations and the right to participate in their activities, without improper or excessive constraints or discrimination as noted by the Committee of Experts and confirmed by the Government's statement. The freedom to establish unions and to negotiate collectively terms and conditions of work could not be dissociated from political and civil freedoms in general, as recalled regularly by the Committee of Experts and by the entire supervisory system. Members of the army and the police were the only categories of workers whose rights of freedom of association and bargaining could be restricted. The categories of public employees referred to in the observation made by the Committee of Experts could not be deprived of their right to organize and to negotiate collectively, nor could they be deprived of their civil and political freedoms, such as the freedom of expression and opinion. These freedoms were granted to Japanese citizens in the Constitution and could not be limited in practice to a vote at election time. Workers in administrative and health services were citizens who were at the service of all citizens, and could not be considered as second-class citizens. In Japan, the exercise of rights protected by the Convention was excessively limited. The fact that freedom of opinion and expression could not be fully enjoyed outside working hours also explained the excessive limits set on other fundamental freedoms, such as those specified in the Convention. The salaries, working conditions and social rights of workers in public hospital services were also political questions, because they depended on the state budget and the budgets of local authorities. The right of trade unions to express their views on budgetary decisions and to explain to other citizens their impact on the quality of services and on the situation of their workers were basic political freedoms which could not be suppressed without putting at risk the freedom to negotiate. In principle, old authoritarian systems had been abolished in democratic countries, regardless of their heritage. For many years, the Committee of Experts had been singling out serious cases of restrictions on freedom of association and the right to collective bargaining in the public service. These issues had also been discussed frequently by this Committee. The time had come for the Government to take the necessary measures, in consultation with the trade unions concerned, to protect civil and political free-

doms and socio-economic freedoms, including the full freedom of workers in the public service and in public hospital institutions to negotiate collectively. The Committee needed to make a strong request to the Government to take urgent measures to modernize and democratize the status of these workers, who provided invaluable services to the community, and to fully commit itself to social dialogue and collective bargaining in good faith in order to ensure a high-quality public service.

The Worker member of India stated that Japan had violated Convention No. 98, particularly with regard to the promotion of the negotiation rights of public employees who are not engaged in the administration of the State. He noted that the National Personnel Authority possessed only the power to submit recommendations respecting the wages and service conditions of public servants, which the Government may freely accept or ignore, and that at no point were employees entitled to negotiate over the terms of employment. He emphasized that all decision-making power ultimately rested in Government hands, and in this context referred to reports that local governments had short-circuited the personnel commission by directly proposing monthly wage cuts or bonus reductions to local assemblies.

He observed that, in this era of increasing globalization, Japan had resorted to such practices as downsizing, retrenchment, privatization and workload increases in order to further the competitive edge of its finance capital, and that these developments came at the expense of Japan's workers. On this point, he cited press reports of employees being treated as robots and dying early deaths. He stated that Japan, for all its material wealth, remained in other respects a poor nation, and concluded by urging the ILO to pursue the matter, as appropriate, in order to ensure the rights of Japan's workers to organize and bargain collectively.

The Worker member of Australia considered that the situation was far from "satisfactory", as noted by the Committee of Experts in its concluding paragraph, and was instead deteriorating. He stated that the Government possessed the clear and unambiguous aim of severely limiting the freedom to organize and bargain collectively. As an example of this, he cited article 98(2) of the National Public Service Law, which prohibits workers from striking or engaging in "delaying tactics or other acts of dispute." By the use of such broad and inclusive language as "delaying tactics" and "other acts", he emphasized, the Government had deliberately and flagrantly breached both the letter and the spirit of Convention No. 98. He further noted that this law had redefined "essential services" so as to include all public employees in the national public service, local public service and public enterprises. He stated that this extension of the prohibition of the right to strike or engage in delaying tactics to so broad a category of employees constituted a further, deliberate attack on workers.

He also cited article 110 of the National Public Service Law, which provides for penal servitude for up to three years for persons who engage in, incite, or instigate delaying tactics or other acts of dispute, and described these sanctions as neither acceptable nor appropriate. In conclusion, he urged the Conference Committee to find the definition of "essential services", and the term "delaying tactics" incompatible with the principles of Convention No. 98.

The Government member of Japan explained that the ongoing civil service reforms were aimed at making more efficient use of public employees' abilities and accommodating to the diversifying needs of the public service. He stated that the issue of the fundamental labour rights had been examined prior to the Cabinet's adoption of said reforms, taking fully into account the ILO view of the matter, and maintained that the Government would continue to fully ensure the current compensation schemes and keep such compensatory functions effective. In conclusion, he asserted that the Government was currently under the process of making the reforms into legislative form and designing the details of the system, and it had fully recognized the ILO's view would continue to hold negotiations and consultations in good faith with employees' organizations.

The Worker members recalled that in this case the Government of Japan was under question for serious violations of Convention No. 98, in particular in the public sector, with regard to workers' rights to collectively bargain with respect to their conditions of work and employment. The different government restructurations which had taken place had resulted in a veritable erosion of workers' rights in this domain and followed a reactionary concept. The Government pretended to make reforms which gave effect to the Convention, but in reality there was no change. For this reason the Worker members asked that the Government be requested to communicate to the Committee of Experts concrete information. They also asked the Government to engage in a real dialogue with the workers' organizations and, in this framework, to sincerely treat the real problem of the absence of negotiations, a matter which infringed on fundamental rights.

The Employer members welcomed the Government representative's comments, particularly concerning planned changes to the public service. However, it remained to be seen whether sufficient protection would exist in the legislation. They noted the changes that had been implemented to date in the public sector, but felt that further changes were needed. They hoped that progress would be made to extend the right to collective bargaining to public sector workers, in particular workers in large medical institutions. The Government had taken steps, but further steps were still needed. The Employer members welcomed the expansion of the scope of issues for collective bargaining. Lastly, they hoped that the Government would bear in mind the comments of the Committee of Experts and be able to report on progress made.

The Committee noted the statement of the Government representative and the discussion that followed. It recalled that the Committee of Experts raised issues which concerned the application of Article 1 of the Convention dealing with protection against acts of anti-union discrimination, and of Article 4 concerning the promotion of collective bargaining. The Committee welcomed the positive developments in this respect in the national hospital sector and in public enterprises and encouraged the Government to continue taking measures to ensure fully the right to collective bargaining for workers in the national hospital sector. However, it noted with concern the very limited participation of public servants in the determination of their salaries. Recalling that the Convention applies to public servants not engaged in the administration of the State, the Committee expressed its firm hope that the Government will avail itself of the current public service reform, in full consultation with the social partners concerned, to encourage and promote collective bargaining, with a view to the regulation by these means of the terms and conditions of employment of public servants covered by the Convention. It urged the Government to provide, in its next report, detailed information on the developments in this respect, in particular on the measures taken or envisaged to ensure the full application of the Convention, both in law and in practice.

Zimbabwe (ratification: 1998). The Government has supplied the following information.

The major observation is that the Government's report has not been received by the Committee. Information is being requested in respect of the Committee's previous comments; it is contended, however, that the information has long been submitted. In the event that it was not received, herewith the Government's formal response.

1. Article 2 of the Convention

The concern of the Committee is that over and above sections 7, 8 and 9 of the Labour Relations Act, which guarantee protection against interference of or by and between unions, there is an undertaking under section 10 that the Minister may prescribe by notice acts/conduct which may be deemed to erode the right to organize and bargain collectively. The observation is that there has been no such notice by the Minister. The position, however, could well be that other than those instances mentioned in section 7 or those deemed to be unfair labour practices under sections 8 and 9, there have been no instances warranting publication of a notice prescribing certain conduct to be an unfair labour practice. It may perhaps be appropriate to provide for the unions or any other person to bring to the consideration of the Minister or Board issues or instances which they may wish the Minister to prescribe as unfair labour practices or instances of interference.

2. Article 4 of the Convention

(a) The Committee is concerned about sections 98, 99, 100, 106 and 107 of the Labour Relations Act which empower labour authorities to refer disputes to compulsory arbitration. It is the Committee's view that dispute settlement should not be curtailed or abruptly cut by reference to arbitration. The Committee suggests that measures should be taken to "encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employer organizations and workers' organizations by means of collective agreements ..." per Article 4. In our proposed amendment Bill, HB 19, which is currently before Parliament, sections 98, 99 and 100, which specifically relate to referrals to arbitration, and not 102 and 106, are being sought to be repealed. In the current Act under section 98, the Labour Relations Officer simply formed an opinion that a matter required arbitration and referred it to arbitration. However, under the amendment "Before referring a dispute to compulsory arbitration, the Labour Officer shall afford the parties a reasonable opportunity of making repre-

sentations on the matter ...". Thus, the parties will be heard, they may consent (i.e. voluntary) or dispute and a determination will be made. This amendment should indeed address the issue of voluntariness provided for in Article 4. The issue raised in comment No. 2 is being redressed.

(b) Section 17(2) and Section 22 of the Labour Relations Act

(1) The Committee is concerned that section 17(2) of the Labour Relations Act provides that regulations made by the Minister in terms of section 17(1) to regulate "the development, improvement, protection, regulation and control of employment conditions and conditions of employment" supersede any other statutory instrument, agreement, or arrangement whatsoever, is too restrictive, and amounts to interference of the right to organize and collective bargaining. The suggestion is that any agreement however between parties to collective bargaining should be paramount. The same concern is raised with section 22 which empowers the Minister to fix a maximum wage and benefits, allowances, bonuses or increments. It is said these restrictions only apply in exceptional circumstances. It would be appropriate to note also that under Article 4 the measures which are to be taken to ensure exercise of that right are "appropriate to national conditions ...". In a sense the right is not absolute.

However, and most importantly, with regard to section 17(2), and the supremacy of ministerial regulations over agreements, it is observed that in terms of the new amendment HB 19 the power of the Minister to make the regulations is to be exercised "in consultation with the appropriate advisory council, if any, appointed in terms of section 19".

In the current Act, the Minister simply made regulations. With the amendment coming into force, any semblance of arbitrariness has been removed, and the regulations which the Minister makes will be informed, practical, and borne out of consultation and hence appropriate to national conditions, in keeping with Article 4. These advisory boards are appointed on a tripartite forum (see section 19).

Section 17(2) itself is being amended so as to ensure that the regulations would not derogate from any rights or better conditions that a party had prior to the regulations. As such the regulations would not supersede any agreements/arguments hitherto existing, nor do they bar the award of greater benefits than those provided for. In other words the regulations would provide for a basic minimum. The new section 17(2) will definitely be in accord with Article 4 of Convention No. 98.

(2) Section 22

In light of amendments to section 17(2), the current section 22 may no longer be valid, for section 22 provides for ceilings to maximum wages and benefits. However, should it be deemed valid, to an extent it takes into account "national conditions" as the Minister consults with the Minister of Finance before he fixes the maximum wages, which is not inconsistent with the conditions envisaged under Article 4.

(3) In sections 25, 79 and 81 vis-à-vis Article 4 the Committee is concerned that collective bargaining agreements are made subject to approval by the Minister as to whether they are consistent with national laws, and international labour laws and their inequitability or otherwise to consumers or the public and any party to a collective agreement. The Committee expresses the view that this power of approval under the Convention may only be exercised to determine whether there are no procedural flaws in the collective bargaining agreement or it does not conform to minimum standards laid by labour legislation. This may well be covered by section 17(2) which provides for basic minimums in agreements.

Article 4 of Convention No. 98, unless otherwise specifically repealed/amended, does not seem to provide for intervention where only procedural flaws in the bargaining process exist, or where there is only need to check for conformity with minimum standards. Quoting it in extenso it reads "Measures *appropriate to national conditions* shall be taken, where necessary, to encourage and promote full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment, by means of collective bargaining ...".

The new section 25(A) also gives recognition and weight to collective bargaining agreements negotiated by works councils at establishments. This should minimize interference by the authorities as long as the agreements are consistent with national laws. It will be observed that Article 4 itself recognizes the authority of national conditions by promoting the taking of measures "appropriate to national conditions ..." which should include national laws. The current position has the effect of avoiding unlawful agreement in the national context or those inconsistent with international labour laws to the prejudice of one or other of the parties. It is a system of checks and balances which is being provided for.

3. Article 6 of the Convention

The concern of the Committee touches on section 20 of the Public Service Act (Chapter 16:04) which provides for consultation between the Public Service Commission and "recognized associations and organizations in regard to the conditions of service of members of the Public Service who are represented by recognized associations/organizations concerned ...". The concern also further touches on S.I. 141/97 which provides for a Public Service Joint Negotiating Council, whose objective shall be to engage in mutual consultations upon and negotiate salaries, allowances and conditions of service in the Public Service (section 3(1)).

The actual concern of the Committee is that this set-up may be contrary to the provisions of the Convention's Article 6 which provides "This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way". The question of the Committee is "whether public servants not engaged in the administration of the State negotiate collective agreements as well as participate in consultation discussions ...".

The current position is that under section 14 of the Public Service Act certain categories of employees are excluded from the Public Service Act. As such, section 20 would not apply to them, nor would S.I. 141/97. This category of persons includes:

(a) Judges
(b) Members of the Commission
(c) Members of a corporate body established under an Act of Parliament
(d) Defence forces
(e) Members of organization responsible for security in the President's office
(f) DDF *trustee employees*
(g) Director of state lotteries
(h) Anyone declared not to be part of public service

In fact these employees do not have recognized organizations or associations representing them, or any at all, for instance:

(1) Conditions of service of judges are provided for under the Constitution and the Judicial Service Commission.
(2) Those of the army, police and prisons fall under their own Act of Parliament and/or their respective commissions.
(3) The rest who are excluded are governed by the various acts which create them.

The reason for exclusion of all or most of these is not necessarily that they are working in an essential service for, in the strict sense of the term, it means "those services the interruption of which would endanger the life, personal safety and health of the whole or part of the population, and in case of acute national crisis".

In direct answer to the Committee's question, there is no current law providing for the right to organize and to collective bargaining of the workers excluded from the Public Service Act.

In addition, before the Conference Committee, a **Government representative** referred to the written information submitted by his Government. This same report had originally been sent to the Office well before the last session of the Committee of Experts, even though the Committee had indicated that it had not been received. He therefore raised the question as to whether the case should now be under examination by the Committee, since his Government had complied with its reporting obligations.

He added that the issues raised with regard to protection against interference in the activities of trade unions were being addressed in the Bill which was being prepared to amend the legislation. On the subject of the need for approval by the Minister for collective bargaining agreements, he said that this process was merely required to prevent procedural flaws and to ensure that the agreements were in accordance with the law. With regard to the right of

negotiation of employees covered by the Public Service Act, he emphasized that the agreements reached in the Joint Negotiating Council also benefited any employees who were excluded from the Act, such as judges and members of the police force. He hoped that these clarifications of the written information supplied were helpful.

The Worker members considered that the date on which the Government had submitted its report was a matter to be determined by the Committee of Experts. They recalled that this case concerned one of the most fundamental rights of workers, which could be best exercised within an environment that guaranteed peace, democracy, social justice, respect for human rights and the rule of law. Unfortunately, the latter had become rare in Zimbabwe in recent times. The right to organize and collective bargaining was enshrined in the ILO Constitution, the Declaration of Philadelphia and the Declaration on Fundamental Principles and Rights at Work. Indeed, the Committee on Freedom of Association had emphasized that, by virtue of its Constitution, the ILO was established in particular to improve working conditions and to promote freedom of association in the various countries. As a consequence, the matters dealt with by the ILO in this connection no longer fell within the exclusive sphere of states and the action taken by the ILO in this respect could not be considered interference in internal affairs, as they fell within the terms of reference received by the ILO from its members with a view to attaining its aims. As a result, the Government could not hide behind the fact that it had not yet ratified Convention No. 87, which was one of the Conventions whose principles had to be respected by virtue of being a member of the ILO. Accordingly, if the Worker members touched on the issues that impeded the exercise of free collective bargaining rights and workers' rights in general, this would not constitute a deviation from the main subject under discussion.

The Worker members emphasized that the freedoms of workers were systematically violated in the country and that interference in their affairs was sponsored. Over and above the legislative deficiencies cited by the Committee of Experts, acts of violence were organized by government-supported groups and individuals, who invaded employers' premises and demanded that recognition of legitimate unions be ended in their favour. The Worker members called upon the Government to fulfil its duty to ensure that jungle justice did not find its way into the workplace. The above practices, in addition to undermining collective bargaining rights, also caused job losses, company closures and economic problems. The ratification of a Convention by any government was a voluntary exercise of its sovereignty, but involved a commitment that effect would be given to the Convention in both law and practice. In the present case, the Government was in clear violation of both Articles 1 and 2, of the Convention. The Worker members therefore believed that it would be in the interests of peace and social justice for the ILO to send a direct contacts mission to the country with a view to contributing to the resolution of the problems of application of the Convention. A tripartite mission should also be organized to assess the situation in the country and advise the social partners accordingly on the measures to be taken for the achievement and maintenance of peace and social justice.

The Employer members recalled that, as the application of the Convention by Zimbabwe had not been referred to in the report of the Committee of Experts for the past two years, the Conference Committee had had no basis for discussing it. However, when adopting the list of cases the previous year, they had already announced the need to examine the case. The fact that the Government had neither submitted its reports nor replied to the comments of the Committee of Experts demonstrated its lack of collaboration. This had been underlined by the fact that the statement of the Government representative had been devoted in large part to putting forward reasons why this case should not be examined by the present Committee. The information submitted by the Government had replied to a number of issues raised by the Committee of Experts. It would therefore be appropriate to wait until the Committee of Experts had analysed this information. This was not because the Conference Committee doubted its capacity to analyse the case correctly, but because it was not possible for it to verify the legislation referred to, or to examine whether there were any further issues raised by the provisions not cited by the Government.

The Committee of Experts had raised several points, the first of which concerned the protection of workers' and employers' organizations against acts of interference by the State in matters pertaining to the internal affairs of the organizations. However, the Employer members considered that the criteria for the interference by the minister were not clear.

