International Labour Conference

Provisional Record

Ninety-second Session, Geneva, 2004

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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 Employer members observed that the abbreviated formula "automatic cases" did not sufficiently reflect the fundamental importance of this issue. The basic obligation of member States to send reports once they had ratified a Convention was not a minor issue and lied at the very basis of the supervisory mechanism. If this obligation was not met, the supervisory mechanism, including the Conference Committee, could not function. The Employer members expressed concern at the large number of countries which again this year had failed to meet their obligations.

The Worker members insisted that the obligation to send reports was the cornerstone of the ILO supervisory system. The information contained in the reports should be as detailed as possible. Countries which had not sent reports for two years or more handed themselves an unjustifiable advantage in that they deprived the Committee of the opportunity to examine their legislation and practices regarding ratified Conventions. The Committee should insist that these States respect their obligations in the future.

A Government representative of Liberia assured the Committee that his Government had reviewed the observations made in paragraphs 51, 58, 62 and 98 of the Committee of Experts' General Report and had taken note of the soundness of the concerns expressed therein. He informed the Committee that the Liberian National Transitional Government had assumed office in October 2003 following 14 years of civil conflict. All basic institutions of governance had been non-existent in the country and information on the matter under consideration had not been available. Hence, the Government had been unable up to now to fulfil its obligations. However, with the deployment of nearly 15,000 United Nations peacekeeping forces in the country, lasting peace was now returning at last. He therefore assured the Committee that his Government would make all efforts to provide the necessary reports to the Committee of Experts.

The Employer members expressed dissatisfaction at the fact that many of the countries present at the Conference had not turned up to explain to the Committee the reasons for their failure to comply with reporting obligations. The Employer members, while sharing the view of the Worker members that the countries which had not reported gained an unfair advantage, noted that this was true only in part since specific reference was made to their omission in the report of the Committee of Experts and their failure to provide explanations to the Conference Committee was also indicated in this Committee's report. These countries developed a negative image and therefore did not succeed in simply avoiding any consequences. While only Liberia, a country facing special problems, had provided explanations to the Conference Committee, the Committee nevertheless had to insist that member States should comply with their basic obligations to supply reports on ratified Conventions and should continue to address requests to them in this respect in the future.

The Worker members noted that only one of the countries invited had taken the floor on the subject of failing in the obligation to submit reports, the others being either absent or not accredited to the Conference. The system of control would remain a system in theory if governments did not respect the obligation to forward reports on the Conventions that they have ratified. The Committee should remind governments that they could request technical assistance from the ILO.

The Committee noted the information supplied and the explanations given by the Government representatives. The Committee recalled the fundamental importance of supplying reports on the application of ratified Conventions and of doing so within the prescribed time limits. As this obligation constituted the very foundation of the supervisory mechanism, the Committee expressed the firm hope that the Governments of Afghanistan, Armenia, Haiti, Kyrgyzstan, Liberia, Sierra Leone, Solomon Islands, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan and Uzbekistan, that until now had not 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 Worker members remarked that it was on the basis of the first reports that the Committee of Experts could carry out its first evaluation of the application of ratified Conventions by a country. The first report helped countries to avoid errors of interpretation regarding the application of Conventions from the outset. The delivery of this first report was indispensable to the supervisory system. The Worker members called on all 18 member States concerned to make a special effort to meet their obligation to submit their first report. The Worker members also noted that there was no longer an automatic obligation to present a second detailed report two years after the first.

The Employer members associated themselves with the comments made by the Worker members as to the importance of supplying first reports. They noted that this issue was also the subject of comments by the Committee of Experts in paragraph 59 of the General Report and that special technical assistance was provided to countries in this respect. They emphasized that member States should be expected to comply with their obligations when they voluntarily undertook to ratify a Convention and that they should be in a position to submit a first report in such cases.

A Government representative of Chad indicated that the reports on the application of Conventions Nos. 132 and 182 were sent to the Office but it appeared that they had not been received. He indicated that copies of the reports would be faxed during the day to the Office for the Committee to examine as soon as possible.

A Government representative of Yemen noted that his country had ratified all fundamental Conventions and, in general, submitted reports regularly. He informed the Committee that the report on Convention No. 182 would be submitted in September.

The Worker members took note of the fact that only two countries had explained to the Committee why they had not met the obligation to submit their first reports. It was unacceptable today that certain first reports on ratified Conventions had not been delivered since 1992. When a country experienced difficulties in this respect, it should inform the Office as quickly as possible so that the latter could provide the necessary assistance. The Worker members trusted that the Office would contact all member States concerned in this respect.

The Employer members expressed disappointment at the fact that only two member States had addressed the Committee and that, moreover, the explanations given were only partly relevant. They considered that this situation was a move backwards in comparison with previous years, but also noted that it might be due to the fact that this year the discussion was taking place on a Friday afternoon. They emphasized that governments should not ratify Conventions without preparation and that they should understand that they would have to abide by specific obligations in doing so. They noted that when a government prepared to ratify a Convention, the examination of the conformity of national legislation with the Convention already constituted the basis for a first report. The Employer members underlined that governments should ratify Conventions only after careful consideration and that in promoting ratifications, the purpose was not to collect statistics on high ratification rates but to obtain results in achieving the objectives set by the Conventions.

The Committee took note of the information and the explanations provided by the Government representatives. The Committee reiterated 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 (Convention No. 111), Kyrgyzstan (Convention No. 133); since 1996 – Armenia (Conventions Nos. 100, 122, 135, 151), Uzbekistan (Conventions Nos. 47, 52, 103, 122); since 1998 – Armenia (Convention No. 174), Equatorial Guinea (Conventions Nos. 68, 92), Uzbekistan (Conventions Nos. 29, 100); since 1999 – Turkmenistan (Conventions Nos. 29, 87, 98, 100, 105, 111), Uzbekistan (Conventions Nos. 98, 105, 111, 135, 154); since 2001 – Armenia (Convention No. 176), Kyrgyzstan (Convention No. 105), Tajikistan (Convention No. 105); and since 2002 – Azerbaijan (Conventions Nos. 81, 129), Bosnia and Herzegovina (Convention No. 105), Chad (Conventions Nos. 132, 182), Gambia (Conventions Nos. 29, 105, 138), Kyrgyzstan (Convention No. 81), Saint Kitts and Nevis (Conventions Nos. 87, 98, 100, 111, 144), Saint Lucia (Conventions Nos. 154, 158, 182) and Yemen (Convention No. 182).

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

The Employer members noted that, at this stage of the discussion, the Committee was addressing the issue of the substantive examination of reports which were unfortunately incomplete or unclear, or did not provide a response to the comments formulated by the Committee of Experts. They recalled that incomplete replies were a serious obstacle to the work of the supervisory bodies including this Committee. They therefore addressed a request to the governments concerned to take a careful look at the comments made by the Committee of Experts and to provide clear and precise replies. They also expressed the wish to hear from the governments concerned about the problems that they faced in this respect so that these problems could be overcome in the future.

The Worker members noted that incomplete or obscure reports, or late delivery of these reports, hindered the work of the Conference Committee and that of the Committee of Experts. In 325 cases (involving 37 countries), governments had not reacted at all to the comments of the Committee of Experts, which was unacceptable in the eyes of the Worker members.

A Government representative of Cambodia informed the Committee that by virtue of ILO's technical assistance, Cambodia succeeded in late 2003 to overcome a lack of human resources and build up the capacity of local staff to make reports. As a result, four reports had been prepared and already sent to the ILO. Although staff had been provided with the necessary skills in making reports through the ILO technical assistance, it was impossible to send all reports on time due to the backlog which went back a few years. He finally assured the Committee that all reports would be prepared by late 2004.

A Government representative of Cameroon observed that his Government had so far regularly supplied reports. Unfortunately, problems in the labour administration had not allowed for the timely fulfilment of this obligation. The Government committed itself to rectifying rapidly the consequences of this situation.

A Government representative of the Central African Republic emphasized that his country had been through recurring political and military crises, which had disrupted the functioning of its institutions. The labour administration had not been spared. The speaker assured the Committee that he had brought the report himself last November during his participation in a seminar on work in the chemical industry. Nevertheless, he would ensure that in the future his country would not fail to fulfil this obligation. The speaker requested that an expert from the Office be placed at the disposal of the Central African Republic in order to train the national staff on how to prepare reports on the application of ratified Conventions.

A Government representative of Chad noted the comments made by the Committee of Experts in its last report. The speaker explained the recent difficulties that had prevented his Government from fulfilling a part of its constitutional obligation to send reports. The Government undertook to communicate full information in writing to the Office in relation to its difficulties.

A Government representative of Denmark regretted that Greenland had not met the deadline this year for responding to the comments made by the Committee of Experts. She assured the Conference Committee that Denmark had made every effort to ensure that Greenland would fully meet its reporting obligations in due time, including through training of the person in charge of reporting to the ILO. However, due to a recent reorganization of the Ministry of Social Affairs in Greenland, the responsible desk officer had been transferred to other duties. As Greenland had a population of less than 60,000 inhabitants, it maintained a very small administration which was vulnerable to changes as regards its ability to undertake the burden of the reporting process. Moreover, the Government of Denmark could not instruct the home rule authorities in Greenland, or fulfil the reporting obligations on their behalf, as the home rule authorities had full autonomy in the area of social policy. She finally assured the Committee that Greenland was fully aware of its reporting responsibilities and that the home rule authorities were actively examining the issues raised by the Committee of Experts and endeavoured to respond as soon as possible.

A Government representative of the United Arab Emirates took note of the comments made by the Committee of Experts on the Hours of Work (Industry) Convention, 1919 (No. 1). The Government's response on this issue was delayed for several objective reasons including the fact that technical discussions were necessary in order to clarify the issues raised and consultations needed to take place with specialized authorities on those matters. He assured the Committee that the Government had already initiated the implementation of the Convention and would send the necessary information to the Office as soon as possible. This was also the case for the Forced Labour Convention, 1930 (No. 29). As for the Abolition of Forced Labour Convention, 1957 (No. 105), the response had been sent to the Office in January 2004.

A Government representative of Eritrea stated that the observations of the Committee of Experts were contributing to the harmonization of national laws with international labour standards and that every effort was being made to respond to them. He assured the Committee that the outstanding reports would be forwarded soon.