The next point raised by the Committee of Experts concerned the issue of compulsory arbitration which could be imposed by the labour authorities whenever they considered it appropriate. The Employer members agreed with the Committee of Experts that compulsory arbitration should only be imposed under certain conditions. However, the issue was rendered more difficult by the fact that collective agreements had a different legal nature in different countries. They could constitute statutory and therefore binding provisions, or simple recommendations, or that could be made binding by an act of authority, depending on the country. The legal nature of collective agreements therefore had to be determined before addressing the issue of compulsory arbitration. Moreover, compulsory arbitration itself was subject to differing interpretations, depending on whether the obligation related to the need to submit a dispute to arbitration or to the binding nature of the arbitration findings.

With regard to the provisions in the Labour Relations Act empowering the minister to set a minimum wage and maximum amounts of benefits, allowances, bonuses or increments, which were interpreted by the Worker members as limiting the right to collective bargaining, the Employer members recalled that trade unions were sometimes very much in favour of public authorities determining these amounts. They nevertheless agreed that these provisions did indeed constitute a limitation of the right of the social partners to engage in collective bargaining, the promotion of which was the objective of the Convention.

On the subject of the Public Service Act of 1996, which only provided for consultation with associations and organizations of public servants, the Employer members welcomed the approach adopted by the Committee of Experts of first requesting the Government to indicate the various groups of workers in the public service. They recalled in this respect that the right to collective bargaining also applied to public servants other than those engaged in the administration of the state.

In conclusion, the Employer members observed that there was a considerable lack of cooperation by the Government, not only with the ILO, but also with the social partners at the national level. They urged the Government to take into account the progress that needed to be made in the country through collaboration with the social partners. Moreover, they called upon the Government representative to indicate clearly whether he considered that a direct contacts mission to his country would be helpful and whether his Government would welcome such a mission.

The Worker member of Zimbabwe welcomed the comments of the Committee of Experts concerning the deficiencies in the Labour Relations Act, and particularly with regard to the right to organize and the need for free collective bargaining without external interference. He recalled that the Act was in the process of being amended and that this process had started in 1993. In this context, he referred to the cases of workers who were being dismissed because they belonged to a particular union as a result of activities by members of the Zimbabwe Federation of Trade Unions (ZFTU). He expressed concern that the Government was taking no action to prevent these unlawful activities by the ZFTU. He added that the ZFTU had been given the freedom to organize by coercive means, intimidation and unlawful behaviour. When the ZFTU turned its attention to a company, it would coerce workers to join its labour centre under the threat of being labelled opposition supporters. Where workers resisted, the ZFTU endeavoured to intimidate the employer. In some cases, employers were so frightened that they succumbed to the intimidation. He emphasized that the ZFTU had no negotiating structure. In contrast, the Zimbabwe Congress of Trade Unions (ZCTU) insisted on complying with the labour legislation in the country in its organization, recruitment and negotiation practices. Unfortunately, the Government did not appear to appreciate this approach to industrial relations.

He expressed the firm hope that at some stage the Government would realize that this situation was not good for the country. If Convention No. 98 was to be complied with, interference from undemocratic trade union organizations needed to be discouraged. Much progress needed to be made in the labour relations situation in his country, which was no longer subject to democratic process. He therefore called for a direct contacts mission to bring his country back to a more democratic industrial relations system.

The Worker member of Norway, speaking on behalf of the Nordic Workers' group, praised the brave fight and opposition of Zimbabwean workers over recent years against the grave violations committed by the Government. She said that there had been moments when she and her colleagues had been unsure whether they would see them safe and alive again. The violations of fundamental human and trade union rights in the country were so grave, that those currently under discussion constituted a mere fraction of the many attacks by the Government on the ZCTU. In recent times, the national authorities had shown no respect for ordinary labour laws. ZCTU meetings had been cancelled by the authori-

ties and permission had even been refused to hold the annual commemoration of the death of over 400 workers in 1972 at the Hwange coal mine. Peaceful demonstrations had been declared illegal and trade union activists had been threatened, abducted and beaten. Visits by trade unionists from other countries had been prevented. Moreover, the establishment of another trade union central organization by the Government had not been carried out in good faith, but with a view to stifling the voices of workers and of the ZCTU.

The comments of the Committee of Experts showed that the Labour Relations Act and the Public Service Act were not in compliance with Article 2 of the Convention, which provided protection against Government interference. The imposition of compulsory arbitration whenever the labour authorities wished was also in violation of the Convention. Moreover, under the Labour Relations Act, collective agreements had to be approved by the authorities, in clear breach of the Convention. For many years, the authorities had refused to allow public servants not engaged in the administration of the state to negotiate collective agreements. Further restrictions were also being imposed through labour legislation. The spirit of collective bargaining, freedom of association and the right of workers to join a trade union of their own free will seemed to have been replaced by coercion, threats and intimidation. The ZCTU faced a threat to its very existence following the adoption of the Public Order and Security Act. Recourse through the courts was to no avail, as court rulings were flouted by the authorities. Action was required to improve matters on all of these questions and there was undoubtedly a need for a direct contacts mission to help the authorities rewrite the labour laws in accordance with the Convention.

The Worker member of Malawi noted with concern the interference by the Government in the activities of the ZCTU, in violation of the principles of freedom of association. It was clear from the report of the Committee of Experts that workers' rights in the country were being undermined. In the same way as any other citizen in Zimbabwe, workers had the constitutional right to express their views freely. Yet, the authorities had interfered with trade union meetings under the pretext of the public interest. This was particularly hard to understand in view of the Government's earlier support for the interests of workers. He feared that this situation might have the effect of jeopardizing workers' rights in neighbouring countries. In view of the essential nature of the contribution of workers to development, it was vital that measures be taken to resolve these issues rapidly. He called upon the Committee of Experts and the present Committee to take up the issue and urged the Government to take action as soon as possible so that justice could prevail in the country.

The Worker member of South Africa expressed deep concern at the violation of human and trade union rights and the breakdown of the rule of law in Zimbabwe, which were of serious concern to all the social partners in South Africa. He recalled that the case had been under examination since 1993 and that the Government had undertaken to draft a bill that would be in conformity with the provisions of the Convention. Nevertheless, legislation had still not been adopted ten years later. What was at issue was not only the Labour Relations Act and the Public Service Act, but also the security legislation, which affected the operations of the ZCTU, and the government-backed violence and intimidation against the ZCTU's members and leadership. The labour legislation placed limitations on collective bargaining and encouraged employers to set up workers' committees to undermine the regular trade unions. The Public Service Act denied the right of public servants to join unions. Moreover, the legislation contained a long and cumbersome procedure to be followed before workers went on strike. The definition of essential services in which strikes were prohibited was also too wide. In essence, all strikes were illegal. Moreover, export processing zones were exempt from the provisions of the labour legislation and workers in the zones were denied legal representation and the right to strike. The situation had been aggravated over the past two years by the systematic violence and intimidation against trade union leaders. He therefore called upon the Government to accept a direct contacts mission to resolve these issues.

The Employer member of Norway expressed deep concern at developments in Zimbabwe and urged the Government to take all the necessary action to comply with the Convention, based on the comments of the Committee of Experts. However, he made a legal remark concerning the conclusions of the Committee of Experts in paragraph 2 of its observation concerning compulsory arbitration. The statement concerning the criteria to be used in order to refer a conflict to compulsory arbitration was, in his view, too narrow and was not supported by the text of the Convention, nor the circumstances or intentions. He recalled that the legal basis for this opinion was comprehensively set out in the Employers' handbook on ILO standards-related activities, published by the ILO in 2001. In his opinion, a country which recognized the full right to strike and had, as a national assembly or parliament which supervised the government, the right under ILO Conventions to refer a strike to compulsory arbitration in exceptional cases, also had the right to refer a strike to compulsory arbitration when it affected the economy of the country and third parties in a serious way. Nevertheless, the parties should be afforded every opportunity to negotiate and no dispute should be referred to compulsory arbitration until it was clear that a strike would take place, and normally not until its effects could be monitored and evaluated. In the present case, it was clear that the powers vested in the authorities to refer a conflict to compulsory arbitration in Zimbabwe were far too extensive. He therefore urged the Government to make the necessary amendments to its legislation.

The Government member of Finland, also speaking on behalf of the Government members of Denmark, Iceland, Norway and Sweden, said that the situation in Zimbabwe gave rise to concern. She noted the information provided by the Government representative on the Bill to amend the Labour Relations Act. However, it appeared that the Bill did not adequately address the discrepancies between the requirements of the Convention and the national legislation. According to the information provided, the Government still appeared to be able to use its authority to decide the extent to which the Convention was applied in practice. She therefore urged the Government to ensure that the Committee of Experts received its report and a copy of the new Bill without delay so that it could assess whether the amendments complied with the provisions of the Convention. She also urged the Government to take the necessary measures to ensure that workers who were excluded from the Public Service Act enjoyed the right to organize and collective bargaining.

The Worker member of Greece supported the statements made by the Worker members and expressed his solidarity with the workers of Zimbabwe. The written response of the Government, was not plausible and was far from being satisfactory. Article 4 of the Convention, which provided that measures appropriate to national conditions should be taken, where necessary, to encourage and promote the utilization of machinery for voluntary negotiation of collective agreements, should not be interpreted in a manner which disregarded the reasons why the Convention had been adopted. The Convention provided that the law had to guarantee the right to free collective bargaining. Citizens had the duty to obey the law, but only when it was a product of democratic process and was in conformity with the Constitution of the country. Furthermore, national law had to respect international conventions signed by the country. Serious allegations had been made and they had to be mentioned in the conclusions. A direct contacts mission should also be sent to Zimbabwe, as requested by the Employer and Worker members, to ensure that the Convention was applied and that workers and citizens had the right to freedom of association, and to freedom in general.

The Employer member of Zimbabwe recalled that the information received from the Government needed to be analysed by the Committee of Experts before the present Committee could examine the case or propose a direct contacts mission. While a discussion of the information provided by the Government was acceptable in the present Committee, its members should refrain from discussing general issues concerning Zimbabwe. In particular, any reference to what he called pseudo-unions was entirely judgemental. He indicated that employers in the country were not in a position to judge whether an organization was good or bad, but that they merely had to deal with the organizations that their workers joined. However, he said that the ZCTU gave rise to problems because it was an organization that was of a political nature. It had founded a political party and withheld recognition of the Government. It was extremely difficult to enter into constructive social dialogue with an organization of that nature. He indicated that many individual workers complained that the union was taking an overly political stance in many of its activities. He emphasized that the right to freedom of association did not prevent the existence of more than one trade union central organization. In conclusion, he urged the Committee to follow the proper procedure and not to propose measures such as a direct contacts mission until it had had the opportunity to review the analysis of the case by the Committee of Experts, based on the information provided by the Government.

A Government representative (Minister of Public Service, Labour and Social Welfare) thanked the speakers for their comments. He recalled that the Government, far from opposing trade unions and political parties, had fought for their inclusion in society when they had been severely weakened by the previous regime. It was not possible for the Government to ban a trade union or employers'

organization, even though the situation in his country was somewhat volatile as a result of the economic conditions, which affected the livelihood of both employers and workers. The measures that were currently being taken were designed to empower the people through the redistribution of land and the development of industry. He reaffirmed that it was the role of the Government to be extremely sensitive to developments at the workplace and recalled that collective bargaining had been practised for many years. Workers in an economy with a surplus of labour were subject to an unequal playing field and it was therefore beneficial to determine minimum and maximum wages with a view to improving their situation. He recalled that the minimum wage had been negotiated by the social partners, including the ZCTU, which had been considered the most representative workers' organization at that time. He denied that the Government interfered in collective bargaining and explained that the role of the Ministry was to put the terms of collective agreements into law through enabling measures, without altering what had been agreed to. He also indicated that, although the amendments to the labour legislation had been slow, the Labour Relations Act would be amended later in the year.

He recalled that this information had been provided to the Committee of Experts in the Government's report the previous year. His Government was fully aware of its responsibilities and would provide any other information required by the Committee of Experts. He added that the analysis of the Public Service Act by the Committee of Experts had not been correct. Although certain categories of public servants were excluded from collective bargaining, such as judges and the defence forces, their conditions were subject to negotiation in the respective commissions.

He regretted that the comments by certain speakers had gone beyond the matters raised in the observation of the Committee of Experts. He took exception to the inference that the rule of law was not observed in his country and to any allegation that his Government was responsible for the harassment of workers. While the authorities were required to use violence to deal with individuals who resorted to violence, certain of the comments made had constituted propaganda against his country. The ILO should be used as a forum to improve the labour market, not for propaganda purposes. Although his Government was pleased to receive assistance from the ILO, he believed that a direct contacts mission would be premature. The correct procedure should be followed, with the matter first being dealt with by the Committee of Experts, which should request further information on any issues that were not clear. He recalled that negotiations were still under way on amendments to the labour legislation. When the Bill had been adopted, the new legislation would be sent to the Committee of Experts for its examination.

The Employer members urged the Government to encourage the participation of the social partners in improving the situation and in preparing new labour legislation. They regretted that the Government had not submitted reports to the Committee of Experts in recent years and that this year's report had not arrived in time. They also regretted the refusal by the Government representative to accept a direct contacts mission and called upon the Government to provide a full report to the Committee of Experts as soon as possible, with full accompanying documentation. Based on the analysis of this report by the Committee of Experts, the Conference Committee would decide next year whether its conclusions on the case should be placed in a special paragraph of its report.

The Worker members objected to a number of derogatory comments that had been made during the discussion which had called into question democratically elected workers' leaders and their right to participate in international organizations. They recalled the need for the members of the Committee to observe moderation in their language and expressed the belief that the comments made by the Employer member of Zimbabwe were not endorsed by the Employer members as a whole. Turning to the issues under discussion, they emphasized that the fundamental right to collective bargaining could only be given full effect in the absence of interference by other parties. This right was not observed in practice when the results of collective bargaining, namely collective agreements, had to be approved by a third party. The Worker members were not opposed to a multiplicity of organizations, provided that all of the organizations were genuine and complied with the law, and were not imposed by the use of force. They recalled that the Government had a duty to protect both workers and employers from thugs who hijacked collective bargaining rights at the shop-floor level. In this respect, they regretted that the Government was not prepared to receive an ILO direct contacts mission, which could be instrumental in preparing amendments to bring the labour legislation into conformity with the Convention and to improve the general situation with regard to freedom of association and trade union rights. The Worker members looked forward to examining the case once again next year. If no progress had been made and the Government demonstrated a similar attitude on that occasion, the Committee's conclusions should be set out in a special paragraph of its report.

The Committee took note of the written information submitted by the Government, of the statement made by the Government representative and of the ensuing discussion. The Committee noted that the comments of the Committee of Experts dealt with problems in respect of the application of Article 2 of the Convention (protection against acts of interference), Article 4 (promotion of collective bargaining) and Article 6 (scope of application). The Committee noted that the amendments made to the legislation on collective bargaining were currently before Parliament. It expressed the firm hope that such amendments would eliminate all remaining obstacles to the right to free collective bargaining in law and practice. It requested the Government to transmit the Bill to the Committee of Experts. On the other points raised in the comments of the Committee of Experts (protection against acts of interference and scope of application of the Convention), the Committee requested the Government to take the necessary measures urgently, in full consultation with the social partners concerned, to ensure that workers' and employers' organizations were effectively protected against acts of interference, and so that public servants not engaged in the administration of the State enjoyed the right to collective bargaining. The Committee suggested that the Government should have recourse to an ILO mission to contribute to the resolution of the problems of application of the Convention. In the event that the Government did not accept such a mission, the Committee would take the appropriate measures in this respect next year. The Committee finally requested the Government to provide detailed information in this regard to the Committee of Experts so that the Conference Committee could examine this case next year.

The Worker members stated that if the arrogant attitude demonstrated by the Government were to continue, they would have to recommend a special paragraph the next time the application of this Convention by Zimbabwe was examined.

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

Peru (ratification: 1961). **A Government representative** noted that in its observations regarding the health-care system, the Committee of Experts criticized the application of Act No. 26790 on the modernization of social security in the health area and its corresponding regulation, Supreme Decree No. 009-97-SA, which separated health insurance benefits into two categories, simple cover and complex cover. The content of these two covers included all benefits regulated under Articles 8 and 10 of Convention No. 102.

Simple and complex covers were regulated by paragraphs (f) and (g) of section 2 of Supreme Decree No. 009-97-SA (regulation of Act No. 26790 on the modernization of social security in the health area). The system of health care providing entities (EPS) – a system complementary to the ESSALUD (social security system in the health area) – to which workers could freely affiliate, had to ensure benefits under simple cover which were obligatory in contracts concluded between employers and the EPS. Furthermore, the contracting parties could come to an agreement on supplementary benefits.

Home visits by practitioners of general medicine were not specifically regulated but there existed a programme of home care (PADOMI) which provided general and specialized health care, as well as continuous care, through home visits. This programme was regulated by an internal policy of this institution.

Regarding the submission of samples of insurance policies contracted with the EPS and specimens of membership forms, they would be annexed to the detailed report that the Government would present before 1 September 2002.

The EPS had a national geographical coverage since there was no statutory limitation or restriction on any region. Health services provided in the context of the EPS were distributed in the majority of departments of the country. The departments in which there did not exist any health-care service linked to the EPS system were *Madre de Dios*, *Huancavelica* and *Amazonas*. The total number of persons affiliated to the EPS system was 339,372, while the number of persons insured with ESSALUD reached 7 million of which 2 million were titulars and some 5 million beneficiaries. The report regarding the EPS would be annexed to the report that the Government would supply on Convention No. 102.

The copy of the superintendent's resolution No. 053-2000-SEPS/CD as well as the mentioned regulations requested by the Committee of Experts, would be sent. The Committee had also requested detailed information on the manner in which the superintendance of health-care providers (SEPS) exercised its supervision on the

system, as well as a copy of the inspection report. In this regard, section 14 of Act No. 26790 provided for prerogatives conferred to the SEPS to supervise the functioning of the EPS. Section 18 of Supreme Decree No. 005-98-SA, regulating the organization and functions of the SEPS provided that the role of the intendance of the supervision of entities (ISE) was to plan, conduct and coordinate surveillance and supervision activities of the EPS, of prepaid entities and other special regimes, in accordance with the regulation of the SEPS and other laws in force.

The system of inspection and supervision was regulated by superintendence resolution No. 053-2000-SEPS/CD of August 2000, which approved the general regulation regarding the supervision of the SEPS. This regulation provided supervisory activities which were at the same time preventive, permanent and complete. Resolution No. 026-2000-SEPS/CD, published in May 2000, approved the regulation on infractions and sanctions of the EPS. In this way, legislative texts provided sufficient supervisory activities to conduct preventive supervision as well as repressive and rehabilitating action by the intermediary of a specialized body of the SEPS, responsible for overseeing respect for rights and obligations of participants in the system. The Committee of Experts had asked that, at the moment of implementation of the new social security system in the health area, the necessary studies were conducted to guarantee the financial viability of the component bodies. In accordance with article 71 of Supreme Decree No. 009-97-SA, to benefit from the authorization of establishment, the promoters of the EPS had to present to the SEPS a study on economic and financial feasibility. Regarding the participation of protected persons in the administration of the system, in particular the EPS, and of the representatives of these persons in the directing bodies of the SEPS, under article 14 of Act No. 26790, the SEPS was a decentralized public organ of the heath sector whose functions were to authorize, regulate and supervise the functioning of the EPS and to oversee the proper use of funds administered by the latter.

The national pension system was based on a distribution regime implemented in a period where the ratio of contributor to beneficiaries was much higher than in the present. A series of exogenous factors had provoked the bankruptcy of the system. Faced with this situation, a private pension system was put in place (Supreme Decree No. 054-97-EF). The legislation granted workers the right to choose between these two systems. If they did not exercise this right within a fixed period it was considered that they opted for affiliation to the private system. In this regard, Law No. 27617 of 1 January 2002 established *inter alia* the minimum pension under this system, for which regulations were being elaborated. The private pension system was administered by the *Administradoras de Fondos de Pensiones* (AFP) which managed individual accounts of capitalization of insurance, accounts that financed old age, invalidity and survivors' pensions. This showed that the State did not intend to abolish its obligation to ensure a national social security system. This restructuring aimed to grant pensioners an advantage through the intermediary of the national public savings fund. For example, in the case of permanent invalidity, the programmed pension was given as a survivor's pension; the titular retained ownership of his or her individual account of capitalization, which generated benefits for the beneficiaries and was adjusted four times a year in relation to the economic situation. The administrative fees related to affiliation or transfer were charged to the worker since in a private system of capitalization, taxes were not part of AFP revenues. There was henceforth an absolute separation between the inputs of each worker, since the administrative fees were covered by a minimum percentage of the contributions of each worker – a contribution which integrated the funds financing administrative fees through a mini-system of distribution. Concerning the conditions for obtaining pension rights, 20 years of contributions had to be accounted for to benefit from a complete pension proportional to the amount capitalized.

The Government was aware of the importance of social security Conventions given the essential role that social security played in the fight against poverty. Thus, it was necessary to do all that was possible, with the support of the ILO, to find adequate solutions to harmonize standards and international obligations with the policies of national legislation. It was also necessary to see that a higher level of pensions was progressively obtained, which constituted the objective of the private system of pensions.

Finally, the report that the Government would supply would include all statistical information requested by the report form under articles 65 and 66 as well as information on the concrete measures adopted in view to guarantee the application of article 71, paragraph 3, and article 72, paragraph 2, regarding the supervision of both private and public pension systems. The inspection report requested by the Committee of Experts and the actuarial study would also be communicated.

The Employer members noted that the Committee of Experts had made comments on the issue of social security in Peru for a number of years and that this Committee had dealt with this case for the first time in 1997. Convention No. 102 was a complex instrument but it was not ideally suited for an oral discussion. In its report, the Committee of Experts had referred to questions related to health-care and pension schemes. As the Government report had not provided detailed information on a number of issues, the Committee of Experts had to raise several questions in order to get a clearer picture of the situation in the country. Since 1997 a fundamental legislative change had taken place in this area and the Committee of Experts had asked whether the benefits to be provided under Article 10 of the Convention continued to be guaranteed under the new legislation. This was a crucial question. The Government representative had provided certain answers that the Employer members would prefer to leave to the Committee of Experts to evaluate. On the regional distribution of medical care provided either by the public services or contractual health providers, the information provided by the Government representative today should be provided in writing to the Committee of Experts so that it could be examined. The supervision of primary regional health providers raised no problem according to the Government and was characterized by the principles of prevention, permanence, continuity and integrality. The Committee of Experts needed to know however whether the financial stability of these providers was guaranteed. The Government representative had advised this Committee that the proper use of the funds managed by those bodies was ensured by preventive inspection measures and by the imposition of sanctions, if necessary. This information should be submitted to the Committee of Experts for further examination.

With regard to the question of private pension schemes, this was a well-known topic in this Committee and concerned many other countries in Latin America. The Committee of Experts had reiterated questions that it had asked in the past without getting an answer. The Government should answer these questions. Both the Committee of Experts and this Committee agreed that the coexistence within the social security system of private and public pension schemes was not incompatible with the Convention which was highly flexible on this point since it allowed the minimum level of social security to be maintained through various methods. Concerning the pensions to be paid, the Committee of Experts understood that private pension systems, dependent on the accumulation of capital, could never ensure a fixed level of pension benefits. Nevertheless, it should be possible for the Government to provide statistical data showing the average pension payments under the private scheme. What mattered after all was to provide the minimum level of old-age benefit as prescribed by the Convention, irrespective of the type of scheme. Other questions raised by the Committee of Experts related to: the period of contribution necessary to obtain a right to old-age benefits, the duration of benefits especially in the context of a "programmed retirement", the benefits payable in the event of permanent total invalidity of workers who had selected the "programmed retirement" and the level of administrative expenses of the private pension scheme, for which the contributions of workers should not exceed 50 per cent. With regard to the qualifying period, the Committee of Experts enquired about the minimum period of contribution required in relation to old-age benefit, and the Government representative responded that the minimum requirement was 20 years. The Convention established a period of contribution of 15 years. Regarding the public old-age benefit scheme, the Government representative had indicated that the benefits paid under the public scheme were not sufficient, even though additional funds had been provided from a national foundation. The Committee of Experts had recalled the purpose of old-age benefit schemes, which was to ensure a certain standard of living, taking into account the rate of inflation. In conclusion, the Committee of Experts had raised more questions than it had received answers and assessments. The Employer members welcomed the Committee of Experts' approach since the only possible way to analyse precisely such a complex social security scheme was through exact information. Therefore, the Government had to provide the information requested so that the Committee of Experts could analyse it and provide conclusions instead of asking questions.

The Worker members indicated that the application of Convention No. 102 by Peru had already been the subject of discussions within the Committee in 1997, and that the social security issues in this country had been examined several times in the context of the application of older Conventions. The Committee of Experts had regretted that the Government had not furnished sufficient detailed information, which would enable it to assess the extent to which the new schemes put in place allowed to give effect to the Convention in law and in practice.

With regard to the health-care scheme, the Worker members referred to various comments of the Committee of Experts and urged the Government to furnish all the information required to the supervisory bodies so that they could assess the extent to which the State assumed overall responsibility of guaranteeing benefits: the scope of the benefits provided compared with those provided for by the Convention; and the scope of geographical coverage of the new health scheme, particularly the geographical coverage of the heath-care providers (EPS).

As regards the private pensions scheme, if the workers had the option of joining one or the other component of the pensions scheme, the Committee of Experts had stressed that in practice the private pensions scheme, which co-existed at present with the public system, would eventually replace it. Even though the Government refused to recognize the relevance of Convention No. 102 in the context of its private pensions schemes, it was appropriate to recall that the purpose of this Convention was to impose a minimum of social security, whatever was the nature – public, private or mixed – of the social security system chosen. Moreover, this Convention had been designed in a very flexible way. As such, for example, ratifying States could specify which parts of the Convention they accepted. Similarly, the level of protection required could be obtained without the Convention determining a specific system of management or organization. It was regrettable that the Government had shown an ideological bias regarding the Convention.

Concerning the practical application of the Convention in Peru, various problems existed. The rate of the pensions provided by the private pensions system did not appear to be determined in advance since it depended on the capital accumulated in individual capitalizations accounts; hence the need to have statistics to assess fully to what extent the old-age benefits attained the level prescribed by the Conventions, whatever the component chosen. Problems also existed regarding the ensurance of a minimum benefit: the ensurance of benefits throughout the contingency, particularly in the context of the "programmed retirement"; the risk to impose a financial burden which is too high for people with small means taking into account that certain commissions were paid entirely by the workers who were affiliated with AFP; the amount of the insurance contributions borne by the employees that could exceed 50 per cent of the total of the financial resources allocated to their protection, contrary to Article 71, paragraph 2 of the Convention. The problems raised did not only refer to a quarrel about numbers or to technical issues but also related to substantive social issues.

As regarded the public pensions system, the Government's criticism of that system was surprising, and it was regrettable that the Government appeared not to have been interested in finding concrete and efficient solutions to ensure its survival, its efficiency and the effective payment of pensions.

The Government should, moreover, provide information on the measures taken to ensure the application of the Convention as regards the system of supervision of pensions and the responsibility it has in this area, as well as on the measures to ensure the participation of the persons covered in the administration of the systems.

The comments made by the association of retired workers of the oil industry of the metropolitan zones of Lima and Callao, and those made by the National Centre of retired and pensioners of Peru raised serious problems. Indeed, a growing number of people who met the conditions for obtaining benefits did not receive pension benefits and were obliged to resort to the courts to enforce their rights. The general responsibility for guaranteeing the overall good functioning of the system of pensions fell on the Government.

Convention No. 102 was an essential element in safeguarding the rights linked to decent work. Difficulties in the application of this Convention in Peru constituted a warning against naïve and non-serious approaches that were fashionable. These approaches could have serious and painful consequences for those who had individually and collectively contributed, with a view to obtaining decent benefits. Rights acquired by work should not be sacrificed for ideological reasons or for reasons of economic profit. The political upheavals witnessed by Peru, and particularly the presence of private pension funds, said a lot about the use of acquired rights of workers for private purposes. The Government should endeavour to respond to the observations of the Committee of Experts and to provide all the information required to allow a correct evaluation of the application of this Convention. In this regard, they recalled the conclusions of the General Survey on Social Security Protection In Old-Age of 1989 according to which "The extent of the economic problems facing national pension schemes must not make one lose sight of the extreme economic vulnerability of older persons, for whom their pension is often their only means of subsistence. To guarantee today's pensioners a fair share of what they gave during their working life is a fundamental concern of social justice".

The Worker member of Peru stated that the Peruvian workers followed with a lot of concern the evolution of the situation of social security in his country. The "dictatorship" of Alberto Fujimori imposed legislation contrary to the workers and in violation of the most essential workers' rights having recourse to that effect to acts of corruption and including recourse to assassinations in order to carry out his destructive policy. Some of these laws concerned social security and the pension system.

Concerning the health-care scheme, the concept of social security had been distorted with the obvious intention to privatize the workers' health-care system by the creation of health-care providers (EPS), originally called enterprises, that workers would join not by individual right but by so-called elections in which workers would participate whether they were members of a trade union or not. These enterprises were under the only obligation to afford minimum service, by obtaining 25 per cent of the contribution destined to social security and impoverishing that system as the more complicated cases were covered by that public system through ESSALUD. With these measures the principle of solidarity had practically disappeared. The coverage of these private EPS was not national for the simple reason that these entities did not function where there was no profitability, and the contributing workers were represented neither in the EPS nor in their supervisory bodies.

Concerning the pensions scheme, the situation was worse because the contribution fell totally upon the worker and the private system had not been created and imposed as an complementary opportunity but in order to eliminate the public system. All workers who had joined this system since the adoption of the law were obliged to be affiliated to a pension fund administrator (AFP) and could not return to the national (public) pension scheme. These pension fund administrators charged the worker 2.8 per cent of his or her wage in order to administer his/her funds, whether or not the worker was paid, and the workers were not represented in the AFP or their supervisory bodies. The principle of solidarity had been eliminated in this case as well, since the AFP operated as a savings bank from which each one would receive his/her pension in accordance with the amount contributed, and there was no guaranteed minimum pension. A minimum period of contribution was 20 years at the age of 65, which did not correspond to the minimum of 15 years established by the ILO.

In this regard it should be noted that the State, due to the inadequate economic and financial policies of the various succeeding governments, owed several billions of dollars to the national pension system, as was confirmed by the decision of the Inter-American Court of Human Rights, a debt that remained unpaid and had no perspective to be cleared.

The labour laws inherited from the Fujimori period were still applicable in Peru. They violated the international Conventions and the recognized fundamental rights, which were accepted and ratified by various Peruvian governments. There was as yet little progress in this regard. The speaker shared the concern expressed in the Committee of Experts report in regard to the Government's practice in the field of social security, referring to comlaints of workers' and retired workers' organizations of the country. He urged the Government to consider these problems on a priority basis and to resolve them. He also requested the ILO and its competent bodies to follow developments closely.

The Worker member of Brazil stated that certain aspects of this case were worrying. The putting into operation in 1992 of the process of privatization of the social security system entailed consequences for the application of Convention No. 102. In fact, the Committee of Experts' comments raised certain doubts about the effective application of the Convention. The Government did not provide explanations on this point. Regarding the health-care benefits of the private scheme, the Committee of Experts requested additional information in order to evaluate whether services supplied by the health-care providers (EPS) cover in practice the whole population, and particularly persons having low means of subsistence, within the framework of a simple cover system. There was also a question whether medical benefits were provided at the level established by the Convention and whether financial participation required in their provision was not too high. It was worrying to note that the establishments providing health-care benefits under the auspices of the EPS or through their own services were entitled to a credit from workers' contributions equal to 25 per cent of those contributions. Besides, since the EPS covered only salaried workers, they protected only 21 per cent of the active population, which was hardly equal to 11 per cent of the total population. It resulted in a situation whereby the amounts absorbed by the private system did not correspond to the number of persons protected by that system. The Government did not supply samples of insurance policies concluded with an EPS, which made it difficult to know the guaranteed scope of coverage and its precise cost for insured persons. The

speaker stressed that only 104,100 workers were protected by the EPS. Thus, only 0.4 per cent of the population could benefit from the protection guaranteed by the Convention. Regarding the participation of representatives of persons protected in the administration of the system, the Government admitted that there was no such participation at the system supervisory bodies, and did not furnish information either on any participation at the level of the EPS and the enterprises' own health-care services.

Regarding the pensions scheme, it turned out the workers could not really choose between the public and private system. In fact, even if such a possibility existed on paper, one should know that such a choice was to be made in writing within a ten days' term. This would be the only period of time during their working life when workers had a choice, since once they had chosen the private pension system, they could not re-join the public one.

The Worker member of France stated that the reforms of the social protection systems had been the object of many discussions within the Committee. The reforms made in Latin America in the 1990s had many points in common, and as such, under the pretext of modernization, contribution systems guaranteeing workers' collective participation were being privatized. The individualization of risk provoked an increase in precariousness and poverty.

It was hoped that the Government would fulfil its obligations and honour its promises. It should, however, have already been able to honour them, by supplying the Committee of Experts with the responses requested and by recognizing that workers were not associated with the management of the system. These failures raised doubts about the content of the report which would be communicated. The Government absolutely had to give honest and complete answers to the requests of the experts and supply the relevant information on the viability of the system. It was essential to ensure the participation of employees in the administration of the bodies which were to guarantee their fundamental rights, in this case, the right to health and the right to old-age pension benefits.

The Government had pursued a deliberate policy of destruction of the public system to the benefit of the private system. Instead of bringing the necessary changes to the old public system, it had preferred to use funds from the privatization of national enterprises and from public indebtment to put in place a new privatized health and pension system. Convention No. 102 allowed for the coexistence of different components in the social security system, public, private or mixed ones, but whichever system was chosen, the Government had to respect the obligations that resulted from the ratification of this Convention. It had to supply all the information requested and envisage the postability of pensions, that is, workers should have the power to transfer at any moment, funds they had placed in the private system of capitalization.

The Employer member of Chile stated that many industrialized countries had opted for a voluntary pension scheme, based on individual capitalization, which would offer more guarantees than the pay-as-you-go system, which entailed risks of bankruptcy. Although in Latin America the level of voluntary savings was extremely low, the speaker asked that the possibility to use the formula of individual investments be provided to the developing countries as, when implemented with skill, this formula would prove very profitable and offer better pensions.

The Government representative thanked the Employer and Worker members and the trade unionists for their statements. He noted that in 1991 his country had abolished a single pension scheme based on a pay-as-you-go system and regulated by Act No. 19-9/1990. He explained that until that date, the direct contributions of the workers had been misappropriated and had been used, among other things, in order to build roads, as a result of which they had never been retrieved. In addition, the previous Government had tripled the number of social security workers, which had passed from 15,000 workers in 1985 to 45,000 in 1990. These contributions were also used in order to buy property and make various investments, which contributed to precipitate the failure of the system.

For this reason, a non-compulsory private pension scheme had been set up, which the workers who had been defrauded by the pay-as-you-go system opted to join. The speaker specified that according to this system, if during the first eight days of work the employee did not opt for a scheme, it would be assumed that he had elected the individual capitalization account and this did not lead in any way to an elimination of the worker's freedom of choice.

The speaker reiterated his commitment to supply to the ILO, before 1 September 2002, all the necessary information so that the Experts in charge could evaluate and examine it, after which they would certainly reach the obvious conclusion that the current Government administered properly the insurance systems. He added that, contrary to the earlier system, the present one guaranteed minimum pensions both with the private scheme and with the pay-as-you-go one.

The Worker members emphasized the role of the State in the field of social security, as reaffirmed by the Committee of Experts in its 1989 General Survey on the social security protection in old age. The Committee of Experts pointed out that the problems facing social security, and national pension schemes in particular, were by no means due to the nature of the institution itself but were mainly caused by external economic factors. In the social field, more than anywhere else, the State's role was vital, since it was to guarantee, despite difficult economic conditions, the institution's ability to meet their pension commitments. Besides, the employers' responsibility in this sector should not be underestimated. In this regard, a question arose about the employers' contribution into the private schemes introduced in Peru. The concept of decent work presupposed the right to decent social security. Measures to guarantee this right contributed to the maintenance of social peace. The Government therefore should be requested to provide, as soon as possible, a reply to the Committee of Experts' requests, supplying the most detailed information.