A Government representative of France indicated that the information required by the Committee had been supplied at the beginning of the week. He pointed out that New Caledonia, in this respect, was autonomous. The French Government had requested New Caledonia several times to present the information required to the Committee. The speaker added that this reply also applied to the situation with regard to the information already provided in respect of the French Southern and Antarctic Territories.

A Government representative of Israel informed the Committee that the report on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), had already been sent to the ILO, while those on the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), were under preparation. With regard to Convention No. 100, the speaker stated that the required statistical data was currently being prepared. The delays were due to changes in the Government and other technical obstacles. All efforts were made to supply the outstanding replies before the next session of the Committee of Experts.

A Government representative of the Libyan Arab Jamahiriya stated that his country accorded great importance to the comments of the Committee of Experts. However, due to a lack of human resources the Government had not been able to reply to all comments. The Government set up a special tripartite committee to deal with the issue of reporting to the ILO and established a training programme to improve reporting. It was hoped that the Government would be able to submit the outstanding reports by the end of the year.

A Government representative of Malawi stated that the reports in question had not been submitted due to a lack of capacity to produce them. The ILO had provided assistance to train the labour officer in charge of reporting, who unfortunately left the position subsequently. Report forms had been requested but were not received in time. The speaker gave assurances that the matter would be dealt with upon return of his delegation to the country.

A Government representative of Mali explained that her Government had not been able to meet its constitutional obligations because of lack of budget funds and changes in the administration. The Government nevertheless undertook to do everything possible to continue to meet its obligations in future.

A Government representative of Paraguay regretted the delays in submission of reports and declared that the new authorities had completed the work to send the required information and were making every effort to complete the appendices in order to forward them to the Committee as soon as possible.

A Government representative of the United Kingdom responded to the comments concerning Montserrat, apologizing that the territory had not met the timetable for responding to the Committee of Experts. While the United Kingdom went to great lengths to try to ensure that all non-metropolitan territories met their reporting obligations, the situation in Montserrat was exceptional. Difficulties following volcanic eruptions had a severe impact on the country, leading to a stretch of resources. Montserrat would respond to the issues raised as soon as possible.

A Government representative of Serbia and Montenegro stated that his country had not been able to respond to the comments of the Committee of Experts because of numerous internal problems, mainly of an administrative nature. He said that, following the recent adoption of a constitutional charter, Serbia and Montenegro were henceforth fully competent in this area. A full internal reorganization process was in hand but everything would be done to ensure that the required information was supplied to the Committee as soon as possible.

A Government representative of Swaziland reaffirmed his country's commitment to the ILO's principles and objectives. With regard to paragraph 62 of the General Report, the speaker stated that the problems were of administrative nature and undertook to send a report to the ILO within 30 days. Technical assistance might be requested from the ILO in this regard.

The Employer members noted that the list of countries that had not provided substantive reports in reply to the comments of the Committee of Experts was again very long. As a consequence, there was no meaningful dialogue between these countries and the Committee. Although lack of resources was an understandable reason for an absence of replies, the Employer members insisted that member States had to comply with this obligation. With regard to the reports submitted during the Conference, they doubted whether these reports contained the information requested by the Committee of Experts. While these countries would not be mentioned in the report of the Conference Committee this time, they probably would again appear on the list next year.

The Worker members regretted having to listen to practically the same explanations as in the past as to why governments had not replied to comments from the Committee of Experts. A majority of governments had not provided explanations on this point. The Worker members noted that among the defaulting countries, some certainly had or should have the required technical capacity.

The Committee took note of the information and explanations given by the Government representatives who appeared before it. It insisted on the vital importance of the continuation of dialogue, and of the communication of clear and full information in reply to the comments of the Committee of Experts. The Committee 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 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, Albania, Antigua and Barbuda, Bosnia and Herzegovina, Cambodia, Central African Republic, Chad, Democratic Republic of the Congo, Denmark (Greenland), Eritrea, Georgia, Grenada, Guinea, Haiti, Israel, Kyrgyzstan, Lao People's Democratic Republic, Liberia, Libyan Arab Jamahiriya, Malawi, Mali, Paraguay, Serbia and Montenegro, Sierra Leone, Solomon Islands, Swaziland, Tajikistan, United Arab Emirates and United Kingdom (Montserrat), to do everything in order to provide the requested information as soon as possible. The Committee decided to mention these cases in the corresponding 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]

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

Cambodia. Since the meeting of the Committee of Experts, the Government has sent the first reports on Conventions Nos. 105, 111 and 150.

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

Congo. Since the meeting of the Committee of Experts, the Government has sent the first reports on Conventions Nos. 81, 98, 100, 105, 111, 138 and 144, as well as replies to most of the Committee's comments.

Cyprus. Since the meeting of the Committee of Experts, the Government has sent the first report on Convention No. 182.

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

Equatorial Guinea. Since the meeting of the Committee of Experts, the Government has sent the reports due concerning the application of ratified Conventions and replies to most of the Committee's comments.

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

Papua New Guinea. Since the meeting of the Committee of Experts, the Government has sent the first reports on Conventions Nos. 103, 111, 138, 158 and 182.

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

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

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

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

Convention No. 29: Forced Labour, 1930

Australia (ratification: 1932). **A Government representative** recalled that the issue of Australian privately managed prisons was considered by the Committee in 1999 and no finding was made against the Government. His Government had also complied with the Committee's request to provide more detailed reports and accordingly submitted a report of over 50 pages. Since then no significant developments were reported to have taken place. He recalled that the prison jurisdiction in the country pertained to the competence of constituent States – a fact which made it difficult, if not inappropriate, to address the prisons' provisions in each jurisdiction. He outlined three main considerations for not agreeing with the interpretations given by the Committee of Experts to the Forced Labour Convention, 1930 (No. 29). When the Convention was formulated in 1930, the ILC did not have the case of privately managed prisons in mind. The Government was therefore of the view that the ILO, in order to remain relevant to the times, needed to take into consideration modern managerial methods. The reality of privately managed prisons existed and if the Committee of Experts' comments were accepted, prisoners would either no longer have access to work, or such prisons would have to close. Prisoners were required to work in accordance with guidelines established by the Government and these guidelines applied equally to both publicly and privately managed prisons. As such, privately managed prisons in Australia must remain under the control of a public authority. The aforementioned government guidelines provided for the carrying out of inspections and addressed the issue of work in prisons as well as the penalties imposed in case of breach of contract. In Australia, the Government paid contractors to manage prisons and at the same time provide meaningful work for prisoners to assist in their rehabilitation. The prisoners were not "hired out to or at the disposal of" the private contractor and payments to the contractor did not relate to the output of the prisoners. In other words, there was no employment relationship. The responsibilities for prison management in the case of privately managed prisons were normally spelt out in a contract wherein the private firm was responsible for the day-to-day management of the prison while the Government, through its prison agency, retained the responsibility for the legal custody of prisoners at all times, as well as the responsibility for establishing the rules governing the treatment of prisoners. Where it was found that prisoners were exploited through their labour to the benefit of the contractor, the Government could decide on the termination of the contract. The speaker renewed his appeal for a new interpretation of the Convention – an interpretation which would protect prisoners from situations of servitude while recognizing and supporting modern correctional policies.

The Employer members recalled that the Committee of Experts had provided its views on the topic of work in private prisons in a lengthy section in the general part of its report of 2001, in spite of the fact that only a few governments had supplied a report on this issue. The lack of responses thus made these reflections theoretical. They further observed that the Committee of Experts, in its view on the topic, always referred to a Memorandum of the ILO of 1931, published in 1932. They pointed out that the Memorandum had been established at the request of the League of Nations with regard to the "Basic rules concerning the treatment of prisoners", which had been adopted by the International Commission for Prisons. This Memorandum was therefore not part of the preparatory works to the Convention, and neither was it an authentic interpretation of the Convention adopted by the Conference in 1930. Moreover, it was indisputable that neither the Committee of Experts nor the Office had the mandate to provide for authentic interpretations of Conventions.

Referring to Article 2, paragraph 2(c), of the Convention, the Employer members noted that this provision required to be interpreted in a restrictive manner, so that the provision was applied only in the event that the prisoner was placed at the free disposal of the private employer without any supervision by the State. Inversely, the collaboration between the State and the private employer should be admissible, if the State adopted regulations for the carrying out of the work of the prisoner, and would control the observance of these regulations. Turning to the question of consent, the Employer members pointed out that the Committee of Experts held the view that it was not forced labour if the prisoner worked with his or her consent and on a voluntary basis for a private employer. However, the Committee of Experts set unrealistically high requirements for determining free consent. According to the Committee of Experts, willingness to volunteer would have to be real and not simply an alternative to, e.g. prisoners remaining confined in their cells for unreasonably long periods, having no alternative to boredom, or being disadvantaged in any early release programme because of failure to undertake work. The Employer members thought that this approach was rather absurd, for normal citizens outside prisons also had to bear the negative consequence when they decided not to work. Therefore, in assessing whether prison labour in a privatized prison was voluntary, the Committee of Experts believed that a number of indicia might be considered. These included the formal consent and the terms of the conditions under which the labour was performed and whether those conditions approximated a free employment relationship. However, the difficult question which arose was how closely conditions were required to approximate a free labour relationship. In this respect, the Employer members noted that the Committee of Experts had not considered the evident lower productivity of prisoners, and that enterprises hiring prisoners undertook particular risks: prisoners were not covered by liability insurance against any damages which might occur, their professional skills did not always correspond with the requirements of the work to be performed, and the length of employment was uncertain. In the end, the Committee of Experts' report formulated a more realistic requirement that working conditions should not be exploitative. In this particular issue, the Employer members agreed with the views of the Committee of Experts.