The Employer members stated that the Convention pertains to a very complex issue, which was indirectly reflected by the relatively limited number of ratifications it had obtained. They disagreed with the statement of the Worker members that the coexistence of both a public and a private scheme was permitted only as long as the private system was subject to the same requirements as the public scheme. This would mean that there would be no difference in the systems except in name. In comparison, however, the private system was much more successful in the long term than the public system and therefore better for the persons insured.

The Employer members stated that the accusations made concerning ideology came from critics of the private system. They considered these kinds of statements to be of no value since the only thing that counted was the benefit conferred to the insured person. They indicated that there were two kinds of pension schemes within the social security system: the traditional public allocation system and the modern individual capitalization system. They were convinced that the latter scheme functioned much better. This country which had implemented the traditional system, was now facing many problems with the public system. It was, therefore, offering an additional private pension system that constituted a stabilizing factor to the traditional public pension system.

In conclusion, the Employer members said that the Government should provide detailed information in reply to the comments of the Committee of Experts, so that this Committee would be able to provide its analysis.

The Committee took note of the declaration of the Government representative and of the discussion that had taken place. The Committee observed that, since the introduction of the new health-care and pension schemes (particularly the private ones) in 1997, the Government had not supplied the detailed information requested by the Committee of Experts, which was necessary for the evaluation of the conformity of these schemes with the Convention. Even if Convention No. 102 was conceived in flexible terms and the minimum social security level could be attained by different means, the Convention nevertheless fixed certain principles of general scope relating to the organization and functioning of social security schemes. In order to enable the Committee of Experts to examine whether effect had been given, in law and in practice, to these principles, as well as to other provisions of the Convention, the Committee persistently requested the Government to communicate for examination by the Committee of Experts at its next session in 2002 a detailed report concerning all the information requested by the Committee of Experts. It noted in this connection the Government's declaration concerning its intention to comply with the obligations arising from the Convention. The Committee also noted the Government's indication that it would supply as early as possible a detailed report, which should be done before 1 September 2002.

Convention No. 105: Abolition of Forced Labour, 1957

Pakistan (ratification: 1960). **A Government representative** said that the Committee's deliberations over the years had provided effective guidance to member States in the implementation of international labour standards and that he therefore welcomed dialogue with the Committee.

He said that Pakistan had launched a far-reaching agenda of labour reforms, resulting in major reforms in labour legislation aimed at making the public sector, and particularly government institutions, more responsive to the needs of the poor and of workers. Following tripartite consultation, the consolidation of over 72 existing labour laws into six broad categories would shortly be approved. The six categories were industrial relations, wages, employment conditions, human resource development, labour welfare and the

social safety net, and occupational safety and health. A Labour Advisory Board had recently been established to act as an apex body for tripartite consultations. Bilateralism and social dialogue were being promoted through the establishment of the Workers-Employers Bipartite Council of Pakistan (WEBCOP). The Government fully supported the initiative by employers and workers to establish provincial chapters of WEBCOP to provide a forum for permanent dialogue. The measures taken included raising the monthly minimum wage for unskilled workers to 2,500 rupees, improving maternity benefits, doubling compensation for workers in the event of death or serious injury, and increasing the old-age pension for industrial workers. A national action plan and policy were being pursued in partnership with the ILO for the elimination of child labour, and a national action plan and policy were being formulated for the abolition of bonded labour. In July 2001, a tripartite labour conference had been convened after a lapse of 13 years. The conference, inaugurated by the President of Pakistan, had been attended by workers, employers and government representatives. Its recommendations, which covered almost all the points raised by the Committee of Experts, were at different stages of implementation. He emphasized that the aim of these structural changes was to bring about a reform in the social sector, despite the current domestic and external constraints.

Turning to the points raised by the Committee of Experts, he said that the purpose of the Pakistan Essential Services (Maintenance) Act, 1952, was to ensure the uninterrupted supply of goods and services to the general public. Its application had been extremely restrictive and, while it remained on the books, no individual had been forced to work without his or her consent. Indeed, industrial relations in Pakistan were exemplary and there had not been any strikes or lockouts for the past five years. In view of the comments by the Committee of Experts and the recommendations of the tripartite Commission on Consolidation, Simplification and Rationalization of Laws, it had been decided to review the Industrial Relations Ordinance of 1969. A new Ordinance had been submitted for approval by the Cabinet, after obtaining the consent of both workers and employers, and would in large part address the concerns of the Committee of Experts. However, this was only one aspect of the solution that was being pursued. As he had informed the Committee the previous year, most of the public sector organizations which came under the Essential Services Act were undergoing privatization, including WAPDA and the telecommunications and oil and gas sectors. The Essential Services Act would no longer be applicable when the respective organizations had been fully privatized.

With reference to the comments of the Committee of Experts concerning the West Pakistan Press and Publication Ordinance, 1963, he affirmed that the press in his country was completely free. The Ordinance had lapsed and no such law was in force. He therefore requested the Committee of Experts to withdraw its observations on this matter.

With regard to the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, he assured the Committee that their application was extremely restrictive and that conviction under the Acts was only after due process and in conformity with his country's international obligations, including those deriving from the Convention. He emphasized that his country was passing through extraordinary times, particularly since the events of 11 September. His country was in the forefront of the fight against terrorism and faced very difficult political circumstances, in a particularly difficult political environment in the region. While noting the matters raised by the Committee of Experts, he expressed the opinion that, under the present circumstances, any change to the existing laws might not be feasible, particularly those related to the security of the country.

Turning to the comments made by the Committee of Experts on the Penal Code, he reaffirmed the commitment of his country to the promotion and protection of human rights, in accordance with both Islam and his country's international obligations. All citizens of Pakistan were equal before the law and the Constitution of Pakistan upheld and guaranteed the fundamental rights of minorities, who constituted some 4 per cent of its population, and who were free to profess and practise their religion and culture.

In conclusion, he reaffirmed that, despite multidimensional challenges, his Government was making every effort to bring about the necessary changes. He would therefore welcome any constructive recommendations that it might make.

The Employer members recalled that the case had been discussed by the Committee on 12 occasions since 1981, most recently in 1999. On some of those occasions the Government representative had not been so forthcoming as he appeared to be today. The report of the Committee of Experts on this case covered six main issues and the Employer members appreciated that it was not possible to cover them all in any depth in a short period. With regard to two of these issues, namely the Pakistan Essential Services (Maintenance) Act, 1952, and the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, the Employer members believed that it was necessary to take into account the contemporary geopolitical realities facing the country, which were giving rise to evident difficulties in terms of basic governance, even with regard to one of the fundamental workplace rights, as set out in the Convention. It was not possible to apply identical solutions under all conditions and all that the Committee should do in the present situation was to urge the Government to make every effort to improve the situation as soon as possible.

With regard to the Security of Pakistan Act and the Political Parties Act, the Employer members believed that the comments by the Committee of Experts did not contain sufficient information for the Committee to engage in an in-depth examination of the issues. They therefore called upon the Committee to request the Government to provide detailed information on all the matters raised by the Committee of Experts in a timely manner, so that the Committee could base its future examination of the case on a fuller assessment of the current situation. For example, the Government representative had referred to the reorganization and amendment of labour and employment legislation and of the renewal of tripartite dialogue at the national level. The Committee did not at present have any way of assessing how valid these developments were. Nor was it entirely clear to the Employer members whether the Committee of Experts in practice had a clear understanding of the issues involved in each of the points that it had raised, and whether the situation as described by the Committee of Experts was indeed the situation at the present time. The Employer members therefore encouraged the Government to take measures in each of the areas of concern raised by the Committee of Experts with a view of bringing its law and practice into conformity with the Convention.

The Worker members agreed that this case was very familiar to the Committee. In the interest of saving time, they would not examine in depth all the points raised by the Committee of Experts, but referred to their previous statements on the case. In addition, any significant new developments would be covered by the Worker member of Pakistan. The Government representative had provided information on a number of new developments in the country. The Committee would have to wait until the Committee of Experts had examined all the relevant information. If indeed genuine tripartite dialogue was being promoted and encouraged, this would be very important and useful for the country's future economic and social progress. Nevertheless, the Worker members' knowledge of the case meant that they retained certain doubts as to whether the process of tripartism in the country was really genuine. Indeed, it was strange to refer to tripartite dialogue when the essential conditions for free trade union activities in the country were not present. As indicated by the Employer members, the conclusions of the Committee should encourage the Government to take the necessary measures to bring its law and practice into conformity with the Convention, but should at the same time be firm and sharp in recalling the problems which remained.

The Worker member of Pakistan thanked the Government representative for the information provided on recent developments in his country, including the holding of the national tripartite conference and the codification of labour laws. He agreed that his country was facing a difficult situation, with volatile northern and eastern borders, and was heavily involved in the international alliance against terrorism. He noted the undertaking by the Government representative to take action to give effect to the comments of the Committee of Experts and the national tripartite conference, and called for such action to be taken as soon as possible.

He recalled the comments made by the Committee of Experts and the Committee on Freedom of Association concerning the very broad definition of essential services used by the Government which covered certain services, such as railways which were not accepted as essential services in the definition used by the ILO's supervisory bodies. The Government representative had suggested that the problem of the restrictions placed on trade union action in these services would be resolved following their privatization. However, he emphasized the importance of the workers in the services involved benefiting from their full rights of freedom of association and collective bargaining before any privatization, so that the necessary protective measures could be taken. A large number of workers would be affected by the proposed privatizations, in particular Karachi Electric Supply Corporation, Telecommunication, Railway, Banks, Oil and Gas, etc., and it was essential to provide them with an effective safety net. Yet, the management in the telecommunications and railway industries and Karachi Electric Supply Corporation in particular had been making use of the provisions of the Pakistan Essential Services (Maintenance) Act to prevent workers from presenting their legitimate demands, without holding

any type of social dialogue with the staff. In particular, he referred to workers who had gone on strike and been arrested in Quetta and called for their immediate release as a demonstration of the sense of responsibility and the good will to which the Government representative had been referring. He urged the Government to provide an independent and impartial machinery for adjudication of their industrial disputes to workers engaged in essential services in strict sense as defined by the Committee of Experts. He also demanded to repeal section 2/A Civil Service Tribunal Act (Amendment) 1998 which debarred from approaching the Labour Court or National Industrial Relation Commission the workers engaged in declared essential services and other public sector organisations. He called upon the Government to seek the technical assistance of the ILO in order to help in the implementation of the required measures to remedy the situation. He reaffirmed that the social partners had an essential role to play in social development and that a policy of democratic participation and dialogue would provide an essential basis for improving compliance with the Convention, thereby raising the well-being of the workers.

The Worker member of Colombia indicated that on several occasions he had had an opportunity to discuss with the representatives of the Government of Pakistan the serious violations of this Convention, and of other fundamental ILO Conventions on, among other matters, child labour, slavery and bonded labour, the unacceptable conditions of workers in the merchant navy and the restrictions on the right to strike. The Workers still had reservations concerning the real progress made. The Committee of Experts had again expressed its concern with the manner in which the Government restricted workers' rights, by having recourse, among other methods, to the inclusion in essential services of the activities which, in reality, did not deserve such a classification, such as the Ghazi Barotha hydro power project. The workers of Pakistan were also concerned with the limitations on the freedom of the press which made any democratic discussion difficult. He called on the Government to guarantee the rights of the population in general and those of workers in particular, and not to forget that words blew away with the wind, but that promises had to be kept.

The Worker member of Singapore directed her comments in particular at the Pakistan Essential Services (Maintenance) Act, 1952, which contravened the Convention in various ways. While noting the information provided concerning the review of legislation in the country, she recalled that Article 1(b) and (c) of the Convention was clear and specific in prohibiting the use of forced or compulsory labour for purposes of economic development or as a means of labour discipline. In other words, it enshrined the right of individuals to decide whether or not to work, and for whom and under what conditions they would do so. This right was so sacrosanct that economic growth alone did not constitute sufficient justification for its denial to anyone. Nor should forced labour be used as an instrument to suppress the legitimate exercise of trade union and workers' rights through the imposition of the obligation to work in the case of labour disputes. The basis for this principle was evidently to prevent oppression and to recognize that workers were not commodities, but had dignity and self-respect which required protection. In this respect, the provisions of the Act which prevented workers from leaving employment without the approval of their employers was oppressive and unreasonable. It opened the door to serious abuse and forced people to work against their will.

With regard to the right to strike, the provisions of the Convention were also clear that the classification of a particular service as essential was not in itself sufficient to deprive workers of their right to strike or to have access to adjudication machinery. For a service to be regarded as essential under the Convention, and thereby justify the imposition of restrictions, it had to be such that its disruption would cause actual danger to life or health. The Government's decision to lift the ban on strikes in WAPDA was therefore welcome, although insufficient since the ban on strikes continued to be imposed in a number of other public utilities which were not essential under the definition relating to the Convention. Furthermore, it was no relief to workers in those services to know that following privatization they would be able to take industrial action, when such action was required before privatization. She therefore urged the Government to remove the restrictions on strikes and to restore the right of workers to terminate their contracts of employment freely. She suggested that the Government should call upon the technical assistance of the ILO to take the necessary measures in this respect.

The Employer member of India expressed strong opposition to situations of forced labour wherever they occurred. Violations of this fundamental Convention needed to be taken seriously. However, he expressed concern that the term "forced labour", which had a specific connotation, was being misinterpreted. He said that the situation in developing countries, such as Pakistan, needed to be considered in relation to the actual conditions in those countries. He believed that the Committee of Experts had not achieved a full understanding of the real situation in this case. The Pakistan Essential Services (Maintenance) Act, 1952, prohibited employees from leaving their place of employment or abstaining from work in a concerted manner in essential services which were vital in the national interest. Workers going on strike or abstaining from work in such services were liable to serious penalties. It was of great importance in developing countries for the government to safeguard the continued provision of essential services, such as power supply, railways, telecommunications, water and food on an uninterrupted basis. Regulations needed to be adopted to this effect and the above Act should be viewed as a measure which complied with this duty of the Government. It would be a misinterpretation and distortion of the spirit of the Convention to interpret such regulatory mechanisms as involving compulsory or forced labour. The provision of a special mechanism in the law to deal with industrial disputes in essential services through their submission to an independent judicial authority to provide justice to the workers should be considered adequate positive action. Moreover, the political affiliations of trade unions in many developing countries meant that strikes were often called with political motives. It should also be recalled that strikes and work stoppages in essential services could lead to violence and damage to plant and machinery, as well as risks to life. In conclusion, he reaffirmed that the interpretation of restrictions on work stoppages in essential services as "forced labour" would only penalize governments of developing countries, which were struggling to maintain economic growth in a context of increased international competition and the market-driven economy.

The Government representative reaffirmed his belief in social dialogue, which was being actively pursued in his country. He also emphasized the will of his country to address the problems that had been raised in the comments of the Committee of Experts in a careful and constructive manner. A number of the Acts to which reference had been made had now lapsed. Those that were still in force were under constant review. With reference to the Karachi electricity company, he had insisted that measures be taken to safeguard the interests of the workers concerned before privatization. In conclusion, he said that his Government's action was intended to achieve improvements in the situation of citizens and workers.

The Worker members, with reference to the statement by the Employer member of India, noted that his interpretation of the Convention did not coincide with that of the ILO supervisory bodies. Moreover, his comments concerning trade unions in developing countries had been superficial and incorrect, as well as being largely irrelevant to the case at hand.

The Employer members wondered to what extent the situation as described in the comments of the Committee of Experts was really the current situation in Pakistan on many of the issues that had been raised. For example, with regard to the Pakistan Essential Services (Maintenance) Act, the Government representative had suggested that it was not applied in practice, while the Worker member of Pakistan had indicated that it was indeed applied. The Committee therefore needed to have before it a definitive report on current developments, including the consolidation of labour laws. The Employer members therefore called for the laws that were enacted to be provided to the Committee of Experts for its analysis, which would provide a solid basis for the re-examination of the case by the Committee in future.

The Committee took note of the statement by the Government representative and of the discussion which ensued on the various questions which had been raised in the Committee of Experts' comments for several years, and which had also been examined on several occasions in this Committee. These questions related to divergences between various legislative provisions and the Convention, namely the Pakistan Essential Services (Maintenance) Act, 1952; sections 100-103 of the Merchant Shipping Act; the Security of Pakistan Act, 1952; the Industrial Relations Ordinance (No. XXIII of 1969); sections 298B and 298C of the Penal Code; and the Press and Publications Ordinance, 1963. The Committee noted, in the same way as the Committee of Experts, that under these provisions it was prohibited for workers in essential services to leave their employment, even after giving notice, without the consent of the employer, or to strike, subject to penalties of imprisonment that might involve compulsory labour. The Committee also noted that infringements of the provisions restricting the rights of expression and association, as well as the peaceful expression of religious views, were also punishable with imprisonment which might involve an obligation to work.

The Committee took note of the privatization of many essential services and of the Government's intention to submit the new labour legislation to tripartite consultation. The Government had also undertaken to consult the social partners on the privatization

of the Karachi Electric Supply Corporation. The Committee expressed deep concern at the lack of progress in bringing the national legislation into conformity with the Convention. It urged the Government to take the necessary measures as soon as possible in order to ensure the application of the Convention.

United States (ratification: 1991). **A Government representative,** noting that this was the first occasion on which a case concerning her country was examined by the Conference Committee, recalled that the United States had ratified the Convention in 1991 following a rigorous four-year review by the Tripartite Advisory Panel on International Labour Standards (TAPILS), a subcommittee of the President's Committee on the ILO, which was a high-level presidential advisory committee of tripartite composition. The TAPILS review of the Convention had involved an in-depth examination of its provisions, its negotiating history, the observations of the Committee of Experts and careful comparisons with United States law and practice. During the course of its review, TAPILS had submitted over 40 detailed written questions to the ILO to address a wide range of issues, and had held numerous meetings with ILO officials to clarify the meaning and scope of the Convention. In the end, it had reached the unanimous tripartite conclusion that United States law and practice fully conformed to all the obligations set forth in the Convention. The finding was in turn endorsed by the President's Committee, the President and the Senate.

During the TAPILS's review, an area of particular concern was Article 1(d), dealing with forced labour as a punishment for having participated in strikes. The question that arose was whether persons imprisoned for participating in strikes considered legal by ILO standards, but illegal under United States law, might be required to perform prison labour prohibited by the Convention. This situation could occur under United States law for certain non-essential public or private sector workers, such as teachers, who disobeyed a court order enjoining strike activity and who were subsequently imprisoned for being in contempt of court. She noted that the prohibition or restriction of strikes per se was not germane to the Convention and that penalties for striking were relevant to the Convention only when they included the imposition of forced or compulsory labour.

After a thorough examination of federal and state prison law and practice, TAPILS had found, first of all, that the imprisonment of strikers for contempt of court was a rare occurrence in the United States. Furthermore, persons jailed under these circumstances were considered "pre-trial detainees" rather than ordinary prisoners. She added that the Federal Bureau of Prisons regulations applicable to all federal prisons, as well as many state and local prisons, prohibited the imposition of forced or compulsory labour on pre-trial detainees. Federal guidelines developed by the Department of Justice urged all other state and local prisons to apply the same prohibition of forced labour. In addition, the American Corrections Association, the private organization most concerned with state and local prison practices, had developed accreditation standards that were nearly identical to the Bureau of Prisons regulations and the Department of Justice guidelines. All of these regulations and guidelines indicated that pre-trial detainees could not be required to work, other than doing housekeeping tasks in their own cells or in the community living area. TAPILS had been unable to find a single instance in which labour was exacted contrary to these guidelines. TAPILS had therefore reached the unanimous tripartite conclusion that persons imprisoned for contempt of court as the result of behaviour relating to an illegal strike were not subject to prison labour in violation of the Convention.

She explained that since 1997, her country had been engaged in a dialogue with the Committee of Experts about the application of Article 1(d). Noting that contempt of court could be classified as either civil or criminal, the Committee of Experts had asked about the status of persons imprisoned for criminal contempt. The Government had reported that TAPILS had examined in great detail the law and practice with regard to contempt of court, including an examination of actual instances in which individuals had been sent to jail as a result of contempt orders in labour strikes. It had explained that TAPILS had determined that, with regard to labour strikes, the treatment of individuals jailed as a result of criminal contempt did not differ from those individuals jailed for civil contempt. In the present observation, the Committee of Experts appeared to have accepted this explanation.

In paragraphs 7-10 of the observation, the Committee of Experts had introduced a new line of questions about the possibility that a person engaging in an illegal strike could be subject to forced labour, focusing on law and practice at the state and local levels. In particular, the Committee of Experts considered that certain provisions of the General Statutes of the State of North Carolina were contrary to Article 1(d). In response, based on a review of the legislation in question, she indicated that participation in an illegal strike by public employees in North Carolina was indeed classified as a Class 1 misdemeanour. A first-time offender was sentenced to "community punishment", which by law could not involve any jail or prison time. Community punishment, in most cases, only required the payment of a fine. A second, third or even fourth misdemeanour conviction was punishable by community punishment, by intermediate punishment (supervised probation) or by "active punishment", which the Committee of Experts noted involved imprisonment. She emphasized that it was important to understand that this type of conviction did not require a sentence of active punishment. But in any event, the sentence in this situation would be limited to 45 days, no matter what kind of punishment ordered. Sentences of less than 90 days, according to North Carolina law and practice, were served in county jails and not state prisons. She noted that the work requirement cited by the Committee of Experts related to the North Carolina *state* prison system, but that county jails had no similar work requirements.

Taking the example of a person with five or more previous misdemeanour convictions, who had nevertheless obtained employment with the State of North Carolina, and who had been found guilty of participating in an illegal strike, she explained that once again the sentencing options were community punishment, intermediate punishment or active punishment. However, in this instance, the sentence could be up to 120 days. If the sentence was active punishment and was over 90 days, then the person *could* be housed in a state correctional facility and therefore be required to work. But in the view of her Government and of the North Carolina legal authorities, this was a hypothetical scenario so remote that it was a virtual impossibility. Indeed, if this situation were to occur, the more serious sentence, and the possibility of prison labour, would be the consequence of the individual's recidivism, that is for engaging in activities resulting in multiple convictions, and not for mere participation in an illegal strike. Research had disclosed no history of strikes by public employees in North Carolina. There were consequently no known instances of any convictions of strikers under this law. Her conclusion was therefore that North Carolina law was in accord with the letter and spirit of the Convention, and that no modification of the legislation was warranted. She hoped that the Committee of Experts, after further study, would endorse this conclusion.

She reiterated that, in the course of its extensive review, TAPILS had never found a single instance at the federal, state or local level of forced labour in violation of Convention No. 105. Nor had any such instances come to light in the years since TAPILS had concluded its review. Notwithstanding the fact that in the future, as in the case of North Carolina, the remote, hypothetical possibility might be discovered that forced labour might be imposed on an illegal striker, she continued to believe that the original tripartite conclusion of TAPILS, upon which the ratification was based, remained valid, namely that United States law and practice were in full conformity with the Convention. Nevertheless, she added that the issues raised would be thoroughly examined in the Government's supplemental report to the Committee of Experts, which would, as usual, be prepared in consultation with the tripartite partners. The report would also address, to the extent that they were relevant to the Convention, the issues raised by the ICFTU. In conclusion, she emphasized that her Government took seriously its obligations relating to ILO Conventions and welcomed continued dialogue with the Committee of Experts and, when necessary, the present Committee.

The Worker members thanked the Government representative for her explanations. This case dealt with three different violations of the Convention, which had been ratified by the United States in 1991: forced labour of prisoners; the link between freedom of association and forced labour; and forced labour of migrant workers. The ICFTU communication provided concrete information on forced labour, the victims of which were migrant workers in United States dependent territories and migrant domestic workers in the United States. The Government needed to take the necessary measures so that migrant workers who went to the United States to live and work in all freedom were not abused and ill-treated by their employers.

Article 1(d) of the Convention required each ratifying country to eliminate forced or compulsory labour and not to use it in any form as a punishment for participating in strikes. This provision was important because it provided minimum safeguards to workers and trade unionists who used strikes as a means of last resort in order to defend their rights, interests and claims. It was unacceptable that strikers should be subjected to forced labour on the grounds of their trade union activity. The legislation of North Carolina specified that strikes by public employees were illegal and that participants in-

volved in such strikes were liable to imprisonment involving the obligation to work.

As recalled by the Committee of Experts, there was only one exception to the prohibition specified in Article 1(d) of the Convention, namely essential services in the strict sense of the term. The extremely broad provisions contained in the general legislation of North Carolina did not allow this exception to be invoked and were contrary to Article 1(d) of the Convention. The Government should supply information on whether this kind of legislation existed in other states of the United States. It should take the necessary measures to ensure that the legislation was brought into conformity with the provisions of the Convention. This also applied to the legislation of the states. By ratifying the Convention 11 years ago, the Government undertook the obligation to remedy any contradictions if the need arose.

With regard to forced labour in prisons, the Committee of Experts referred only to the ICFTU communication, without formulating any observations on the allegations contained therein. The Committee of Experts no doubt wished to obtain clarifications from the Government regarding this point. The Government was therefore requested to provide written information to the Committee of Experts on the initiatives it intended to take to put an end to such a situation and to bring its law and practice into conformity with the Convention.

The Employer members indicated that, even though this was the first time that the Committee had examined a case concerning the United States, it would of course be dealt with in the same manner as any other case, namely on the basis of the information contained in the report of the Committee of Experts. While several paragraphs of the report of the Committee of Experts reproduced allegations transmitted by the ICFTU, one paragraph concerned the alleged exploitation of forced labour in the Northern Mariana Islands. The question arose as to why these allegations had been described by the Committee of Experts in detail, since it had correctly concluded that the Convention was not among the ILO standards which had been declared applicable to that territory by the United States. With regard to the allegations that migrant domestic workers had to perform forced labour, the Employer members emphasized that the Conference Committee could not assess the situation at this stage, as the Government had not yet had an opportunity to indicate its position on this point.

Point 5 of the observation of the Committee of Experts raised the issue of the possibility that persons detained for engaging in illegal strikes, and particularly those detained for contempt of court, would have to perform prison labour. In this respect, the Employer members noted the ruling by the Supreme Court concerning the distinction between civil and criminal contempt and its implications for the obligation to perform prison labour. In view of the obvious complexity of the issue, they referred to the indication by the Government representative that sentences of imprisonment for participating in illegal strikes and in purely labour-related disputes never occurred in practice. The Employer members noted that the Committee of Experts evidently entertained certain doubts on this matter, which had not been fully explained in its report. They also believed that the statement by the Worker members on this case amounted to an endeavour to reverse the burden of proof by calling upon the Government itself to identify other instances in which the Convention might be violated. In the view of the Employer members, this attempt to seek proof of the violation of the Convention directly from the Government was not justified.

With regard to the case of North Carolina, the Employer members observed that in the event of participation in illegal strikes in the public service, a Class 1 misdemeanour, a distinction was made between first offences, for which sentences of "community punishment" were incurred, and cases of second convictions, for which sentences of "active punishment", namely imprisonment, could be given. In this respect, the Committee of Experts had referred to its 1979 General Survey on the abolition of forced labour in stating that it was not incompatible with the Convention to impose penalties (even if they involved an obligation to perform labour) for participation in strikes in the civil service or essential services, provided that such provisions were applicable only to essential services in the strict sense of the term, that is services whose interruption would pose a clear threat to the life, personal safety or health of the whole or part of the population. However, the Employer members observed that there was a divergence between the wording given in the observation and that of the original General Survey. Even though this point was not essential for the evaluation of the present case, it was curious and inadmissible to pretend to quote from a general survey and then not to use the correct wording. They added that, despite its general support for strike actions, the Committee of Experts had acknowledged limitations to this right in its definition of "essential services". In this respect, it was the view of the Employer members that it was the right and duty of every State to develop its own definition of the term "essential services" as part of its obligation to protect its population as a whole and all individual citizens. The current definition cited by the Committee of Experts was therefore too narrow, and the definition should also cover civic and cultural aspects and property. Further reflection on this issue was not however important in the present case.

Returning to the case of North Carolina, the Employer members noted that the situation described under point 8 of the report of the Committee of Experts clearly did not represent a mass phenomenon. Moreover, such a situation could give rise to different legal interpretations. The Employer members were in disagreement with the Committee of Experts on this point and considered that such imprisonment did not constitute a violation of the Convention if it was a result of another punishable act in addition to participation in a strike. Moreover, it was immaterial whether such acts were concomitant or consisted of several distinct punishable acts. Moreover, the fact that participation in a strike was one of the punishable acts should not result in the exemption of the person concerned from a specific sentence for the other misdemeanour. They therefore invited the Committee of Experts to reflect this aspect of the case in its report and indicated that they did not currently see any violation of the Convention in this respect. They added that there was a difference in the interpretation of the facts of the case. In its report, the Committee of Experts had stated that prison labour could be required from detainees following a second conviction, while the Government representative had stated that this was the case only upon a fifth conviction and provided that the sentence was over 90 days in length. The situation required clarification in this respect.

In conclusion, they called for the Government to submit the relevant information in a written report to the Committee of Experts so that it could evaluate the case. A final evaluation of the situation was not possible at the present time.

The Worker member of the United States expressed his gratitude to the Government representative for her very technical and detailed comments and for signing up early in the week to discuss this case, which would facilitate the work of the Committee. He emphasized that this was an historic moment in the Committee, as the first time that a case concerning the United States had ever been discussed. The labour movement in the United States looked forward to the day when it would ratify many more ILO Conventions and a discussion of an American case from time to time in the Committee, when questions of application arose, would be a routine matter.

He indicated that this case had two or three general aspects. First, there was the question of whether according to law, especially state law in North Carolina, there was the possibility that a worker imprisoned for violating a no-strike injunction could be subject to criminal charges and, if convicted, subjected to prison labour in violation of Article 1(d). Secondly, there was the question raised by the Committee of Experts concerning forced labour by migrant workers in the United States, and especially in the Northern Mariana Islands.

Regarding the first aspect of the case, the position of the Government seemed to be that the concerns of the Committee of Experts regarding the possibility of a worker in North Carolina being imprisoned and subjected to forced labour for participation in an illegal strike were unfounded. His Government argued that there had never been an actual case of a public employee in North Carolina being placed under arrest for participation in strike activity and then forced to work. So, according to the Government, the United States was in compliance with Article 1(d) of the Convention in both law and practice. In this respect, he provided some additional information regarding the situation in North Carolina. A new state law stripping all public employees, without distinction, of their right to strike had been enacted in the early 1980s to head off a possible collective action by public health care workers. The breadth of the ban went well beyond what the Committee of Experts described in paragraph 9 as essential services in the strict sense of the term (that is, services whose interruption would pose a clear threat to the life, personal safety or health of the whole or part of the population). So public employees in North Carolina, in clearly non-essential industries as defined by the ILO, having engaged in illegal collective actions could be subjected to arrest, conviction and possible prison labour.

He conceded that he had not been able to find any case of this actually happening. Nonetheless, he remained concerned that at least one state had applied an overly broad interpretation of essential services by ILO standards and that by doing so had created the possibility that any striking state employee could be subject to criminal conviction and forced labour. It was his view that such overly broad state prohibitions on the right of public employees to take

collective action severely undermined their right to organize and bargain collectively. He called on his Government to submit information to the Committee of Experts as to whether such broad strike prohibitions had been enacted in other states in addition to North Carolina. He also wished to obtain information on whether any such state laws provided for the punishment of striking public employees found to be in violation of such broad bans of the right to strike by subjecting them to prison labour.

Regarding the second aspect of the case, he referred to the statement of the Government representative that the Convention did not apply to the Northern Mariana Islands as a territory of the United States. Nonetheless, he believed that there were some very important issues regarding the treatment of migrant workers in the Northern Mariana Islands relating to his country's obligation under Article 1(b) "to suppress or not make use of any form of forced or compulsory labour (...) as a method of mobilising and using labour for the purpose of economic development". Statements made by political leaders in the Northern Mariana Islands and by members of the United States Congress had made it quite clear that a major justification for developing a garment industry dependent on migrant labour was the economic development of the territory. He recalled in this respect that the United States had administered the Northern Mariana Islands on behalf of the United Nations from 1947 to 1986, when they had come under United States sovereignty pursuant to a covenant approved in a United Nations supervised plebiscite. The covenant had not immediately extended federal immigration and minimum wage laws to the Islands but provided that Congress could apply federal immigration and minimum wage laws to the Northern Mariana Islands upon termination of the trusteeship agreement, which had occurred in 1986. Since 1986, the temporary immigration and wage privileges granted under the agreement and other trade privileges, had been used to develop a garment industry based on the ability of these Islands to ship products duty free and without quotas into the United States. Contributing to the rapid growth of the industry was the fact that the minimum wage on the Islands was and remained significantly lower than in the United States. In addition, the Islands' own immigration laws had made it easy to import foreign workers, primarily from China and Viet Nam, to work in the garment factories. Such workers were indentured because they were admitted solely by virtue of their employment contract with a specific and sole employer or "master", who was in control of the duration of their stay. If a worker displeased the employer, the contract was terminated and the worker had to leave. These migrant workers now constituted far more than half the population of the Islands.

The stories of exploitation, abysmal working and living conditions, and exorbitantly high labour broker fees had been well documented in the international press over the past few years. What existed today was a sweatshop industry producing for many of the country's best known retailers, which was able to ignore United States minimum wage laws and which had unlimited access to the United States market. Many imports from the Northern Mariana Islands even had "made in the US" labels.

He believed that his Government could do more to end such exploitative conditions. First it could be much more aggressive in enforcing safety and health standards and the Fair Labour Standards Act. Secondly, it should introduce federal legislation to end the temporary minimum wage and immigration privileges and extend federal immigration and minimum wage laws to the Northern Mariana Islands. He called on his Government to introduce such legislation without delay. Finally, he indicated that his Government should take these measures, not because it had a treaty obligation to do so, but because they were the right things to do to ease the suffering of tens of thousands of foreigners living and working in the territory of the United States.

The Worker member of India referred to the discriminatory treatment by the Government of migrant workers in the Northern Mariana Islands. The discrimination suffered by these workers was such that two sets of minimum wages were applied, one of which was applicable to migrant workers. These workers had to pay high fees to employment agencies which recruited them from such countries as Bangladesh, China, Indonesia and the Philippines. They were required to sign agreements with employers stipulating the period for which they had to serve, the fact that they could not demand any wage increases and that they could not join a union. This meant that the wages and working conditions available to nationals of the United States were not applicable to them. Moreover, if they violated these agreements, they had to pay their own expenses to return to their countries. This amounted to serious exploitation by a country which was foremost in the world. Furthermore, such unfair labour practices were in violation of the Convention which had been ratified in 1991. He called for an inquiry by the ILO to ascertain the truth and recommend the appropriate action. In addition, he also strongly protested against the practice prevalent in the United States of privatizing prisons and allowing private prison managers to exploit prison labour.

The Government representative stated that she had taken note of the statements of the Worker and Employer representatives. She indicated that the was preparing a supplementary article 22 report on the Convention. Her Government intended to continue the dialogue and would respond to the comments made in the discussion in respect of all issues relevant to the application of the Convention. She emphasized that her Government would fully participate in the process of supervising the application of international labour standards.

The Employer members considered that the case was fairly clear and that the report of the Committee of Experts had been descriptive, without reaching concrete conclusions. With regard to the calls that had been made for the application of the Convention to be extended to the Northern Mariana Islands, they recalled that this was a matter of national policy which lay within the discretion of the Government. The Committee clearly did not have the right to consider such matters of national policy. Noting the indication by the Worker member of the United States that there was no known instance of the law in North Carolina being applied in the manner referred to by the Committee of Experts, they once again emphasized that there was no justification for requesting the Government to indicate the situation in other states. This amounted to endeavouring to reverse the burden of proof. The only conclusion that the Conference Committee could reach in this respect was to ask the Government to provide all the information requested in a detailed report for further examination by the Committee of Experts. The Conference Committee should not request the Government to review its current legislation in the light of the Convention until the actual situation was clarified. Only then, could a final assessment of the case be undertaken.