The Employer members recalled that in the past, entrepreneurs who requested prison labourers had to pay the State for gaining access to them; today, the State had to offer certain incentives to the entrepreneurs so that the they would be prepared to employ prisoners. By providing work in prisons, the State was complying with a moral obligation to assist in the rehabilitation and reintegration of prisoners and to help maintain their vocational skills. They noted that in times before the recognition of the free market economy, private enterprises were under wholesale suspicion to exploit their workers. This would be an explanation for the drafting of Article 2, paragraph 2(c), of the Convention providing that the prisoner was not "hired or placed at the disposal of private individuals, companies or associations". It was clear that prisoners should not be exploited when working for private employers. However, this wording showed that the Convention did not intend to prohibit in general the performance of labour for private employers by prisoners. A reading according to the ordinary meaning rule was the right approach in interpreting this Convention. In conclusion, the Employer members said that the performance of work by prisoners for private employers was admissible, provided that said work was carried out according to rules adopted by the State and under the supervision and control of the public authority. Moreover, the conditions of work did not need to be equal to those of a free working relationship, but should not be exploitative. With regard to the case of Australia, the Employer members noted that the privately managed prisons remained under the control of the public authority in that the Government had established guidelines for work in prisons. The Government carried out inspections and imposed penalties for breaches. Therefore, the Employer members believed that the requirement of voluntariness was satisfied if the work to be performed was appropriate and not exploitative. In conclusion, they hoped that an agreement could be reached on the meaning of the Convention in this matter which corresponded to today's reality.

The Worker members stated that they would not repeat their full position from the 1999 discussion of this case as it appeared that the Government representative and the Employer members had done. It was not productive to simply stick to a particular position and not move forward. They recalled that in the debate on privatization of prison labour so far, there had been four key concepts: supervision and control of a public authority over prison labour; the irreconcilability with the Convention of prisoners being hired to or put at the disposal of private individuals, companies or associations; prison labour conditions approximating the conditions of a free employment relationship; and freely given consent by the prisoner. They underlined that the first two were considered to be cumulative and to apply independently. Further issues that had been raised were whether or not the Convention was relevant to the issue of private prison labour and the question of punishment versus rehabilitation.

With respect to the comment by the Employer members that this case should not have appeared before this Committee, they refused to accept the allegation made by the Employers that the Committee paid attention to this case at the expense of very serious

violations of the Convention. In the past the Committee had always dealt with the latter, it did so this year, and it would certainly continue to do so in the future. Putting this case on the list once again simply testified that the Committee saw the value of the Committee of Experts examining new developments in the field of forced labour. The Committee of Experts had raised the important question of whether the Convention was relevant to this new phenomenon and they should be commended for this, not criticized. Referring to a comment by the Government representative, the Worker members stated that they were convinced that the Committee of Experts did not have a hidden agenda on this question. Neither would the Committee of Experts have an interest to paint a black picture of Australia, and furthermore the nationality of the Chair of the Committee of Experts was a guarantee that the Experts would not misunderstand the situation in Australia. He deplored that the Government had been so completely insensitive to the observations and the recommendations of the Committee of Experts. The fact that the Government of a highly industrialized country took this attitude set a very bad example for other member States and could undermine the ILO's supervisory system. With the independent, objective and impartial work of the Committee of Experts as its cornerstone, this system was a precious thing, superior to international supervisory mechanisms within and without the ILO. They recalled that if States really thought that the interpretation of a Convention was wrong and unfair to them they could turn to the International Court of Justice. This rarely occurred, they pointed out, because governments knew all too well about the high quality of the Experts' interpretation and, by consequence, that they could very well lose the appeal. France, Switzerland, Argentina and Colombia were examples of countries which had turned to the observations of the Committee of Experts, so sharply criticized by the Government, to adjust their law and practice. The Worker members urged the Government to reconsider its position, to take into account the positive developments in other countries, and to turn their polemical approach of the issue at stake into one of dialogue with the ILO. That was the way to make progress and to get out of the vicious circle we were in now.

The Employer member of Australia expressed his support for the statement made by the Government representative and by the spokesperson for the Employers. In addition he wished to underline three points. First, the operation of private prisons had not been contemplated at the time when the Convention was framed and adopted. It was therefore inappropriate to bring such prisons within the scope of the Convention. Second, it was clear that prisoners in these types of private prisons were not hired to, or put at, the disposal of the operators of those prisons. It would be a perversion of language to claim otherwise. The prisoners remained in the custody of the state which retained full responsibility for their treatment and fully controlled their operators in this respect. The prisoners therefore remained under the supervision and control of the public authority. They were not hired to the private operator since there was no employment relationship, and the operators did not have the power of hiring and dismissing such workers. Private prisons therefore fell within the exclusions permitted by the Convention. Third, he noted that work done by prisoners was not done for the profit of its operators, but rather for the purposes of training and rehabilitation. For these reasons, he concluded, the observation by the Committee of Experts should be treated with considerable caution.

The Worker member of France said that he was surprised to hear some of the comments that had been made which called into question the objectivity of the Committee of Experts. If governments had not referred cases to the International Court of Justice since it began its work nearly 70 years ago, it was because they knew that the quality of the analyses made by the Committee of Experts was incontestable. The privatization of prison labour, such as was practised by Australia, extended well beyond the protective provisions of the Convention. Yet the Government believed that the modalities governing the private management of penitentiary labour complied with the Convention, and that it was unrealistic to expect that inmates might be remunerated in accord with open market conditions. However, in order to favour their subsequent reintegration into society, the employment conditions of prisoners needed to be as close to open labour market conditions as possible, even if they could not be identical, given the prison environment. If those conditions were not met, that constituted forced labour as well as unfair competition with regard to free workers. Prison labour needed to contribute to training and rehabilitation of persons, and not enable private investors to profit as much as possible from the work of prisoners. He wondered what the situation was like in Australia, and said that an in-depth study on how private prisons operated was necessary. In some states, especially Victoria, work was imposed on detainees without their consent, and working conditions were substantially inferior to those for the open market. That was a clear case of forced labour and was in breach of the Convention. The Government should thus urgently adopt the appropriate measures by following the example of the good practices in other countries and turning to the good technical offices of the ILO. That should be reflected in the conclusions.

The Worker member of the United Kingdom stated that it was of deep concern to him that governments claimed to uphold the authority of the ILO's supervisory mechanisms, but when the Committee of Experts reached a conclusion they disliked, those governments said the Committee was wrong and thus should be ignored. He recalled the criteria which the Committee of Experts considered that they had to apply if the relationship between the prisoner and the private company was to approximate to a free employment relationship and be acceptable under Article 2(2) of the Convention. First, prisoners could not be hired out by public or private prisons to private individuals, companies or associations. This was the difference between hiring by and hiring to. Notwithstanding the duty of care of the public prison service to ensure that prisoners were not exploited, the relationship would have to be a direct one between the prisoner and the company. Moreover, there could be no compulsion or duress. Therefore, prisoners who refused to perform work for a private company could not be subject to punishments of any sort, including refusal of parole or privileges. An appraisal of free consent also required further guarantees regarding wage levels, which should be at least the prevailing industry norm or national minimum, social security and labour inspection. The work also had to be subject to public supervision. The existence of a prisons minister, or a civil service director of the prisons system, did not amount to public supervision of the work done by prisoners. Wherever the work was performed – except in the case of legitimate prerelease schemes where prisoners were working outside prisons in normal workplaces – the work had to be supervised by public officials.

The question therefore was if work performed in private prisons, whether for another outside company or in normal prison work, such as food preparation or cleaning, effectively was work or services for that private prison company. The conclusion the Committee of Experts had drawn from this was straightforward – prisoners held in private prisons, where the activities were not supervised by the public authorities, and whether convicted or not, could not be obliged to work. Even an approximation to free consent would be insufficient here because their work was not publicly supervised. The Committee of Experts had repeated clearly that those two conditions were cumulative and applied independently. Therefore, public supervision and control did not remove the requirement to ensure that the prisoner was not hired to or placed at the disposal of private individuals, companies or associations. In the case of privately managed prisons in Australia, prisoners' consent was not being sought and there was neither approximation to a free employment relationship nor public supervision. The prohibition on work for private companies applied a fortiori to all work performed under private supervision, including in privately managed prisons. This did not mean that no work at all could be performed by prisoners for private companies, so long as the conditions of public supervision and genuine free consent in an employment relationship which approximated to a free employment relationship prevailed. Companies which relied on unpaid or barely paid captive labour for the daily running of their prisons, or to produce goods or provide services, would not be viable in a free labour market. Companies which sought to support the rehabilitation of prisoners held in public prisons by providing decent work for prisoners under the conditions required by the Committee of Experts had nothing to fear from the Convention.

The Government member of the United Kingdom stated that her country fully supported the aims of the Convention which it had ratified in 1931. The United Kingdom supported the thrust of the Government representative's statement. Her Government continued to believe that all countries should have in place a robust set of rules and regulations that ensured prison labour was not abused. In applying these rules, both public and private sector prisons and workshops should be subject to rigorous independent inspections, both domestically and internationally. If the current interpretation of the Convention by the Committee of Experts were accepted, the employment of prisoners would no longer be viable in a number of prisons. It was rarely possible within prisons to mirror conditions of free market employment. She did not believe the Convention adequately reflected the changes in penal practice in the past 70 years. Contrary to the intent of the Convention, compliance with the Committee's view would be highly damaging for prisoners and their rehabilitation. Noting that the Australian Government had suggested that a process be established to examine this issue and to settle a modern interpretation, she repeated the suggestion that her

delegation had made before, that this matter should be remitted for further consideration in conjunction with international penal practitioners. The United Kingdom stood ready to offer assistance with this work.

The Government member of the United States recalled that her country had not yet ratified this Convention. In the United States there existed instances of both privatized prisons and the contracting out of labour in public prisons. When the Tripartite Advisory Panel on International Labour Standards began to look at the legal feasibility of ratification of both Conventions Nos. 29 and 105 in the mid-1980s, the Panel quickly realized that the Committee of Experts' interpretation of Convention No. 29 made ratification of that Convention unlikely. The review of the Convention was suspended indefinitely and the Panel focused solely on Convention No. 105, which the United States ratified in 1991. A key problem was that, in addition to the Committee of Experts' interpretation being very narrow, it also lacked clarity. This was true particularly with regard to the criteria the Committee of Experts cited for determining whether work in a privatized prison was truly voluntary. In paragraph 6 of their observation in this case, the Committee of Experts had noted that the conditions of employment in privatized prisons were not required to be exactly the same as in the open market, but that they needed only to "approximate" a free labour relationship. Indeed, the Committee of Experts had acknowledged in a previous general observation that in the prison context it was difficult, if not impossible, to reconstitute the conditions of a free working relationship. However, in studying the list of criteria the Committee of Experts developed for making this judgement – some of which were listed at the end of paragraph 6 – it was virtually impossible to see how and where they drew the line. The United States would like to resume consideration of this Convention, but until such time as there existed a clear understanding of precisely what the Convention required regarding prison labour, this would not be possible, even though United States law and practice appeared to be in full conformity with all other aspects of the Convention. The speaker recalled that countries contemplating ratification of ILO Conventions – whether fundamental or technical – needed and deserved to know exactly what obligations they would be making a binding international commitment to uphold. She joined previous speakers in calling on the ILO to establish a process for settling a modern and clear interpretation of the Convention – an interpretation that protected prisoners and preserved the original intent of the Convention, but one that also took into account modern prison practices.