The Worker members once again requested the Government to provide more information on the questions raised and on the measures taken to resolve them. There was no doubt that the North Carolina legislation, which provided for imprisonment involving compulsory labour for participating in strikes, was contrary to the Convention. The Government needed to amend its legislation and inform the Committee of Experts on the existence of any similar legislation in other states. This was not a reversal of the burden of proof, but simply a request for information.

The Committee noted the information provided by the Government representative and the discussion which followed. With regard to the legal possibility to punish persons sentenced for having refused to obey an injunction prohibiting strike action, the Committee expressed the hope that the Government would provide information on the situation in law and practice, and that it would report on any action taken to ensure compliance with the Convention in North Carolina, and more generally to prevent any violation of Article 1(d).

With regard to the working conditions of migrant workers, the Committee noted the views of the Government and the information provided during the discussion, which would be reported to the Committee of Experts for its next examination of the application of the Convention by the United States, in addition to any supplementary information that might be made available to the Committee of Experts in the light of the discussion.

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

Qatar (ratification: 1976). **A Government representative** referred to paragraph 2 of the Committee of Experts' observation which noted with interest that the Civil Service Law No. 1 of 2001 had repealed section 82 of the previous law, which gave the authorities the power to end labour contracts with nurses as of the fifth month of pregnancy. Section 110 of the new law gave more privileges to the category of nurses by granting, inter alia, paid maternity leave for two years.

The speaker drew attention to the fact that the Labour Code of 1962 and the Civil Service Law did not discriminate amongst workers on the basis of race, colour, national extraction, sex, or religion. Furthermore, the Constitution declared that all Qataris are equal in rights and duties without discrimination on the basis of race, sex or religion, and the Penal Code imposed penalties on anyone violating these principles. She recalled that the Committee of Experts had welcomed the achievements made by the State of Qatar with respect to education and training for women and their participation in the labour market. For instance, women's participation in the Administrative Development Institute increased from 26 per cent in 1997 to 42 per cent in 2001.

The speaker listed numerous examples of women occupying higher level posts. The participation of women had also increased in the various ministries between 1999 and 2000 due to the government policy to promote the employment of women and the Council of Ministers' Decree on the formulation of specific policies for women, which aimed at reinforcing the role of the family in society and employment. The new draft of the Labour Code also included vocational training and a chapter regulating women's employment and rights. The technical assistance provided by the ILO office in Beirut had provided an expert to help the Government bring Qatar's new draft Labour Code into conformity with the ratified Conventions.

With respect to discrimination on the basis of race, colour, national extraction and religion, referred to in the comments made by the International Confederation of Arab Trade Unions (ICATU), she pointed out that Qatar had not responded to the ICATU's comments as it had already initiated a process of constructive dialogue with them to resolve the issues that were raised in their comment. As a result, the ICATU had withdrawn their comment.

The Government representative pointed out that the State of Qatar was a relatively modern State in view of its recent independence which was only in 1971. Nevertheless, it had been actively taking measures and was involved in numerous forums and symposia on the issues of women, employment, training, and human resources development. Such issues were priorities in Qatar, and her country and it had solicited the ILO's technical assistance in order to examine the labour market and the possibilities of increasing employment opportunities for women, especially in the non-governmental sector.

She concluded by reiterating the commitment of her Government to put into effect the provisions of the Convention through the promulgation of laws and decrees in order to ensure the equality of its citizens as to rights and obligations, without discrimination on grounds of race, colour, national extraction, sex and religion. The Government would provide the Committee of Experts with a detailed report submitted in good time.

The Employer members stated that it was superfluous for the Government to complain about having been placed on the list of cases, as this list had been established a week ago, and recalled that good cooperation amongst the members of the Committee required Governments to be brief in their statements. They noted the positive developments indicated in the Committee of Experts' report, such as the repeal of section 82 of the Public Service Act, which authorized the authorities to terminate the employment contracts of nurses as from the fifth month of their pregnancy, as well as statistical information reflecting increases in the percentage of women employed in various sectors of the economy. With respect to the meaning and significance of Convention No. 111, they pointed out that failure to achieve immediate numerical equality did not mean that an equality policy was not being pursued. Numerical equality would only be possible in a planned economy which prohibited individual choice of occupation. They observed that the persistence of gender segregation in certain fields of employment was a phenomenon witnessed in other regions of the world, including the industrialized countries. The difficulty facing Qatar was therefore a familiar one deeply rooted in ideas and attitudes passed on from one generation to another, and it would take time and experience to overcome the traditional occupational preferences of women and men. Nevertheless, the enactment of specific provisions prohibiting employment discrimination was one step towards eradicating the problem, and on this point they noted that the Government had yet to adopt any such legislation. They concluded by requesting the Government to adopt the measures necessary to ensure real, meaningful equality in employment.

The Worker members noted that the Committee of Experts' report identified several shortcomings with regards to discrimination on the grounds of sex, but had also acknowledged the slight progress made in the areas of education and training and participation in the labour market. The crucial shortcoming, however, remained the absence of a national policy to promote the principles of Convention No. 111. They stressed the necessity of formulating such a policy, and asked that this constitute the main point of the conclusions. Noting that the Government's report to the Committee of Experts focused exclusively on discrimination on the basis of sex, they inquired as to whether discriminatory practices on other grounds existed in Qatar and requested that the Government supply information respecting all the grounds of discrimination covered by Convention No. 111 in its next report. They further requested the Government to provide information regarding the concrete targets of its educational policies concerning women, as well as information on any consultations it may have held with worker organizations. Turning to the report of the Committee of Experts, they expressed surprise that the Committee of Experts had noted the communication from the International Confederation of Arab Trade Unions (ICATU), which alleged flagrant violations of Convention No. 111, without specifying or discussing these violations – which pertained to the unequal treatment of foreign workers, measures depriving foreign workers of their freedom of movement, and significant wage differentials between foreign workers and Qatar nationals. The Committee of Experts should seek clarification as to the nature of these serious allegations, or otherwise make no reference to them at all; merely noting these violations might have created unnecessary confusion. Finally, they expressed the hope that the Government would supply information as to how Articles 2 and 3 of Convention No. 111 were being promoted, and asked that this last statement be included in the conclusions.

The Worker member of Senegal recalled that the case of Qatar was being examined by this Committee because the Committee of Experts had observed that it did not have at its disposal the information to assess concrete measures to actively promote equality in the field of employment and occupation, measures which should be aimed at the elimination of all the forms of discrimination indicated in the Convention. The announcement of a new Labour Code, which would reflect the principles and objectives of the Convention, was certainly a positive element. However, before making any conclusions, it was necessary to wait for its implementation in practice. In this country, a certain number of conservative forces still acted against the provisions of the Convention. It was still difficult to assess the real significance of women's participation in the labour market. Statistical information showing the distribution of men and women in the different occupational sectors showed the existence of a certain level of discrimination. The division found in practice imposed on the Government an obligation to promote genuine equality of opportunity and treatment in employment and occupation. In this regard, the announced repeal of section 82 of Act No. 1 of 2001, as a result of which the employment of nurses could no longer be terminated as from the fifth month of their pregnancy and the nurses could enjoy maternity leave of two years, was evidently a positive event. However, a very evident phenomenon of ostracism against women at the level of ministries and the highest positions in the public service, as well as statistics on the number of women with university degrees seeking employment and, more generally, statistics of the participation of men and women in the labour market, showed the reality of the situation. The Government should be also invited to indicate precisely the measures taken with regard to other forms of discrimination covered by the Convention and, more generally, to describe the policy that it was pursuing, within the framework of genuine social dialogue, in order to make a real break with the past.

The Worker member of Bahrain expressed his appreciation for the Government's report, including the information on economic and social reforms taking place. He also highlighted the role of the regional office in Beirut. He noted the positive steps that had been taken and hoped that the Government would be given the chance to implement the necessary reforms.

The Government representative stated that she had listened attentively to the Worker and Employer members who had spoken. Her Government intended to take into account these views, as well as those of the Committee of Experts. The new law took all of the issues raised into account, and the existing laws governing the public and private sectors did not allow discrimination on any basis. The Government would respond in full in future reports. Concerning allegations of discrimination against foreign workers, the speaker stated that freedom of movement was guaranteed to everyone in accordance with their employment contract, that workers were not forced to do any job without their consent, that they were free to leave before the end of their contract, that they were paid an indemnity for termination of a contract and that employers paid their repatriation costs.

The Committee took note of the information and explanations provided by the Government representative and of the discussion which ensued. The Committee recalled the importance of implementing all the aspects of the fundamental Convention on discrimination. It noted the legislative initiatives announced by the Government and some progress achieved with regard to women's access to positions of responsibility. The Committee emphasized the need to formulate and promote a policy of equality of opportunities and treatment in employment with regard to all the grounds of discrimination listed in the Convention. The Committee noted that no information had been communicated to the Committee of Experts on the manner in which the protection against discrimination on the basis of race, colour, national extraction and religion was assured. The Committee expressed the hope that the Government would provide the complete and detailed information requested and took note of the Government's undertaking to provide full information in the future. It also hoped that the Government would make every

effort, with the assistance of the ILO, to formulate and apply a policy of non-discrimination and equality for all men and women, and in respect of all the grounds of discrimination set out in the Convention, in law and in practice, with the participation of the social partners.

The Government representative wished to clarify that according to last year's Committee of Experts Report, nationality was not one of the criteria for discrimination under the Convention.

Convention No. 122: Employment Policy, 1964

Turkey (ratification: 1977). **A Government representative** referred to the demand by the Confederation of Employer Associations of Turkey (TISK) that the Economic and Social Council be given a legal status, and to the allegation by the Confederation of Trade Unions of Turkey (TURK-IŞ) that consultation mechanisms were not being used; he indicated that Act. No. 4641 on the establishment and working methods of the Economic and Social Council was passed by Parliament on 21 April 2001 giving the Economic and Social Council a permanent legal status. The Economic and Social Council, whose main function involved advisory discussions among representatives of interest groups on macroeconomic and social issues, including policy formulation and implementation on employment problems, had met several times in 1999 and 2000.

With regard to the information requested by the Committee of Experts on the work of the tripartite employment consultation committees established in 12 provinces, the speaker stated that the Istanbul Employment Committee had decided, for instance, to initiate vocational training courses in cooperation with IS-KUR (the recently reformed Public Employment Organization which replaced the former IIBK) on information technologies in order to combat unemployment among young workers as well as to take action jointly with related institutions with a view to fighting clandestine employment. Although the actual performance of these employment consultation committees had not yet been evaluated, their continuing efforts were expected to yield concrete results in the regions concerned. The speaker indicated that his Government would be pleased to provide further information on their performance in its next report.

In an attempt to promote dialogue on the formulation of a national employment strategy, an initiative was taken by IS-KUR to formulate national employment policies supplemented by an "urgent action plan", thus aiming to draw up a National Employment Strategy along the four pillars on employment of the European Union.

Turkey's integration into the global markets since the 1980's had rendered its economy very vulnerable to successive waves of economic crisis, resulting in adverse effects on the productive sectors and employment levels. The various recessions of a secondary nature, the three serious financial crises, coupled with the devastating effects of the earthquake in 1999, also exacerbated unemployment to high levels in Turkey.

However, the Government had taken several measures, including the adoption of active labour market policy measures to combat unemployment. These included adopting legislation to encourage employment by reducing the rate of social security contributions and taxes and deferring their payment to future dates. This legislation was the outcome of social dialogue since it was drafted through consultations among the Ministries of Labour and Finance, Under-Secretariat of Treasury, Union of Chambers as well as the labour and employers' confederations. Other measures included programmes of vocational guidance and education and reform of the banking system.

Concerning the demand by TISK that private employment agencies be permitted, the Decree of 4 October 2000 which reorganized the structure and functions of ISKUR permitted the establishment of private employment agencies along the lines envisaged in the Private Employment Agencies Convention, 1997 (No. 181), which would be licensed and supervised by ISKUR. However, the enabling legislation on which the said Decree was based was struck down by the Constitutional Court for procedural reasons, so there was at present a void, pending the enactment of new legislation on ISKUR.

On the issue of forced retirements at an early age, the speaker stated that the complaint of TURK-IŞ had to be acknowledged, but this situation was due to Turkey's standby agreements with the International Monetary Fund aimed at restructuring the economy and privatizing the ailing state economic enterprises.

The speaker concluded by stating that, while acknowledging that proper economic policies were essential for sustainable employment, he had to limit his references to only those aspects raised by the Committee of Experts. He wished to stress again that the great part of Turkey's unemployment problem was caused by the recurrent financial crises. Both the ILO and the World Bank were aware of the unemployment problem with which Turkey was trying to cope, as evidenced by the projected ILO mission on developing a national employment policy in Turkey – foreseen in the Protocol signed two years ago – as well as the ILO's role in providing assistance cited in the World Bank report (*Component 6: Labour market information*). The World Bank had in the recent past provided financial assistance for a large-scale project on employment promotion (the labour adjustment programme) and the restructuring of the Public Employment Organization.

The Worker members took note of the information presented by the Government. Convention No. 122 concerning employment policy was one of the priority Conventions because employment policy was one of the cornerstones of social policy and of a solid economy. It was the first time that Turkey had been called before the Committee with regard to Convention No. 122 and it was appropriate to note here that, thanks to the regular submission of reports by the Government, the Committee of Experts had been able to observe closely the development of the situation over the past 15 years and to be aware of these developments and especially of the efforts undertaken by the Government.

Naturally, the difficult economic situation in Turkey had a negative impact on employment; this obliged the Government to have an advised policy in this area. The Committee of Experts drew particular attention to Articles 1 and 3 of the Convention. As the Turkish trade unions confirmed, the consultation machinery provided for in this area did not function normally. In fact, the competent bodies did not meet. The Worker members, therefore, hoped that the Government would be requested to engage in a genuine dialogue with the organizations of workers and employers on different aspects of employment policy. Turkey had a very serious problem of unemployment, especially in the cities. In this regard, Article 1 of Convention No. 122 required the Government to formulate an active policy with a view to promoting full, productive and freely chosen employment. The real situation, confirmed by the statistics, was far from reflecting such a policy. Yet access to employment remained for every individual a precondition for a decent life. When talking about decent work, it was appropriate not to forget that for someone who did not even have work, such an objective remained utopian. The Worker members welcomed the signs of goodwill demonstrated by the Government in its written communications as well as in its verbal presentation and they hoped that, to the extent that it would act in consultation with the social partners, the Government would achieve progress in the area of employment. They wished to be kept informed of the development of the situation.

The Employer members commenced by noting that Turkey has appeared before the Conference Committee 17 times over the past 20 years, in regard to various Conventions. The significance of such a high level of appearances should not be lost on the Conference Committee, although the Government had always provided the information requested. Recalling that Convention No. 122 was promotional in nature, placing no specific demands on ratifying governments but rather emphasizing the pursuit of an objective-oriented policy, they drew attention to the fact that the creation of policy often involved an "art of the possible", with numerous possibilities for promoting employment. On this point they noted that the Government had passed a new Decree establishing an Economic and Social Council, thereby creating a legal basis for consultation with the social partners, and requested that the Government supply information on the manner in which tripartite consultations concerning employment policies take place, as per the request made in the Committee of Expert's report. In reference to the request made by the Committee of Experts for further information on the manner in which other groups, such as rural and informal sector workers, were consulted, they pointed out that the informal economy posed particular problems of definition and delineation, and was often characterized by an absence of representative structures.

Noting the criticisms of government employment policy by the Confederation of Turkish Trade Unions (TURK-IŞ), as reflected in the Committee of Experts' observation, they cautioned against taking the employment statistics provided by a government at face value. They recalled that there were different methods of recording statistical information, and stated that only by comparing the various methods utilized can a full sense of what they reflect be acquired. Concerning the criticism that workers were being forced to retire at an early age, they pointed out that the Government had increased the age for pensions and that many countries were currently undergoing rapid changes in the retirement age. In reference to the assertion by TURK-IŞ that public spending had failed to generate jobs, they underscored the fact that employment creation was not the sole objective of public investment; education and healthcare spending were also important priorities, although these invest-

ments did not affect short-term employment rates. Finally, they acknowledged the various difficulties faced by the Government in promoting employment – including the earthquake of August 1999 and the increase in migration from rural to urban areas – and expressed their confidence that the Government would provide the information requested by the Committee of Experts in its next report.

The Worker member of Turkey indicated that he was aware of the negative impact on employment opportunities of the economic crises, of the customs union with the European Union, and of the continuous impositions of the IMF and the World Bank. The Government had taken steps to promote employment that were worthy of praise. For instance, the Government had last year granted permanent status to more than 70,000 workers who had been employed on a temporary basis for decades, and had postponed the payment of 37 per cent of the income tax and of the social insurance contributions of newly recruited workers for a period of one year; the postponement was of 50 per cent for workers holding trade union membership. These positive steps were in line with the requirements of the Convention, but were contradicted by some other actions. Referring to paragraph 2 of the experts' observation, the speaker stated that, although the law on the Economic and Social Council was enacted on 11 April 2001, the Council had never been invited to convene, in spite of the express stipulation of regular meetings every three months. This law had been a good example of tripartite activity, since its text was drafted by a tripartite commission. However, since the Economic and Social Council had never met, it had never been in a position to discuss employment policy with the organizations directly concerned.

The speaker recalled that last year this Committee had discussed the application of the Termination of Employment Convention, 1982 (No. 158), in Turkey. The Ministry of Labour and Social Security had prepared, again on a tripartite basis, a Bill almost in harmony with Convention No. 158 and forwarded it to the Council of Ministers. The Bill was now pending debate in Parliament. Acceleration of the legislative process on this issue would contribute to the objectives of Convention No. 122.

The speaker indicated that it was correct to criticize the Government for violating Convention No. 122; but one should also be aware of the fact that the Government could not pursue a policy of promoting full, productive and freely chosen employment because the interest paid on the public debt exceeded the total tax revenues. The Turkish Government had concluded standby arrangements with the IMF, which demanded extensive dismissals in the public sector. Tens of thousands of workers and public servants were waiting for compulsory retirement.

The financial institutions were providing funds not to create new employment, but to assuage the anger of those dismissed, and they were demanding extensive and rapid privatization of enterprises which then are liquidated or dismiss workers. The demand of these institutions also had led to the termination of subsidies to the agricultural sector. He urged the governments of the developed countries to change the policies of the IMF and the World Bank to promote full, productive and freely chosen employment.

The Worker member of the Netherlands indicated that the issue of Turkey's numerous appearances before the Conference Committee had to be put in relation with the fact that a military coup had taken place in September 1980, thus leading to the jailing of the current Worker member of Turkey and the holding of numerous discussions concerning trade union freedom under Conventions Nos. 87 and 98. With regard to Turkey's relationship with the European Union, the speaker noted that the establishment of a joint consultative committee was one requirement for membership in the European Union. He stated that, although Turkey had formally established a Social and Economic Council, it had as yet held no actual, meaningful consultations with the social partners on matters of employment policy. He drew attention to the European Union's employment policy, which calls for active involvement on the part of the social partners, and concluded by urging the Government to consider this model in designing its own employment policy – especially in light of its ratification of Conventions Nos. 122 and 144.

The Worker member of Romania emphasized that Convention No. 122 was a priority Convention and of great importance to the workers, and it was in this context that the case of Turkey had to be analysed in light of the observation of the Committee of Experts on the application of Articles 1 and 3 of the Convention. With regard to Article 1 of the Convention, according to the Turkish trade unions, the Government's employment policy aggravated the problem of unemployment and its public investments did not create employment. None of the criteria for employment promotion were being implemented to strengthen the private sector. Moreover, many older workers were forced to take early retirement and no measures were taken to avoid collective dismissal. The unemployment rate remained high and youth unemployment remained unchanged. The speaker recalled the sensitive question of the rural exodus and there remained an insufficient number of jobs offered to absorb the number of jobseekers. Underemployment had increased in 1998 and 1999 and was prevailing in both rural and urban areas. Concerning the application of Article 3 of the Convention, according to the information received from the Turkish trade unions, the procedures for consultation were not being followed and there were no means for consultation with rural workers and workers in the informal sector. The speaker requested that the Government make progress in the area of employment policy and emphasized that this approach should be carried out in the context of a dialogue with the workers' organizations.

The Government representative stated that Convention No. 122 was promotional in nature – with no specific solutions, just objectives. He agreed that unemployment was one of the most significant ills in society. All labour legislation was meaningless without a sound employment base. The Government was trying to cope with economic development problems and unemployment. In its next report the Government will detail progress achieved as a consequence of the employment subsidies taking effect. However, there might be a slight increase in unemployment due to the unemployment insurance scheme which took effect in 2002, which would induce more registration of unemployment. He agreed with the Employer members that unemployment rates vacillated and one needed to look at the underlying statistical methods used. Concerning consultations, the law establishing the Economic and Social Council foresees it convening upon the request of one-third of the members. Therefore, the social partners were able to request that the Economic and Social Council convene. The other employment consultation committees were just getting started, but he assured the Committee that efforts on social dialogue would continue. Finally, he quoted a representative of TURK-I^, saying "the Government of Turkey is taking positive steps in order to eradicate unemployment in Turkey, despite the unnecessary interventions of the IMF".

The Employer members emphasized that, although employment policy was of paramount importance, it could not be viewed in isolation. Employment must be considered in relation to other policies, and an integrated approach must be achieved. They stated that tripartite consultation must remain an essential aspect of the implementation and devising of employment policy, and requested the Government to provide further information on all matters relevant to its commitments under Convention No. 122.

The Worker members recognized that Turkey currently found itself in a difficult economic situation, which, inevitably, had negative consequences for employment, and that this situation was in large part the result of factors external to the Government's will, such as the impact of the policies of the International Monetary Fund and the World Bank. Nevertheless, it remained that the Government of Turkey was bound by the obligations it had taken when ratifying Convention No. 122 in 1977. Consequently, the Worker members asked that the Government be requested to take all necessary measures to bring its law and practice into conformity with the Convention by resorting to an open dialogue with the social partners and respecting their freedom and independence.

The Conference Committee notes the statement made by the Government representative, as well as the discussion in the Committee. The Conference Committee recalls that the employment policy Convention is a priority Convention that requires the promotion of full, productive and freely chosen employment within the framework of a coordinated economic and social policy, carried out in consultation with representatives of the persons affected by the measures to be taken. It notes the economic conditions Turkey is currently facing, as well as the various active measures taken by the Government to promote employment, including the adoption of numerous measures aimed at reforming the Public Employment Service and the functioning of private employment agencies. It hopes that the Government will continue to furnish in its next report on the application of the Convention information on progress made in promoting employment. It trusts that its reports on the application of the Convention will also include information on other measures taken to ensure that there is effective consultation in the framework of the Economic and Social Council and that the views of representatives of employers' and workers' organizations, as well as those of other interested parties, are taken fully into account in the formulation, implementation and evaluation of employment policies and programmes.

C. 138

Convention No. 138: Minimum Age, 1973

United Arab Emirates (ratification: 1998). **A Government representative** stated that section 13 of the Basic Statutes on Camel Racing prohibited the employment of children as camel jockeys. Only persons who fulfilled the international requirements of camel jockeys and who were not less than 45 kg in weight were allowed to practice the sport. There were a number of regulations which ensured the safety and health of camel jockeys, penalizing any person violating their rules. The Ministry of Labour and Social Affairs had requested an amendment to section 20 of Federal Law No. 8 of 1980 concerning the regulation of labour relations which defined a young person according to the law as someone who has completed 15 years of age but is under 18 years old. Young persons of both sexes under the age of 15 were not allowed to be employed; and young persons under the age of 18 were not permitted to work in hazardous tasks or in tasks whose nature could jeopardize their health, safety or morals, in conformity with Article 3 of Convention No. 138 and the provisions of Convention No. 182 ratified by the United Arab Emirates in 2001.

The speaker drew attention to the fact that his Government had repatriated camel jockeys to their countries of origin at the expense of the Government on grounds of their non-observance of the requirements needed to practice camel jockeying. This demonstrated the Government's commitment to implementing the regulations currently in force on camel racing and confirmed that such an activity was carried out outside the territory of the United Arab Emirates.

With respect to the Committee's request to the Government to provide detailed information on the two cases of exploitation of foreign children who had been repatriated to their countries of origin, as well as on any proceedings initiated against persons responsible for their presence in the country and on the sanctions applied, he explained that the Ministry of Labour and Social Affairs had asked the police to provide it with all information on the allegations and communications regarding the smuggling of children into the country in general, and into the two cases in particular. In reply, the police had indicated that the notifications registered with them were not an indicator of the bad treatment of children in the country. Such children came into the country with their parents who were responsible for them, due to the fact that the law governing the entrance and residence of foreigners prohibited the entrance of any minor without the guarantee of the parents. The official stamp concerning residence which prohibited remunerated or unremunerated employment (with the exception of wives and unmarried daughters under limited conditions) was further proof of his country's commitment to the law. Allegations to the contrary, including reports from the media, did not identify any specific violations of laws or non-observance of the relevant Conventions. It was the parents who actually urged their children into employment for the sake of money without the knowledge of the authorities. Those parents whose responsibility was proven were referred to the public prosecutor for trial. The investigations carried out by the police concluded that the limited number of such notifications could not be considered an indicator of a widespread practice but reflected rather specific behaviour which was closely monitored by the police.

Referring to the communication of the ICFTU, dated 29 August 2001, on the death of a 7-year-old boy on 11 April 2001 as a result of kidney damage sustained during his two-and-a-half-year period spent as a camel jockey in Dubai and the death of a 6-year-old boy in May 2001, who was seriously injured when he fell from a camel, and the trafficking of hundreds of boys for use as camel jockeys in the United Arab Emirates every year, the speaker indicated that no information on the above allegations was available. He requested more time for his country to obtain the necessary information from the competent authorities regarding these allegations.

The speaker stated that the present system in force to govern the employment of foreigners in the country did not authorize the issuing of a work permit to any person who had not completed 18 years of age, in accordance with regulations contained in Ministerial Order No. 23 of 1981 as amended by Ministerial Order No. 52 of 1989 on the procedures and regulations respecting the employment of foreigners in the Emirates. He concluded by referring to the record of his Government in the field of human rights which focused clearly on children's welfare by providing them with the necessary educational, health, housing and social services.

The Employer members noted that these substantial violations of Convention No. 138 were discussed by the Committee last year, and that, as per the year before, the Government' s response was once again confusing, dubious and provided little concrete information. The Government representative had referred to the Basic Rules Governing Camel Racing of the Camel Jockey Association as evidence that children were not used as jockeys in such races. They pointed out that these rules were of no legal force, and, furthermore, contained no provisions relating to the minimum age. They also noted that the Government representative had failed to respond to the alleged cases of children dying in connection with their work as camel jockeys. They emphasized that the Government needed to produce hard figures relating to the problem, such as an estimate of the number of children working as camel jockeys. In light of the lack of information provided, however, last year's conclusions should not only be repeated, but made more firm. In conclusion, they stated that these were serious allegations and that it was necessary to provoke action from the Government in order to rectify the situation.

The Worker members noted that the Committee had urged the Government to prevent the use of children under 18 as camel jockeys, including through the establishment and imposition of criminal penalties, and to report on the measures taken to combat both camel jockeying and trafficking of children for that purpose. No progress had been achieved in this regard, and evidence of children continuing to be kidnapped or sold to be used as camel jockeys in the United Arab Emirates continued to mount. As proof of this, they summarized several news reports from last year relating to this issue, including stories of the rescue of several young boys, ranging in age from 3 to 8 years, who had been trafficked to work as camel jockeys, beaten and abused. Estimating that 30 boys a month are kidnapped in Pakistan alone and taken to the United Arab Emirates, they stated that these were not isolated cases but a systematic violation of Convention No. 138 which the Government had done little to remedy, in legislation or in practice. The violations continued with impunity because the families that controlled camel races were above the law. They urged the Government to amend the legislation as recommended last year; carry out regular, unannounced inspections to identify, release, and rehabilitate any child being used as a camel jockey; pursue the prosecutions of traffickers and camel jockey masters; and avail itself of ILO technical assistance in developing programmes to eradicate this problem. Should there be no progress, they concluded, the Committee should consider a direct contacts mission to the United Arab Emirates.

The Worker member of Japan stated that this was a clear case of violation of Convention No. 138. Children as young as 5 years of age are forced to work as camel jockey. Some of them are kidnapped or sold by their relatives and trafficked in the United Arab Emirates. All children, regardless of nationality, religion, or sex, have the absolute right to be brought up in a healthy environment, with the affection of their family and support of the community, and they have the right to develop their abilities to the fullest. This is the spirit underlying Conventions Nos. 138 and 182. The United Arab Emirates ratified these instruments in 1998 and 2001 respectively. Nonetheless, young children working as camel jockeys do not enjoy any of these rights. The speaker noted that although the rules of the Federation of Camel Racing prohibit the use of children as jockeys, the rule was not legally binding. The situation was all the more serious given the high per capita income of the country. The speaker supported the recommendations of the Committee of Experts that the Government should take measures immediately to abolish the practice of using children as camel jockeys.

The Worker member of Singapore stated that the existence of children employed as camel jockeys was undeniable. The Committee of Experts' observation noted in paragraph 5 that even the Government's list of repatriated jockeys included a number of children. Although the Government is not responsible for the kidnapping, trafficking, and employment of children as camel jockeys, it is responsible for establishing laws and systems to ensure that no person or organization profits from these violations of children's rights. The laws must be stringent, the penalties harsh, and the monitoring system effective in order to fully deter these abusive practices.

The Government member of Kuwait, speaking on behalf of the Gulf Cooperation Council including Bahrain, Saudi Arabia, Oman, Qatar and Kuwait, stated that the Government of the United Arab Emirates had taken positive steps since the 89th Session of the International Labour Conference and the discussions of the Committee of Experts. The comments of the Government representative indicated that the violations of procedures and regulations reflected individual cases and could not be considered a general practice. Such individual cases occurred contrary to the national laws currently in force and the Government was making serious efforts to put an end to them. He concluded by expressing his full confidence that the Government would take all the necessary measures to put an end to such individual cases, and requested the Committee to give an opportunity to the Government of the United Arab Emirates to complete the necessary measures in this regard.

The Government member of Lebanon, indicated that the Government of the United Arab Emirates had demonstrated its good will in amending the laws in order to combat the employment of

children as camel jockeys. She pointed out that child labour inspection in general, and in the informal sector in particular, was an intricate process requiring special efforts. In that context, she referred to IPEC's special programme on child labour inspection which could be implemented in the United Arab Emirates. She concluded by reiterating that the Government had shown that it was making all efforts to combat the phenomenon of child labour in its territory.

The Government representative stated that he had listened with interest to the statements that had been made. He thanked in particular the Government members of Lebanon and Kuwait speaking on behalf of the Gulf Cooperation Council, whose members were more familiar with the facts of this case. The speaker stated that he would bring all of the comments made to the attention of the Government, so that it could take the necessary steps to ensure full implementation of the Convention.

The Committee noted the statement by the Government representative and the discussion which followed. It recalled that it had examined the case the previous year. The Committee shared the concerns expressed by the Committee of Experts concerning the employment of children as camel jockeys in view of the dangerous nature of this activity. It noted the information concerning the trafficking of children to the United Arab Emirates for employment as camel jockeys. The Committee noted the information provided by the Government representative, and particularly the proposal of the Ministry of Labour to amend section 20 of Law No. 8 of 1980 to prohibit hazardous work for persons under 18 years of age, in accordance with Conventions Nos. 138 and 182. It also noted his indication that those responsible would be subject to legal action and that sanctions would be imposed following the completion of police inquiries. The Committee expressed its deep concern and requested the Government to take the necessary measures without delay, with the support of the ILO, to ensure that young persons under 18 years of age could not be employed as camel jockeys and that the dangerous nature of this activity was recognized. It also requested the Government to ensure the protection of children against trafficking and any other form of exploitation, also taking into account the obligations deriving from the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Forced Labour Convention, 1930 (No. 29). It emphasized the need to impose sanctions on those responsible. The Committee asked to be kept informed of the amendment of the legislation, which it hoped was effective, and on the sanctions imposed on persons involved in the trafficking of children.

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

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 Appendix I.

Appendix I. Table of reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

Reports received as of 20 June 2002

The table published in the Report of the Committee of Experts, page 687, 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.

Algeria — 24 reports requested

* 14 reports received: Conventions Nos. 13, 32, 62, 69, 73, 74, 77, 81, 87, 97, 98, 138, 142, 144
* 10 reports not received: Conventions Nos. 17, 19, 24, 78, 94, 96, 105, 111, 127, 150

Antigua and Barbuda — 13 reports requested

(Paragraph 101)

* All reports received: Conventions Nos. 11, 12, 14, 19, 29, 81, 94, 98, 101, 105, 108, 111, 138

Barbados — 13 reports requested

(Paragraph 101)

* 11 reports received: Conventions Nos. 29, 81, 98, 102, 105, 108, 111, 118, 128, 144, 172
* 2 reports not received: Conventions Nos. 19, 74

Belize — 25 reports requested

(Paragraphs 97 and 101)

* 15 reports received: Conventions Nos. (14), 22, 29, 81, 87, 88, 94, 95, 97, 98, (100), 101, 105, (111), 115
* 10 reports not received: Conventions Nos. 5, 16, 19, (135), (140), (141), (151), (154), (155), (156)

Bosnia and Herzegovina — 58 reports requested

(Paragraphs 90 and 101)

* 4 reports received: Conventions Nos. 81, 87, 111, 158
* 54 reports not received: Conventions Nos. 8, 9, 11, 12, 13, 14, 16, 19, 22, 23, 24, 25, 27, 29, 32, 45, 53, 56, 69, 73, 74, 88, 89, 90, 91, 92, 97, 98, 100, 102, 103, 106, 113, 114, 119, 121, 122, 126, 129, 131, 132, 135, 136, 138, 139, 140, 142, 143, 148, 155, 156, 159, 161, 162

Botswana — 14 reports requested

* All reports received: Conventions Nos. 14, 19, (29), (87), (95), (98), (100), (105), (111), (138), (144), (151), (173), (176)

Chile — 18 reports requested

* All reports received: Conventions Nos. 13, 16, 19, 20, 29, 32, (87), (98), (105), 111, 122, 127, (131), (135), (138), (140), 144, 162

Costa Rica — 14 reports requested

* 12 reports received: Conventions Nos. 16, 81, 98, 102, 105, 111, 113, 114, 134, 144, 145, 148
* 2 reports not received: Conventions Nos. 94, 95

Côte d'Ivoire — 18 reports requested

* 2 reports received: Conventions Nos. 29, 95
* 16 reports not received: Conventions Nos. 6, 13, 14, 18, 19, 33, 52, 81, 87, 98, 105, 111, 129, 133, 144, (159)

Cyprus — 15 reports requested

* All reports received: Conventions Nos. 16, 19, 23, 81, 98, 102, 105, 111, 122, 123, 128, 144, 147, 152, (175)

Czech Republic — 26 reports requested

* All reports received: Conventions Nos. 10, 11, 13, 14, 19, 29, 87, 89, 90, 98, 100, 102, 105, 108, 111, 115, 122, 123, 124, 128, 130, 132, 139, 140, 148, 161

Democratic Republic of the Congo — 24 reports requested

(Paragraph 101)

* All reports received: Conventions Nos. 11, 12, 14, 19, 26, 27, 29, 62, 81, 84, 88, 89, 94, 95, 98, 100, 102, 117, 118, 119, 120, 121, 150, 158

Denmark — 19 reports requested

(Paragraph 101)

* 14 reports received: Conventions Nos. 16, 29, 53, 73, 81, 94, 105, 111, 130, 134, 144, 148, 152, 169
* 5 reports not received: Conventions Nos. 19, 98, 102, 118, 139

Greenland — 9 reports requested

* All reports received: Conventions Nos. 6, 14, 16, 19, 29, 87, 105, 106, 122

Ethiopia — 7 reports requested

* 4 reports received: Conventions Nos. (100), (105), 111, (138)
* 3 reports not received: Conventions Nos. 87, 98, (181)

France

French Guiana — 25 reports requested

* 18 reports received: Conventions Nos. 10, 13, 16, 19, 32, 53, 62, 73, 81, 94, 95, 98, 105, 111, 115, 123, 129, 144
* 7 reports not received: Conventions Nos. 69, 74, 113, 125, 142, 145, 149