The Government representative, responding to the discussion, stressed that private prisons in Australia remained under the control of public authorities which were responsible for guidelines, inspections and penalties with regard to prison operators. He noted that prisons paid contractors to administer and oversee the work of prisoners. Employers did not pay for access to prisoners, but rather prisons paid companies to handle prison operations. The terms of work were the same in both private and public prisons. Exploitation was not permitted and supervision in private prisons was stringent. In response to the Worker members, he stated that his Government did not consider that the Committee of Experts was wrong in its interpretation of the Convention, but rather that its position on private prisons was confusing and had led to a stalemate. He reiterated that Australia was keen to have this matter reconciled and was prepared to work with the Office and the Committee of Experts in this regard.

The Worker members said that they did not think that the Committee of Experts was infallible. And even if they would think so, they would not say so as that would be an unwise thing to say to the Experts and create a strange impression of the relationship between the Committee of Experts and the Conference Committee. They noted that, contrary to what the Employer member from Australia had said, the issue of private prisons had already been under consideration in 1930, as was noted by the Committee of Experts' comment in its General Report of 2001. The Worker members fully believed that the Convention was an adequate basis for the discussion of the phenomenon of private prisons and were not interested in developing a new instrument.

Indeed the Committee of Experts was also charged with examining new developments in the light of ILO standards. This was exactly what it did in 2001 in its General Report. As had been noted by other speakers, however, many governments had decided not to participate in the preparations for this exercise. Governments, therefore, would mainly be to blame if the Committee of Experts' analyses and interpretations of the Convention in this respect did not sufficiently take into account the real situation in their countries. The Worker members called for dialogue to clear up the confusion surrounding this issue and hoped that Australia would note the positive experience other countries had had in accepting interpretations of standards provided by the Committee of Experts. The conclusions should, exactly as the conclusions of the debate of the case in 1999, request the Government to provide detailed information on the state supervision of privatized prison labour and stress the Convention's requirement that prisoners should not be hired to or placed at the disposal of private companies or individuals. Furthermore, the Committee's conclusions should call for the re-establishment of dialogue on the matter between the Government and the Committee of Experts. This dialogue should be enriched by the discussion of best practices in the countries mentioned earlier.

The Employer members, in response to a statement by the Worker members that the Committee of Experts had found the privatization of prison labour to have been under consideration when the Convention was adopted, recalled that the Committee of Experts had referred to the Memorandum of the ILO of 1931, which was not an official interpretation of the Convention. They recalled the importance of rehabilitation and reintegration measures through work. It was a fact that the State was often unable to provide meaningful work for prisoners. The State was in general a rather unsuccessful employer, and state-run prison work was often stultifying. Therefore, it was in the interest of the prisoner to be employed by a private employer, thereby increasing his or her employability after release. They also emphasized that the Committee of Experts in its analysis of 2001 had not excluded the possibility of employment of prisoners by private employers. In reaction to a point raised during the debate, the Employer members indicated that the employment of prisoners by private employers would not lead to distortion of normal trading conditions. This was proved by the fact that the State usually had to undertake propaganda work and to give incentives to private employers to encourage them to employ prisoners. Finally, the Employer members drew attention to the fact that the analysis of the Committee of Experts in its 2001 report had been based on only a few reports the Government had submitted on the matter. However, they thought that now the Government had entered into the discussion on the subject. They hoped that the Committee of Experts would not ignore the new elements that arose with the discussion, and that discussions with all supervisory bodies would continue. In conclusion, they said that the conclusions had to reflect that the Conference Committee had different views on the issue.

The Committee noted the information transmitted orally by the Government representative and the ensuing debate. It recalled previous Committee discussions of prison labour in private prisons in Australia. There had been little change in the law and practice as transmitted to the Committee of Experts and the Conference Committee in regard to work of convicted prisoners for private enterprises. The Committee hoped that the Government of Australia would continue the dialogue with the ILO and with social partners concerning the practice of prisoners working for private enterprises. The best practice of the ILO members States should be taken into account. The Committee stressed that the Convention prohibited placing prisoners at the disposal of private individuals, companies or associations, unless the work was carried on under the supervision and control of public authorities. The Committee noted the Government's undertaking to fulfil the obligations of the Convention and requested it to take the measures necessary, without delay, to ensure that prisoners working for private enterprises did so voluntarily and were not subject to any pressures or threats. The Committee hoped that a detailed report on the measures taken would be supplied for examination by the Committee of Experts.

Indonesia (ratification: 1950). **A Government representative** provided a detailed overview of the measures that had been taken to address the problem of child labour. The existence of child labour in Indonesia was, unfortunately, an inescapable reality caused by widespread poverty, lack of access to education, and the traditional perceptions that children were expected to help their parents in order to contribute to the family's economic well-being. The Government, nevertheless, was committed to ensuring that children were given the fullest protection. The recently adopted Act No. 13 on manpower clearly stated that children could work only if the work did not undermine their physical, mental and social development and health. Following this Act, the Indonesian Ministry of Manpower and Transmigration had published Minister's Decision No. 235/2003 regarding the types of work which were harmful to children's health, safety and mental well-being. This decision was also a follow-up to the implementation of ILO Convention No. 182 which Indonesia had ratified.

Turning to the question of *jermals* (fishing platforms), the speaker recalled that the Government and the ILO had signed a Memorandum of Understanding on the elimination of child labour in 1992. The Provincial Government of North Sumatra and the ILO-IPEC in Jakarta had recently signed a Letter of Agreement in April 2004 as an extension of the previous agreement signed in 2000. This Let-

ter of Agreement laid down the second phase of the programme to eradicate children working on *jermals* by 2004. The first phase which started in 2000 had received positive recognition by the ILO in which the Provincial Government of North Sumatra was regarded as successful in reducing the problem of child workers in the province, particularly on *jermals*. According to the ILO-IPEC finding, since the beginning of the project in December 2000 until March 2004, 344 children were withdrawn and 2,111 children were prevented from working on *jermals*. Furthermore, a monitoring team had been established by the provincial Government which constantly monitored the activities of *jermals*, especially to prevent the use of child workers. It should also be noted that the provincial Government had been more restrictive in its licensing of *jermals*. Indeed, the total number of *jermals* had gone significantly down from the previous 450 to the current 124. Turning to the second phase set forth in the new Letter of Agreement, he noted that the primary objectives of this Agreement were: to remove children from *jermal* platforms and provide them with educational and other opportunities; to implement prevention, monitoring, withdrawal and rehabilitation strategies; to facilitate changes in community and family attitudes towards child labour, and to encourage replication of such strategies in other areas in Indonesia. The new Agreement also stressed tougher implementation of forced withdrawal of children working on *jermals*. In the first phase, immediate withdrawal was applied to *jermal* children under 15 years old. Now, children under the age of 18 should be immediately withdrawn, in line with the Minister's Decision No. 235 mentioned above. In implementing the programmes to eradicate child labour, the Ministry of Manpower had enjoined as many parties or stakeholders as possible, including the national police, its social partners, workers' and employers' organizations, NGOs and civil society.

Turning to the issue of trafficking in persons, the Government representative stated that the problem could not be separated from the issue of the placement of Indonesian migrant workers abroad. The Minister's Decision No. 104 A/Men/2002 provided a legal basis for the sending of Indonesian workers abroad which allowed both the Government and the private sector to undertake the sending of those workers. The provision, among others, stated that only after fulfilling certain criteria could private companies obtain an official permit (SIUP) to be involved in the sending of workers abroad. In order to further ensure compliance to existing regulations, the Government had reviewed their activities and imposed sanctions on those violating the rules. So far, 61 labour-sending companies (PJTKI) had been sanctioned and some 53 permits (SIUPs) had been withdrawn. Reasons for the withdrawal included substandard labour training houses and the use of fake vocational training certificates. The Ministry of Manpower and Transmigration, in cooperation with the national and provincial police, had also raided several migrant workers' training accommodation after receiving information from the public. Further, the Government was still in the process of implementing the Indonesian National Plan of Action for Human Rights of 2004-09, which included the programme to improve the integrated efforts for child protection from trafficking and sexual exploitation. The Indonesian national police had expanded some of its facilities to be able to deal with the crime of human trafficking in women and children. The Indonesian Government had also conducted some training programmes for labour inspectors, aimed at increasing their awareness of the issue of trafficking in persons. The Government was also working to strengthen data collection on trafficking cases, and was in the process of harmonizing national laws, in particular the Criminal Code and the Law on Immigration, which, among others, would also address the issue of trafficking in persons. Furthermore, the Government had concluded agreements with some receiving countries, and had also provided programmes to improve migrant workers' technical skills. The recruitment process also had to include psychological tests.

The Government also joined efforts with the international community in addressing the issue of trafficking. The Government had launched a regional initiative in cooperation with the Australian Government and co-hosted the Regional Ministerial Conference on People Smuggling and Trafficking in Persons in 2002 and 2003 with a view to enhancing regional cooperation and establishing a regional mechanism in combating trafficking in persons. Realizing the need for an improved protection of Indonesian migrant workers, the Government had prepared a draft law on the placement and protection of Indonesian migrant workers which included, inter alia, increasing the minimum age for working abroad and putting stricter requirements for permit applications. In order to combat trafficking in persons more effectively, the Government was in the process of finalizing a draft law on the eradication of people trading and trafficking in persons. In conclusion, he reiterated the commitment of the Government to eradicate forced labour and asked the international community, including the ILO, to continue to extend their assistance and cooperation.