Georgia — 9 reports requested

* All reports received: Conventions Nos. 29, (87), 98, 100, (105), 111, (117), 122, 142

Iraq — 16 reports requested

(Paragraph 101)

* 6 reports received: Conventions Nos. 13, 19, 98, 105, 111, 118
* 10 reports not received: Conventions Nos. 11, 16, 77, 78, 81, 139, 144, 145, 148, 152

Israel — 10 reports requested

* All reports received: Conventions Nos. 19, 53, 81, 98, 102, 105, 111, 118, 134, 147

Jamaica — 17 reports requested

* 14 reports received: Conventions Nos. 8, 11, 16, 19, 29, 81, 87, 94, 97, 98, 100, 122, 149, 150
* 3 reports not received: Conventions Nos. 105, 111, 144

Kazakhstan — 2 reports requested

* All reports received: Conventions Nos. (111), (122)

Republic of Korea — 8 reports requested

* All reports received: Conventions Nos. 73, 81, 111, (138), (144), 150, (159), 160

Luxembourg — 11 reports requested

* 8 reports received: Conventions Nos. 16, 53, 69, 73, 74, 81, 98, 102
* 3 reports not received: Conventions Nos. 13, 19, 105

Myanmar — 13 reports requested

(Paragraph 101)

* All reports received: Conventions Nos. 1, 2, 6, 14, 16, 17, 19, 22, 26, 27, 29, 52, 87

Netherlands

Netherlands Antilles — 20 reports requested

* All reports received: Conventions Nos. 10, 14, 22, 23, 25, 29, 33, 69, 74, 81, 87, 90, 94, 95, 101, 105, 106, 118, 122, (172)

Niger — 13 reports requested

* 10 reports received: Conventions Nos. 14, 29, 81, 95, 98, 100, 105, 111, 138, 156
* 3 reports not received: Conventions Nos. 6, 13, 102

Nigeria — 20 reports requested

* 4 reports received: Conventions Nos. 29, 87, 95, 100
* 16 reports not received: Conventions Nos. 8, 11, 16, 19, 26, 32, 81, 88, 94, 97, 98, 105, 123, 133, 134, 144

Paraguay — 8 reports requested

* 5 reports received: Conventions Nos. 87, 98, 105, 123, 169
* 3 reports not received: Conventions Nos. 60, 81, 111

Russian Federation

12 reports requested

* All reports received: Conventions Nos. 13, 16, 32, 69, 73, 81, 98, 105, 108, 111, 113, 134

Saint Lucia

21 reports requested

* All reports received: Conventions Nos. 5, 7, 8, 11, 12, 14, 16, 17, 19, 26, 29, 87, 94, 95, 97, 98, 100, 101, 105, 108, 111

Slovakia

28 reports requested

* 14 reports received: Conventions Nos. 14, 52, 77, 78, 87, 89, 95, 98, 102, 105, 111, 138, 155, (182)
* 14 reports not received: Conventions Nos. 13, 19, 90, 115, 122, 123, 124, 128, 130, 139, 142, 144, 148, 159

Slovenia

18 reports requested

(Paragraph 101)

* 15 reports received: Conventions Nos. 13, 16, 32, 53, 69, 73, 74, 81, 97, 98, 105, 111, 113, 139, 143
* 3 reports not received: Conventions Nos. 19, 102, (147)

South Africa

4 reports requested

* All reports received: Conventions Nos. 19, 98, 105, 111

Swaziland

10 reports requested

* 4 reports received: Conventions Nos. 98, 105, 111, 144
* 6 reports not received: Conventions Nos. 11, 19, 29, 81, 96, 123

Sweden

18 reports requested

* All reports received: Conventions Nos. 13, 16, 19, 73, 81, 98, 102, 105, 111, 118, 128, 134, 139, 140, 144, 145, 152, 157

United Republic of Tanzania

21 reports requested

* 12 reports received: Conventions Nos. 16, 17, 29, 63, 98, 105, (138), 140, 148, 152, (154), (170)
* 9 reports not received: Conventions Nos. 11, 12, 19, 94, 95, 134, 137, 144, 149

Zanzibar

3 reports requested

(Paragraph 90)

* 2 reports received: Conventions Nos. 58, 97
* 1 report not received: Convention No. 85

Thailand

4 reports requested

* All reports received: Conventions Nos. 19, (100), 105, 123

Trinidad and Tobago

9 reports requested

* 8 reports received: Conventions Nos. 16, 19, 98, 105, 111, 144, (147), (159)
* 1 report not received: Convention No. 125

Tunisia

12 reports requested

(Paragraph 101)

* All reports received: Conventions Nos. 13, 16, 19, 62, 73, 81, 98, 105, 111, 113, 118, 127

United Kingdom

Anguilla

12 reports requested

(Paragraph 101)

* 7 reports received: Conventions Nos. 14, 23, 29, 87, 97, 101, 140
* 5 reports not received: Conventions Nos. 19, 22, 94, 98, 105

Gibraltar

10 reports requested

* 9 reports received: Conventions Nos. 16, 19, 22, 23, 81, 87, 98, 100, 105
* 1 report not received: Convention No. 29

Isle of Man

22 reports requested

* All reports received: Conventions Nos. 10, 16, 19, 22, 23, 24, 25, 29, 32, 56, 69, 74, 81, 87, 97, 98, 101, 102, 105, 122, (133), 151

Jersey

18 reports requested

(Paragraph 101)

* All reports received: Conventions Nos. 10, 16, 19, 22, 24, 25, 29, 32, 56, 69, 74, 81, 87, 97, 98, 105, 115, 140

Montserrat

9 reports requested

* 8 reports received: Conventions Nos. 14, 19, 29, 87, 95, 97, 98, 105
* 1 report not received: Convention No. 16

Uruguay

17 reports requested

* All reports received: Conventions Nos. 13, 16, 19, 32, 62, 73, 81, 98, 105, 111, 113, 118, 128, 134, 139, 144, 151

Zimbabwe

6 reports requested

* 5 reports received: Conventions Nos. 19, 81, 98, (111), 144
* 1 report not received: Convention No. 105

Grand Total

A total of 2,314 reports (article 22) were requested,
of which 1,672 reports (72.26 per cent) were received.

A total of 391 reports (article 35) were requested,
of which 276 reports (70.59 per cent) were received.

Appendix II. Statistical table of reports on ratified Conventions

(article 22 of the Constitution)

as of 20 June 2002

Conference Year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Conference Year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%

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

Failure to submit instruments to the competent authorities

The Employer members recalled that the competent authority to which the instruments adopted by the ILC should normally be submitted to was the national Parliament, being the legislature in most countries. Submission was the first step taken by member States after the adoption of instruments. The only purpose of submission to the competent authorities was to inform them of the contents of the relevant instruments. However, this obligation of governments did not imply any obligation to ratify the instruments in question. The government merely had to give its recommendation as to whether or not it intended to ratify or, whether it would examine the question again at a later stage. With regard to the time limits for submission, they recalled that it had to be carried out within 12 months, or in exceptional cases within 18 months of the end of the Conference which had adopted the instruments. The instruments were not adopted for the governments, but for the countries, which needed to be informed about the adoption of instruments at the Conference.

The Worker members recalled that this obligation constituted a fundamental element of the ILO system. It allowed the reinforcement of the connection between the Organization and the national authorities, the promotion of the ratification of Conventions and the encouragement of tripartite dialogue at the national level. This was emphasized by the present Committee in the discussion of last year's General Survey. The Committee of Experts had specified the nature and modalities of this obligation and had insisted on the fact that submission did not imply for governments an obligation to propose the ratification of Conventions under consideration or the acceptance of Recommendations. An important delay accumulated by certain countries and the difficulties which might arise in overcoming this delay were worrying. The Committee must insist that the governments should respect this obligation, and recall the possibility of seeking the technical assistance of the ILO.

A Government representative of Cambodia expressed the appreciation of his Government for the work of the Committee of Experts, especially for its excellent report. As a member of the ILO since 1969, Cambodia had tried its utmost to comply with the ILO Constitution, and more particularly with the discharge of its obligations to submit the instruments adopted by the International Labour Conference to the competent authorities and to report on this to the ILO. Regrettably, the Government had failed to do this for the instruments adopted by the ILC at its 81st Session up to the 87th Session. The reason for this was the lack of competent staff. To remedy the situation the Ministry had set up last year, a unit responsible with international labour issues. This unit, originally composed of four officials, was also to deal with regional labour issues and bilateral labour cooperation. However, two of the officials had left the unit shortly after, to pursue studies abroad. Despite their failure to meet the obligation to submit, in the meantime these instruments had already been presented to the Council of Ministers. Seven more ILO Conventions, including six core Conventions, had been ratified. With a view to implementing both ratified Conventions and the labour law, and with the assistance of the ILO, an important Ministerial Regulation on the representatives of the professional organizations and the right to engage in collective bargaining was issued. Another Ministerial Regulation on work that could be hazardous to children was being finalized with the assistance of the ILO. He said his Government would do its best to replace the staff and meet its obligation to submit the instruments to the competent authority.

A Government representative of Cameroon underlined that because of numerous misunderstandings regarding the procedure of submission and ratification of standards and the related obligations, for many years several instruments adopted by the Conference had not been submitted to the competent authorities. Seminars organized or supported by the Office had permitted to improve the situation. Thus, recently adopted Conventions, namely, the Maternity Protection Convention, 2000 (No. 183), and the Safety and Health in Agriculture Convention, 2001 (No. 184), had been submitted to the competent authorities. Furthermore, an inter-ministerial commission had been established and entrusted with the evaluation and follow-up of the application of the ILO Conventions. This commission had already met and had been able to provide certain answers to the comments of the Committee of Experts that had not been responded to for a number of years. The next session of this commission would certainly permit to submit other Conventions to the competent authorities and maybe even propose certain of them for ratification or denunciation.

A Government representative of Suriname indicated that his Government had promised a reply for 8 June but that he had not received information to date. He indicated that he knew that at this stage the instruments had been sent to the Council of Ministers after being discussed by the Labour Advisory College. The next procedure was for the Council of Ministers to send them to the President of the Republic of Suriname, who would then send them to the State Council for advice. The advice would be then forwarded to the President who would submit the Conventions and Recommendations to the National Assembly. He assured the Committee that his Ministry would do its best to communicate with the Office of the President to be informed about the current status of things, unless the information reached him during the Conference. He apologized for the inconvenience.

A Government representative of the Syrian Arab Republic noted that paragraph 135 of the report of the Committee of Experts included the Syrian Arab Republic as one of the countries that had not complied with the obligation to submit instruments adopted by the International Labour Conference. He recalled that his country had already ratified 45 ILO Conventions and that it had ratified Convention No. 138 last year. His Government had indicated to the ILO by letter that it was considering ratifying Convention No. 182 in the next few months. His Government had also informed the ILO of a number of amendments to laws that covered observations and direct requests made by the Committee of Experts. In fact satisfactions had been noted in respect to Conventions Nos. 11, 87, 96 and 98. He further informed the Committee that instruments adopted at the 81st-87th Sessions of the International Labour Conference had been submitted to the competent authority and that the Office would be informed in due course on developments.

The Worker members indicated that the procedure of submission should not pose problems in a democratic country. The ILO instruments should be submitted to the competent authorities and it should be expected that the promises made would be kept so that the situation could improve.

The Employer members fully supported the conclusions of the Worker members and requested that this be reflected in the conclusions of the Committee.

The Committee took note of the information and explanations provided by the government representatives. It also noted the specific difficulties in meeting this obligation mentioned by some speakers. Finally, it took due note of the fact that several government representatives undertook, on behalf of their governments, to fulfil the constitutional obligation to submit as soon as possible the Conventions, Recommendations and Protocols to the competent authorities. The Committee expressed the firm hope that the countries cited – Afghanistan, Armenia, Bolivia, Cambodia, Cameroon, Comoros, Congo, Grenada, Haiti, Kazakhstan, Kyrgyzstan, Latvia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Suriname, Syrian Arab Republic, Turkmenistan, Uzbekistan – would transmit in the near future information on the submission of Conventions, Recommendations and Protocols to the competent

authorities. The delay or lack of submission and the increase in the number of these cases, greatly preoccupied the Committee since these constitutional obligations were essential to the effectiveness of standards-related activities. In this respect, the Committee recalled that the ILO was in a position to provide the necessary technical assistance so that this obligation could be fulfilled. The Committee decided to mention all these cases in the appropriate section of its General Report.

IV. REPORTS ON UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

(Article 19 of the Constitution)

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

A Government representative of Bosnia and Herzegovina stated that the consequences of war in Bosnia and Herzegovina were the most devastating in the whole region of the former Yugoslavia. With the support of the international community, the Council of Ministers of the country was dealing with the urgent economic and social problems, especially those of vulnerable groups such as the internally displaced, refugees, women households and persons with disabilities. Another serious problem was the extremely high rate of unemployment in the country whose economy was completely destroyed during the war period. Bosnia and Herzegovina was a country in transition from a socialist to a market economy. The Council of Ministers had undertaken numerous legislative reforms to enable the country to become self-sustaining. Another reason for the delay in the submission of reports was the fact that the competent authorities in charge of their preparation did not have sufficient experience and there was a problem of translation of the instruments. The Government had recently submitted its first reports on ratified Conventions Nos. 81, 87, 158 and 111. He expressed gratitude for the assistance from the ILO in this area as well as under other programmes. He hoped this cooperation would continue in the future. He reiterated his Government's commitment to the ILO's values, principles and objectives and expressed its willingness to supply the requested reports as soon as possible.

A Government representative of Guinea-Bissau indicated that during the military conflict that had isolated the country in 1998 and in 1999, the institutions could not function and no report could be sent. Following this conflict, there had been a lack of information and communication. In the year 2000, the Government had responded positively to the request for 20 reports, as well as to requests for information by the Committee of Experts. Also, in 2001, the Government had communicated the nine requested reports. It seemed that the request for the report due under article 19 of the Constitution had not been communicated. Indeed, if Guinea-Bissau had been able to send the 20 requested reports, why would it not have been able to supply a supplementary report on the unratified Conventions? This year Guinea-Bissau had also received very late the request to report on instruments concerning the protection of wages. Despite this late receipt and the workload involved in drafting this report, this had been prepared and had to be analysed by the Permanent Council on Social Dialogue. It would then be communicated to the Office. It should be emphasized that the Government was determined to respect its obligations, a commitment that was demonstrated by the transmission of all reports due in the past two years as well as by the submission of many instruments to the competent authorities. This commitment was also shown by the inclusion on the agenda of the popular national assembly, of an item on the approval of several fundamental Conventions. Finally, it seemed that the Government had transferred funds to the ILO to reduce the amount of its payments due, and this again showed the interest of his country in the activities of the ILO.

A Government representative of Iceland regretted that requests for reports on ratified Conventions under article 19 of the ILO Constitution had not been complied with for the past five years. She indicated that the Government's priorities were always to comply with the obligation to submit reports on ratified Conventions of the ILO and other organizations. Her Government was working on the report under article 19 of the Constitution due on 30 April this year on the unratified Protection of Wages Convention, 1949 (No. 95). She apologized for the delay in responding to the ILO, but indicated that the report would be submitted as soon as possible.

A Government representative of Nigeria indicated that the complexity of the report forms and the inadequate development of human resources had led the country to ask for ILO technical assistance. An expert had been sent to assist the officials in November 2001. This had been followed by training on international labour standards in Turin and Geneva from 20 to 31 May 2002. This human resources development will no doubt allow the Government to comply with its reporting obligations under article 19 and 22 of the ILO Constitution. The reports due Conventions Nos. 29, 87, 95, 100 and 138 had been submitted during this Conference. Further technical assistance would be required from the Office to clear the backlog of the outstanding reports. He assured the Committee that there would be significant improvement in reporting after the exposure of some of the officers to training on international labour standards.

The Employer members stressed the particular importance of the obligation to supply reports on unratified Conventions, Recommendations and Protocols. It was an obligation under article 19, paragraph 5(e), of the ILO Constitution, inserted in 1946 upon a proposal of the Conference Committee. These reports were important for a number of reasons. Possible obstacles to ratification could be identified. The reports further provided a basis for obtaining an overview of the real situation in a country in order to ascertain the extent to which the social reality differed from the provisions prescribed by the Convention examined. Furthermore, they were an indicator of whether and to what extent a Convention was in need of revision. The Employer members deplored that this year only 50 per cent of the reports requested under article 19 of the ILO Constitution had been submitted by governments, which constituted a negative trend, since last year 60 per cent of the reports had been transmitted to the ILO. Therefore, the member States had to be reminded to comply with this important constitutional obligation.

The Worker members indicated that article 19 of the ILO Constitution provided that member States had to communicate reports on unratified Conventions and on Recommendations. These served as a basis for the drafting of general surveys and thus offered an overview of the obstacles met by member States for the ratification of a Convention. These reports equally permitted to examine whether Conventions remained relevant to economic and social conditions. This year 22 countries had not fulfilled this obligation, against 18 the previous year. Only four governments expressed themselves in this regard without bringing any new element on the reasons for not fulfilling this obligation. The Committee had to insist for governments to fully respect their constitutional obligation to submit their reports on unratified Conventions with a view to allowing the Committee of Experts to prepare complete and detailed general surveys.

The Committee took note of the information and explanations furnished by the Government representatives and other speakers. The Committee insisted on the importance attached to the constitutional obligation to communicate reports on unratified Conventions and Recommendations. In fact, these reports permitted to better evaluate the situation in the context of the general surveys of the Committee of Experts. The Committee insisted on the fact that all member States had to fulfil their obligations in this regard and expressed their firm hope that the following countries would, in the future, respect their obligations under article 19 of the ILO Constitution: Afghanistan, Bosnia and Herzegovina, Equatorial Guinea, Fiji, Georgia, Grenada, Guinea, Guinea-Bissau, Iceland, Iraq, Liberia, Nigeria, Lao People's Democratic Republic, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, Solomon Islands, The former Yugoslav Republic of Macedonia, Turkmenistan, Uzbekistan. The Committee decided to mention these cases in the appropriate section of its General Report.

INDEX BY COUNTRIES TO OBSERVATIONS AND INFORMATION CONTAINED IN THE REPORT