The Worker members noted that the Government had not contested the information in the Committee of Expert's comments. They understood that poverty was a cause of child labour, but this should not prevent the Government from seriously addressing the issue. The Worker members asked for further details which the Government had not addressed. In particular, they wanted to know the estimated total number of children who were working on the *jermal* platforms and how far the Government had approached the goal of the total eradication of the problem, as we were already halfway through the year 2004. They also wanted more information on the legal measures that were being developed, in particular whether the draft Regulations mentioned in the Report of the Committee of Experts had already been adopted and applied in practice. It was also important to know how the *jermal* system would be monitored. *Jermals* were fairly easy to spot, and the Worker members requested more information on how they could be controlled. They also wanted to know more about law enforcement measures and penalties for crimes of forced labour. Declining numbers of child workers on *jermals* suggested that the Government was gradually coming to grips with the problem. Against that background it was strange that, apparently, no information at all was available on prosecutions and convictions of perpetrators.

With regard to trafficking of persons, the Worker members noted that a National Plan of Action for Human Rights had been established. They requested what the services established under the Plan had done so far and what results they had in fighting trafficking of persons. They also pointed out that prosecution of perpetrators was essential. They noted that the Indonesian police should be effective in dealing with those responsible for trafficking, given the efficiency with which they had arrested and locked up large numbers of alleged trade union troublemakers throughout the period of the Soeharto regime. Finally, they noted that the Memoranda of Understanding the Government had concluded with receiving countries of migrant workers did not contain clauses protecting workers' rights, as for example the very recent arrangement with Malaysia. The Memoranda of Understanding also excluded household workers. The lack of social protection in these agreements invited the exploitation of workers.

With regard to abuses in the practice of recruiting migrant workers, the Worker members noted that the Government had apparently not reacted in its report to the Committee of Experts to the allegations or provided additional information on this matter. It appeared that migrant workers were required to pass through recruiting agencies before being sent abroad, which often charged exorbitant fees up to thousands of US dollars, as revealed by the Indonesian Migrant Workers' Union and other organizations representing the interests of migrant workers. They asked if the fees were subject to legislation, and if there was a maximum legal fee. They observed that it appeared that the Government was co-responsible for the widespread malpractices as they required migrant workers to go through these agencies while failing to regulate or control their activities. The Government should review their legislation relevant to migrant workers and involve, in this process, not only employers' organizations and trade unions, but also migrant workers' unions and other organizations representing the interests of migrant workers. They should seek technical assistance of the ILO, including advice of the ILO on the possible ratification of the most important Migrant Workers' Conventions of the ILO and on the relevance of Convention No. 181 for the regulation of private employment agencies.

Finally, the Worker members recalled the problem of political prisoners, hundreds of thousands of whom were incarcerated after the 1965 failed coup attempt, the overwhelming majority without any trial. These so-called *Tapols* had been often subjected to forced labour. It was for that reason that the Committee had discussed their case repeatedly under Convention No. 29 in the late 1970s and early 1980s. When they were released and they returned to their villages or towns, they were often discriminated against on the basis of a special mark in their ID-cards and could not find work. Even today those still surviving had these problems. The Committee could not address this particular aspect of the case at the time because Indonesia had then not ratified Convection No. 111. Meanwhile it had, but to their dismay the Workers had found that the Committee of Experts in its report of this year had not mentioned this form of discrimination in employment and occupation in Indonesia. They hoped that now that Indonesia had ratified the Convention, it would provide the Committee with information on this matter.

The Employer members noted that this was a serious case dealing with different forms of forced labour, and that their position was close to that of the Worker members. With regard to forced labour

of children on fishing platforms, they observed that this was extremely dangerous work. Recognizing that child labour was a consequence of poverty of families, they welcomed the actions taken in the framework of IPEC which had as its main objective to prevent child labour and to remove children working on the fishing platforms. They said that the data provided by the Government and contained in the report of the Committee of Experts required to be updated periodically in order to be apprised of current information on the extent to which children work on fishing platforms. With regard to the abduction of children, the Employer members thought that the situation remained quite unclear given that the Government representative had not provided information on this topic. They noted the indication of the Government representative to the effect that a new law was adopted prohibiting child labour and a draft law existed on the prohibition to employ children on fishing platforms. The Government should supply the texts of the above legal texts to the ILO indicating which of them were already in force. They also noted the statement of the Government representative that the collaboration of the central Government and IPEC would lead to a resolution of the problem in the course of 2004 as far as child labour on fishing platforms was concerned. They requested further information on the realistic chances to come to the resolution of that problem.

With regard to trafficking of persons, the Employer member noted that up to 25 per cent of migrant workers were concerned. According to the Government, the elimination of trafficking was not an easy task because it related to transnational crimes. Moreover, the professional competency of the officers responsible for combating trafficking needed to be improved. In this respect, the Employer members noted the National Plan of Action adopted in 2002 to combat trafficking in persons. They wondered whether the measures indicated therein were right and whether the measures would be taken in the right order. Therefore, they associated themselves with the Committee of Experts which had requested the Government to provide information on the measures taken under the plan and on their results. The Employer members recalled that the provisions under the penal code needed to be adopted, because the Convention expressly provided that the illegal exaction of forced or compulsory labour was punishable as a penal offence. Turning to ICFTU allegations concerning the requirement for migrant workers to go through recruitment agencies and the exploitation of migrant workers due to the absence of legislation laying down rights and regulating the labour migration process, the Employer members noted that the Committee of Experts had not expressed its position, but it had requested the Government to supply its response. However, the Government representative had not supplied substantial information on this matter. Therefore, the Government should provide this information in a detailed report which would constitute the basis for the assessment whether there was progress and which further measures needed to be taken in this respect.

The Government member of Cuba stated that the measures taken by the Government on the elimination of child labour on fishing platforms, including the adoption of Manpower Act No. 13/74, had contributed, as indicated by the Committee of Experts, to the reduction in the number of children working on fishing platforms. The Government had also been carrying out ILO programmes such as the one on the elimination of child labour, had submitted its first reports on the application of Convention No. 138 and had recently signed a protocol for the implementation of the second phase of the programme for the elimination of child labour on fishing platforms thereby demonstrating its good will. He affirmed that trafficking in persons had turned into a global and extremely complex scourge. It was clear that it was a phenomenon with different aspects. One such aspect was that traffickers took advantage of emigration. Neither laws nor administrative measures were sufficient to resolve it as it was necessary to address the problems of underdevelopment and the unjust economic and international trading system, which were behind the phenomenon and made it more acute. He stated that trafficking existed because there were traffickers and places which received and exploited trafficked persons. He maintained that if it was really intended to eliminate the phenomenon, this had to be done at both its place of origin and of destination. What were the destinations of the Indonesian migrant workers, women workers and children who were victims of trafficking, for prostitution and semi-slavery? He emphasized that the problem needed to be addressed in an integral manner. In this respect, he said that in the future he would like to see the analysis of the violation of Convention No. 29 in countries which received trafficked persons, since it was there that forced labour was really exacted. He referred to the measures adopted by the Government which, although they might be insufficient, served to show that, in addition to the political will shown by the Government, many other factors were also necessary, including: international cooperation from the ILO and all agencies involved in preventing and combating transnational organized crime and the political will of receiving States to reduce demand; the use of forced labour and to punish those who trafficked and exploited the victims of such forced labour. He concluded that Indonesia needed the continued technical assistance of the ILO in order to ensure the full application of the Convention and hoped that, in its future reports, it would be possible to note much more significant progress in the application of the Convention.

The Worker member of Japan noted that work on fishing platforms off the north-east coast of Sumatra was very dangerous and difficult. The workers were isolated 15-25 kilometres out to sea for three months at a time and faced accidents and drowning. They endured long workdays, sometimes up to 20 hours. For children, the situation was even worse. They were not only kidnapped and forced to work under extremely dangerous conditions, but faced physical and sexual abuse from their adult co-workers. There was no doubt that this kind of work counted among the worst forms of child labour under Convention No. 182. In this regard, she welcomed the adoption of the regulation on minimum age for admission to employment, which prohibited the employment of children in certain categories of work, including work on fishing platforms. Adopting the regulation was one thing; implementation, however, was quite another. She requested the Government of Indonesia to make every effort to fully implement this regulation, particularly with regard to notifications, inspections and the provision of sufficient financial resources. Moreover, she asked the Government to take all possible measures to bring an end to this hazardous work for children. She noted the letter of agreement signed between the Government of Sumatra and ILO/IPEC in April 2003. This project followed upon a similar initiative between 2000 and 2003 which was estimated to have withdrawn approximately 260 children from work on fishing platforms and prevented another 1,116 children from taking such jobs. She welcomed the report of the Government which showed that the project had brought about good results. Moreover, she asked the Government to take additional steps in collaboration with ILO/IPEC to eliminate child labour from the fishing platforms. She emphasized that all people, particularly children, had the absolute right to be educated and to develop their skills and realize their full potential. She requested that the Government accept the observations of the Committee of Experts and take all necessary measures immediately.

The Worker member of the Republic of Korea noted that, according to a series of interviews with Indonesian migrant workers in the Republic of Korea conducted by the Korean Confederation of Trade Unions, there were eight recruitment agencies that sent workers to the Republic of Korea. In order to become an industrial trainee in the Republic of Korea, Indonesians were required to sign contracts with these recruitment agencies and spend three to 12 months in training camps. As the Committee of Experts noted and as the interviews confirmed, these agencies charged extortionist amounts of training and processing fees. In the training camps, prospective migrant workers were forced to endure harsh, semi-military training such as marches or runs in the compound and repeated lifting of logs, among other practices. There were reportedly instances where those who were late for training sessions had been physically beaten. In comparison to such training courses, it was found that these agencies were in most cases unfit to provide education courses that would substantially help those migrant workers during their stay in the Republic of Korea, such as language or cultural education or training on the rights of industrial trainees in the Republic of Korea. According to the interviews, recruitment agencies required prospective migrant workers headed for the Republic of Korea to pay US$3,000 when they signed their contracts. Of this fee, US$750 to US$1,000 was received as a deposit, and was used to guarantee that prospective migrant workers were unable to leave their host country. If a migrant worker indeed left the company, the deposit was not returned. Unfortunately, around 50 per cent of all industrial trainees left their host country because of low wages, bad working conditions and discriminatory, sometimes abusive treatment in the Republic of Korea. This indicated a situation where migrants were trapped in a dilemma between enduring harsh and unjust conditions and losing their deposit in the hope of finding a better job elsewhere as undocumented workers. In either case, agencies profited at the expense of prospective migrant workers, which was the reason why many agencies deceived workers when describing the conditions of industrial trainees in the Republic of Korea. Moreover, some of the agencies forced prospective migrant workers to sign blank contracts just before departure. Most workers signed them because they had no negotiating power to insist upon the terms or conditions of their employment. The Indonesian Government required that migrants used the services of recruitment agencies although these agencies did not provide the neces-

sary education to prospective migrant workers in the Republic of Korea and exposed them to abuse, exploitation and forced labour. While these interviews were not conclusive, they pointed to a strong need for a comprehensive survey and review of migration processes for Indonesians from the perspective of labour and human rights. The speaker urged the regulation and monitoring of recruitment agencies and training camps in order for measures to be taken to rectify such practices.

The Government member of Pakistan declared that it was heartening that the Government of Indonesia had taken note of the situation and had enacted legislative provisions to provide protection to workers. The labour laws of Indonesia prohibited the employment of children in the worst forms of child labour, including work on fishing platforms, and a large number of children had either been withdrawn or had been prevented from engaging in such forms of work. These children were being provided with education, vocational training or were being rehabilitated by other means. He expressed appreciation for the assistance provided by the ILO to the Government through ILO/IPEC in its efforts to eliminate the menace of forced labour, particularly in relation to children. He also welcomed the fact that the Government, in collaboration with the ILO, had developed a programme for the immediate withdrawal of children under the age of 18 years from the worst forms of work. While appreciating the Government's efforts to combat the trafficking of women and children, he urged the Government to accelerate its efforts for the total eradication of trafficking in persons.

The Worker member of Indonesia noted that difficulties remained with respect to migrant workers and trafficking in persons in Indonesia, even though the Government introduced Presidential Decree No. 88/2000 along with other measures. Yet the facts demonstrated that eradication of these problems was still far from attained and many obstacles remained. His union, the SBSI recently visited three cities in Sumatra to investigate the issue of migrant workers and trafficking in persons. Through interviews with local government officials, recruitment agencies, unions and workers, the SBSI found that it was difficult to combat trafficking because some recruitment agencies sent migrant workers abroad with fake documentation. In fact, many workers did not have identity cards. One agency, for example, even falsified the age, name, address and marital status of the workers. As a result, many workers were transported by illegal means in order to avoid government and police border controls and to minimize travel costs. In the city of Tanjung Balai, at least one boat left illegally every week with 10-20 passengers headed for Malaysia and Singapore. Upon arrival in the host country, workers feared taking jobs in the formal sector and some fell into prostitution because they did not know where to find work. This was a particular problem in Indonesia because there were numerous transit border islands and massive unemployment. The speaker thanked the Government for revoking the licences of some illegal agencies, even though many more agencies continued to operate with impunity. Another obstacle was the inability of local governments to address the problem because of a lack of coordination between them. For instance, even if the authorities could abolish the production of fraudulent identity cards, it would nonetheless be impossible to stop trafficking if police border controls remained weak. With respect to the Government's recent action plan to combat trafficking in persons, he requested that unions be consulted. This would give them the opportunity to contribute to eradicating the problem and more importantly would allow them to keep track of the number of cases that had been dealt with, how many persons had been punished and the proposed plan for tackling the problem. The Government should make every effort to hasten the adoption of the draft law on the placement of migrant workers abroad which was submitted to Parliament one year ago. Because this was a multifaceted issue, Presidential Decree No. 88/2000 was not sufficient to address all the potential problems that would arise in the future. He suggested that the Government should adopt comprehensive national legislation based on international standards for the protection of migrant workers. In conclusion, he supported the recommendations submitted to the ILO by the Indonesian Migrant Workers' Union.

The Government member of Bangladesh, referring to the statement made by the Government representative concerning forced labour on fishing platforms in north Sumatra, welcomed the ongoing close cooperation between the Government of Indonesia and the Office, towards the elimination of child labour. In this context, the signing of a Letter of Agreement in April 2004, between the Indonesian authority and the ILO was also to be welcomed. He pointed out that since the beginning of the programme in December 2000, good progress had been achieved in reducing the number of children working and preventing them from working in the *jermals*. This showed the commitment of the Indonesian Government in eliminating child labour from that country. He expressed the hope that the ILO would continue to provide the necessary assistance and support to the Government to redress the problem of child labour in the country.

The Government representative indicated that, following the ratification of Convention No. 182, a national action plan had been developed for the elimination of the worst forms of child labour. Under the terms of the decrees adopted for this purpose, those who were found guilty of violating the provisions on the forced labour of children, including on fishing platforms, were liable to sentences of imprisonment of from two to five years. Indonesia was also participating in an ILO programme to combat the trafficking of workers, with particular reference to the problem of forced domestic work, as well as in a special action programme under the ILO Declaration which was in its preliminary stages and was currently focusing on the assessment of the situation. She added that the Memorandum of Understanding that had been concluded with Malaysia consisted of the renewal of a previous Memorandum of Understanding covering workers in the formal sector. Discussions were under way with a view to the extension of the Memorandum of Understanding to informal workers. Finally, she added that the fees that were payable by migrant workers to recruitment agencies covered certain costs, including transport, medical examinations and the actual fees of the agencies involved. These were paid back once employment had been taken up, in accordance with normal practice for such agencies and in line with the provisions of the Private Employment Agencies Convention, 1997 (No. 181). She also invited the Worker member of the Republic of Korea to assist in assessing the situation of migrant workers from Malaysia who were employed by companies in the Republic of Korea.

The Worker members expressed disappointment with the reaction of the Government representative to the discussion, during which many questions had been raised. In particular, the Government representative had not provided any information on the measures taken to prosecute those who were responsible for the imposition of forced labour. It was therefore to be hoped that the Government would take measures to address this matter. With regard to the Memorandum of Understanding which had been concluded with Malaysia, the Worker members noted that it did not appear to cover the rights of migrant workers. They raised the question of whether Indonesia had concluded other such agreements with third countries which also failed to cover the situation of migrant workers. The Worker members called upon the Government to provide full information on the three matters raised by the Committee of Experts. They also hoped that in its next report the Government would provide full and practical information on the prosecution and punishment of cases of violations of the Convention. With regard to the need to review the legislation that was in place, the Worker members understood that the Government had recently adopted some legislation. However, they recalled that, as indicated by the Committee of Experts and illustrated during the discussions, much remained to be done in this respect in terms of a thorough review of the applicable legislation. They added that the Government bore a heavy responsibility for the situation of migrant workers by requiring them to go through recruitment agencies, but failing to regulate these agencies adequately. Finally, the Worker members emphasized that, when preparing legislation on the issues under discussion, the Government should ensure the involvement of all the parties concerned, including employers' and workers' organizations, organizations representing migrant workers and NGOs involved in assisting migrant workers. It should also seek the ILO's assistance and should examine carefully the possibility of ratifying the ILO's major Conventions on migrant workers. As it claimed that it had developed rules which were adapted from the Private Employment Agencies Convention, 1997 (No. 181), it should also examine the possibility of ratifying that Convention. When Indonesia concluded bilateral agreements on issues of migration with other countries, it should ensure that they covered the rights of all the workers concerned in an adequate manner.

The Employer members noted the very detailed discussions concerning an important case which gave grounds for concern. Although some new information had been provided, it was still not entirely clear what the real situation was. They therefore urged the Government to provide copies of all the relevant legislative texts, both those that were in force and draft legislation, as well as information on planned administrative measures, so that a clearer picture could be obtained of the situation. They further requested the Government to report on the practical impact of the laws and administrative measures adopted up to now. A very complete report would therefore be required on the matters raised by the Committee of Experts as soon as possible.

The Committee noted the information provided by the Government representative and the debate that followed. The Committee noted with concern that the issues raised by the Committee of

Experts related to grave situations of the trafficking in persons, forced labour by children on fishing platforms and the exploitation of migrant workers under forced labour conditions by recruitment agencies. The Committee noted the statements made by the Government representative concerning Manpower Act No. 13/74 and the action taken to prevent the employment of children on fishing platforms and on the linkages between the situation of migrant workers and trafficking. The Government representative had also referred to the National Plan of Action for the promotion of human rights and to the Memoranda of Understanding concluded with countries of destination. With reference to forced labour of children on fishing platforms, the Committee noted with concern the persistence of the practice of employing children in this dangerous work, in which the children could not give their consent or leave the work if they so wished. Allegations also continued to be made of the forced recruitment of children. Such practices occurred in spite of the agreement signed between the provincial government of North Sumatra and IPEC which provided for the complete elimination of child labour on fishing platforms by 2004. The Committee also noted with concern that the Act on the trafficking in persons had not yet been adopted. Taking into account the magnitude of the phenomenon, which concerned women and children in particular, and the need to punish the persons who were responsible for such trafficking, the Committee expressed the hope that the new legislation would be adopted in agreement with the social actors, trade unions and organizations of migrant workers, and with ILO technical assistance, and that the Government would also be in a position to provide information on its application in practice. The Committee urged the Government to take strong measures, proportional to the magnitude and gravity of the problems examined, particularly to impose sanctions on those responsible for practices of forced labour. The Committee expressed the hope that the Government would provide detailed information in its next report, especially on the conditions of work of migrant workers, placed by recruitment agencies and on the bilateral agreements concluded, which needed to protect the rights of migrant workers.

Niger (ratification: 1961). **A Government representative** took note of the observations made by the Committee of Experts with regard to forced labour and child labour and thanked the Committee for giving her the opportunity to address these questions the gravity of which she fully recognized. The Government representative stated that different measures had been taken in order to face up to these phenomena. With regard to forced labour, she recalled that a law (Act No. 2003-025) had been adopted in June 2003. The adoption of this law was too recent to evaluate its impact, but it demonstrated the efforts made in order to eradicate forced labour. To this were added the actions taken in the context of the combat against poverty carried out by Niger. Concerning child labour in general, and in particular the children who worked in mines, as well as child beggars, she observed that these questions intensely preoccupied her Government. In order to face up to this veritable scourge, the Government of Niger relied on the labour inspection services, the IPEC programme, as well as certain NGOs. The Government stated that it was determined to continue its action and wished to be able to count for this on the technical assistance of the ILO and, in general, on the technical and financial aid of its partners in development.

The Worker members referred to the studies carried out on the phenomenon of slavery in Niger. One of these studies, surveying 11,000 persons, in some six regions of the country, was completed in 2002 under the auspices of Anti-Slavery International, in cooperation with its local partner Timidria. It had revealed that the status of slave continued to be transmitted by birth to individuals from certain ethnic groups. These persons worked for a master without remuneration, mainly as shepherds, agricultural workers or domestic servants. Their only remuneration was food and a place to sleep. Thanks to the impact of the Anti-Slavery International/Timidria report, presented at a conference on slavery in Niamey in May 2003, the Government quickly adopted a new law on slavery, which provided not only for fines but also for prison sentences of 10 to 30 years. Previously, in 2001, following a study carried out on an ILO initiative and endorsed by the Government and the social partners, a number of initiatives were identified to strengthen legal instruments, raise awareness among the population of its rights and duties, move to more sustainable forms of development, and undertake a national survey on the forms of slavery, its victims and its perpetrators. The Worker members appreciated that the Government had not denied the existence of the phenomenon, but nevertheless regretted that it minimized it. They asked the Government to provide information on rehabilitation efforts of enfranchised persons. An ILO study had revealed the extent of child labour in small-scale mining in Niger, mainly in the informal sector. Thus, in this sector, 47.5 per cent of workers were children. They worked as from the age of eight years, often seven days a week and more than eight hours a day. They were especially exposed to the dangers inherent in their activity and the lack of schooling reduced their expectations to nothing. As adults, they would inflict the same fate on their own children, simply to ensure their subsistence. The children were often put out to work by their parents and this locked these categories into poverty. The Worker members also denounced the practice of making children beg. The Committee of Experts considered that these children, who were caught in a relationship similar to the slave-master relationship, performed work which they had not chosen of their own free will. They believed that nothing could justify this practice, which affected both the dignity of children and their psychological development. They therefore requested the Government to provide concrete information on action being taken against this phenomenon.

The Employer members noted that several requests for information had remained unanswered. Although the Government had ratified the Convention in 1961, it was surprising that the Committee of Experts issued a first observation only in 2001. This was surprising, given the gravity of the case. The first issue at stake was the continuing conditions of slavery for some ethnic groups serving as shepherds or agricultural and domestic workers, without pay. The extent of the problem was not clear and the Government should provide more concrete information. While slavery was prohibited under the national Constitution and a provision had been included in the Penal Code, it appeared that there was not an effective enforcement programme. Awareness-raising programmes were not enough and more concrete action was needed to meet the obligations under the Convention. The second problem raised by the Committee of Experts was forced labour of children in mines which was expressly prohibited under Article 21 of the Convention. An ILO Survey of 1999 showed that child labour in small-scale mining was widespread in the country with over 47 per cent of the workers being children. The percentage was 57per cent if one considered work in quarries. This work, which was arduous and unsafe, was performed by children as young as 8 years. This was significant because the Government had also ratified Convention No. 138 in 1978 and Convention No. 182 in 2000, which provided for the age of 18 for all kinds of arduous work. In addition, it appeared that no laws were in place prohibiting child labour in mines. Finally, forced labour was a product of poverty. There was evidence that children were begging in the streets with the encouragement of spiritual leaders. Considering that these children were in a relationship resembling that of a slave to a master, the Committee of Experts requested further information on measures taken to prohibit such practices. In the Employer members' view, this practice fell clearly under the definition of forced labour set out in Article 2 of the Convention. In summary, the Employer members considered that the minimal steps taken by the Government were totally insufficient. The Government needed to pay urgent attention to eradicating forced labour in law and practice.

The Government member of Cuba was confident that the measures adopted would provide a solution to the questions raised. It was important to emphasize that the situation under discussion was a result of the exploitation suffered over centuries by victims in the Third World, preventing them from progressing at the economic and social level. She pointed out that standards had been adopted during 2003 which sanctioned slavery; in 2001 a forum had been held on forced labour with the support of the ILO to sensitize and mobilize both traditional and public authorities on the issue, and training programmes were carried out in different social areas as part of a support project for application of the ILO Declaration of 1998. Among other measures taken, a group of experts on international labour standards had been set up. The speaker underlined that the Committee of Experts had recognized the measures taken by the Government to combat forced labour. She insisted that international cooperation had to be extended to the Government. This should include ILO technical assistance to improve training and education, to create employment and to assist in the search for solutions to the problems described in the Committee of Experts' observation.

The Worker member of Senegal stated that he appreciated the work carried out by the Committee of Experts, especially the quality of the information collected which provided a clear image of the situation in Niger. He considered nevertheless that in the examination of phenomena like forced labour and child labour, one should take into account the history of the country and at the same time the situation of extreme poverty in which the country actually sank. The Government of Niger recognized the existence of forced labour and child labour and had undertaken to eradicate these phenomena. The ILO should take into consideration the efforts made

in the country and respond to its request for technical assistance. The persistence of slavery practices in several regions of the country called for awareness raising and measures to end the suffering of thousands of individuals. A solution should not be sought only in law and the Government should undertake action to ensure the reinsertion of the persons who were liberated from slavery. Parallel to the road map followed by the Government, the international community should support the country in its combat against forced labour.

The Worker member of India noted that three main problems existed in Niger with regard to forced labour, namely, slavery, forced labour in mines and forced labour and begging. The persons concerned were described by the Committee of Experts as belonging to a slave caste which worked in the informal sector for a master in exchange for food and sleep. Regarding the first problem, i.e. slavery, he considered that Article 25 of the Convention had not been implemented and emphasized that exploitation should be reduced and that the Government should give all the relevant information in this respect. As to the second question, he noted that despite the vast scope for governmental action, the Government had not reported any information. Noting the seriousness and widespread nature of the problem, he urged the Government to give special and urgent attention to implementing effective means to eradicate these three practices. He also requested the ILO to take measures to safeguard the interests of the children in situations of slavery.

The Worker member of Benin stated that the phenomenon of slavery had always existed in Niger, especially because this status was being transmitted by birth in certain groups. This fact was recognized by the Government of Niger which did not stay inactive. Forced labour of children aged 8 to 18 years in mining activities was a reality which led to a deplorable and worrying social situation for the future generations and made one wonder about the concrete measures envisaged by the Government in order to put an end to it and the legal responsibility of parents. The speaker was of the view that a legal arsenal of laws, even if it existed, did not suffice on its own to solve the problems or to allow ethnic minorities to be aware of their rights as citizens, as defined in the Constitution of Niger. It was urgent that the Government take diligent and pragmatic measures to ensure the application of the provisions of Convention No. 29 in practice.

The Employer member of Niger considered that in analysing the situation in Niger one should take into account that Niger was a country of more than 1.2 million square kilometres, 70 per cent of which was occupied by a nomad population. Slavery was a widespread practice in that group and this made it difficult to take any action to eradicate forced labour. The solution should be sought in consciousness raising among the population at large on these questions. However, by reason of the extreme poverty afflicting Niger, like other sub-Saharan countries, the Government needed the support of the international community. With regard to child labour, the speaker stated that the absence of schooling was one of the causes of this phenomenon and invited Niger to adopt a law fixing the obligatory schooling age. Finally, with regard to child beggars, the speaker explained that the religious tradition always required children to beg in the framework of their spiritual education, but that since this practice had been introduced in the cities it had started to represent a problem. The solution should be looked for mainly in the set of measures aiming to fight against poverty.

The Government member of Argentina expressed his grave concern over the situation in Niger, especially regarding children. He urged the Government to take the necessary measures to comply with the terms of the Convention and asked the international community to provide assistance to end this situation which affected human dignity.

Another Government member of Niger stated that they had not wanted to repeat the information contained in the report of the Committee of Experts, which was why the intervention had appeared brief. He considered the scale of the phenomenon described in the Committee's remarks to be excessive. In the final analysis, the issue was an economic one. The development index placed Niger in the last but one position in the world and the struggle against slavery was closely linked to the fight against poverty. He was satisfied that several speakers had expressed the need for international cooperation to address the problem, not only of slavery, but of the extreme poverty which afflicted the country. The existence of the phenomenon was not an isolated case, but the Government of Niger had had the courage to recognize it and seek appropriate solutions.

The Worker members stated that neither the Koran nor the Bible accepted that children should take to begging. The Workers recognized the efforts undertaken by the Government to combat the phenomenon of slavery by modifying the Penal Code and through awareness-raising campaigns. They remained concerned by the persistence of practices of slavery and awaited effective enforcement of the relevant legal provisions. They invited the Government to recognize the phenomenon in all its scope and to supply information on programmes to rehabilitate those freed from slavery and on the number of those charged, judged and condemned. The Worker members noted their even greater concern for the situation of children forced to work in dangerous conditions and engage in street begging, and invited the Government to seek ILO technical assistance in this field.

The Employer members stated that the grave situation discussed had to be of concern to everybody. The Government should take concrete steps to address it, while assistance of the ILO and the international community was also required. Generally, there was a need for economic development policies to put the country in a position to solve the problem.

The Committee took note of the information provided in the Government representative's statement and the discussion that followed. The Committee took note of the information contained in the report of the Committee of Experts according to which the phenomenon of slavery had not been entirely eradicated. The Committee noted with interest that the Government had amended the Penal Code which now classified slavery as a criminal offence and punished the imposition of slavery on other persons with a sentence of imprisonment. The Committee regretted that the Government had not provided any information to the Committee of Experts on child labour in mines. The Committee shared the concern of the Committee of Experts, also expressed by the United Nations Committee on the Rights of the Child, as regards the vulnerability of the children who begged in the streets. The Committee took note of the information provided by the Government representative on the application of the law which had been adopted in 2003 and the importance of the inspection services. The Committee noted that the Government of Niger had expressed its willingness to continue its efforts to eradicate such situations with the technical assistance of the ILO. The Committee also took note that, in their interventions, various members of the Committee underlined their concern for the continuing existence of slavery, child labour in mines and child beggars. Taking into account the seriousness of the problems, the Committee requested the Government to give special attention to the adoption of measures destined to protect the children against the forms of forced labour represented by work in mines and begging. In this respect, the Committee reminded the Government that it could avail itself of the technical assistance of the Office and the international community.

Myanmar (ratification: 1955). See Part Three.

Sudan (ratification: 1957). **A Government representative** started his statement with a condemnation by his Government of all forms of slavery, servitude and similar acts which were morally wrong and constituted a violation of the Constitution of Sudan. These were all crimes punishable by the laws of Sudan. He indicated, in reply to the observations made by the International Confederation of Free Trade Unions (ICFTU), that their observations had reached his country at a late stage, and informed the Conference Committee that Sudan's replies were sent to the ILO and would be submitted to the Committee of Experts at its forthcoming session in November 2004. He reiterated that his Government had the desire and serious will to collaborate with various international organizations for the eradication of abductions. In that regard, the Committee for the Eradication of Abduction of Women and Children (CEAWC) was set up to implement the resolution of the United Nations Commission on Human Rights, adopted unanimously in April 1999, and whose aim was to investigate cases of abduction and facilitate the return of abductees to their families as a priority. To that end, CEAWC had formulated plans of action in collaboration with the European Union, UNICEF, the UK Save the Children and the Save the Children Sweden, and sought to raise funds in addition to governmental funding.

He informed the Committee of a Presidential Decree promulgated in 2002 by virtue of which the work of CEAWC would be under the Presidency. Since that date, CEAWC was able, through its different branches and bodies, to return the following numbers of abductees in the regions of Kurdufan, Darfur and the south of Sudan: (a) in March 2003, 143 abductees rejoined their families in the west of Kurdufan, thanks to the funding of the European Union through UNICEF; (b) in March 2003, 54 abductees rejoined their families in the south of Darfur, thanks to the funding of the European Union through UNICEF; (c) in August 2003, 69 abductees rejoined their families in the south of Darfur, funded by the European

Union through UNICEF; (d) in August 2003, 80 abductees rejoined their families in the west of Kurdufan, funded by the European Union through UNICEF; (e) in September 2003, 57 abductees rejoined their families in the west of Kurdufan, funded by BIR International Organization; (f) in October 2003, 57 abductees rejoined their families in the west of Kurdufan, funded by Save the Children Sweden; (g) in October 2003, 46 abductees rejoined their families in the south of Darfur, funded by Save the Children Sweden; (h) in the period from December 2003 to January 2004, 134 abductees rejoined their families, funded by the Government; (i) in January 2004, 88 abductees rejoined their families in the west of Kurdufan, funded by various donors; (j) in the period from March to May 2004, 1,000 abductees rejoined their families funded by the Government. As of March 2004, he pointed out that his Government had allocated the sum of US$600,000 to CEAWC, enabling it to send 13 tribal committees on two missions, aimed at returning abductees to their families. On 10 April 2004, the first mission ended its work and managed to return 700 abductees to their families in the areas controlled by the Sudan People's Liberation Army (SPLA). The second mission succeeded in returning 300 abductees to their families. He added that CEAWC was doing its utmost to return abductees to their families in the regions controlled by the SPLA. He informed the Committee of an Order promulgated by the Vice-President of Sudan, approving the allocation of US$400,000 a month to the activities undertaken by CEAWC, which would enable it to carry out its plan of action within the specified period of time. As a result, abduction stopped totally and CEAWC succeeded in making progress in spite of the delayed and insufficient funds from the donor community.

He highlighted that the Special Rapporteur for Human Rights in Sudan had indicated in his report that no cases of abduction had been registered since October 2002 and that there was a decrease in the phenomenon of abduction during the period of his reporting. With respect to the legal proceedings instituted against perpetrators of abduction, the speaker stated that CEAWC thought that legal proceedings were the only means to put an end to abduction, while the tribes, including the Dinka Chiefs Committee, had requested CEAWC not to resort to that means of action unless the efforts of tribes had all failed. They argued that legal proceedings were lengthy, threatened abductees' lives, and did not help in peace-building amongst the different tribes. He highlighted that there was no proof regarding the numbers of abductees advanced by some of the organizations, and informed the Committee that a distinction should be made between cases of abduction and other cases of displaced persons, who had been separated from their families. He pointed out that, in a war situation, numbers of displaced persons increased, which made it difficult to certify numbers. He indicated that, in previous discussions of the Conference Committee, it was noted that the phenomenon of abduction had worsened due to the war in the south of Sudan. He added that, at that time, the positive developments in putting an end to the phenomenon of abduction had been noted, after the signing of the Khartoum Agreement for Peace with the warring factions in 1997, which diminished the phenomenon. He highlighted that, in 2002, the delegation of Sudan had indicated to the Committee that the ceasefire agreement in the Nuba mountains signed on 19 January 2002 had led to improved tribal relations in the region, which further diminished abduction.

The speaker informed the Committee of the signing by the Government of Sudan of three protocols for peace which included the south of Sudan, the areas hit by war in Kurdufan, the Blue Nile and Abyei regions, on 26 May 2004, after lengthy and tiring negotiations, held under the aegis of the countries of the Inter-Governmental Authority on Development (IGAD), headed by the Kenyan Government, the host of those negotiations. He added that the friends of the countries of IGAD, the United States, the United Kingdom, Norway and Italy had all helped in attaining peace, and that in spite of the ceasefire which had long been in place, the signing of the peace protocols was the date on which the war ended effectively. The protocols included the protocol for power-sharing, providing for fundamental principles and freedoms, human rights, as specified under international conventions and instruments, covering cultural, economic and political rights, the instruments on racial discrimination, the Conventions on the rights of the child, and the laws on slavery. He concluded his statement by reiterating his firm belief that the phenomenon of abduction would be ended totally after achieving peace in Sudan, based on mutual understanding, and expressed his hope that it would pave the way to a just peace for all parties. He hoped that the Conference Committee would understand the position of Sudan and invited its members to assist his country in stabilizing the peace agreements and to formulate their conclusions taking into account the reality of the situation.

The Worker members stressed that the warnings of the Committee for the past decade regarding the violation of the Convention by Sudan had not been sufficiently heeded. Over time this Committee had become aware of how the abduction of women and children was a stab in the heart of Sudanese society. The healing process was long and the events in Darfur were a new source of concern. The Secretary-General of the United Nations himself had compared the situation in Darfur to the Rwandan genocide, suggesting that United Nations forces could be obliged to intervene if the Government did not control the situation. Despite the fragile optimism which had been created by the signing of the peace agreement, troubling information continued to arrive concerning the situation in Darfur: destruction carried out by the Janjaweed militias, massacres, mass rape, violence against the civilian population and over a million refugees. According to the UN High Commissioner for Human Rights, violations of human rights committed by institutions similar to governmental institutions and by militias could constitute war crimes. The High Commissioner had requested the Government to establish an investigation commission. This commission absolutely had to function in good faith and the results of its investigations should be published.

The Worker members indicated that the Conference Committee should not risk realizing later that it had not done enough for the abducted children and women. These people found themselves in an abyss and were racked by agony and distress, and they had accumulated enormous frustration. This Committee had to rescue them. Even if the Government had taken measures to improve the situation of human rights and a peace agreement had been signed, serious failures in practice were still evident. In the first place it was important to note the previous refusal of the Government to accept a direct contacts mission and the slowing down of the process of identifying and liberating abducted women and children. The figures released by the Government in this regard could not hide reality. Moreover, the problem of impunity of the perpetrators of these acts appeared to be a refusal to eradicate this problem, and generated frustration. The Government had to put an end to this situation and in the future prosecute persons who were suspected of carrying out or supporting abductions of children and women. In view of this situation, the Government had to provide guarantees of its commitment and demonstrate that it had turned from its errant ways. It had to face up to its responsibilities urgently. It was urgent that the Government responded to the concerns raised by the Special Rapporteur of the United Nations Commission on Human Rights. The Worker members stressed that this Committee had to be sure of the good faith of the Government. The war had for a long time been cited to explain the situation. The peace agreement should allow the source of this evil to dry up. The Government should not be issued a blank endorsement. This Committee needed to receive integral, collective and sincere responses – words had to be followed by actions.

In conclusion, two elements had to govern this Committee's procedure. First, there had to be a clear objective: the Government had to accept ILO technical assistance and commit itself to improving the situation and to submit itself to a new examination next year. Second, there had to be a method: technical cooperation which imposed on Sudan an active cooperation which should be confirmed at each stage. At the same time the Committee of Experts should play its supervisory role. The conclusions of this Committee should reflect both its convictions and doubts. The Committee should assist the Government in repairing the fabric of its society, thereby permitting Sudan to be a peaceful and promising country which allowed liberated former slaves to go home.

The Employer members recalled that the Committee of Experts had indicated that thousands of women and children had been subject to abduction, trafficking and forced labour for a number of years. While noting that the Government had established a plan of action for the eradication of forced labour, they believed that this plan still lacked penalties for those responsible for forced labour. They also noted that the report of the Special Rapporteur of the United Nations Commission on Human Rights, released in January 2003, had cited a number of steps which had been taken to improve the human rights situation in Sudan. Nevertheless, the report concluded that the overall human rights situation had not improved. They recalled that there had been no prosecution of a case regarding abductions for the past 16 years and that no special courts existed to hear cases on the abduction of women and children. Therefore, the Government representative's announcements of steps taken to eradicate forced labour were signs of hope rather than real accomplishments. The Employer members noted the meeting which had taken place between the Government and the tribes which had resulted in impunity for abductors and others who exploited forced labour. The State, it appeared, had practically given up its right to prosecute criminals. This refraining from penalizing

persons who extracted forced or compulsory labour was a clear violation of the Convention, which required that the illegal imposition of forced labour be a punishable criminal offence.

They further noted the peace agreement concluded in May 2004 with the support of the Government of Kenya. This agreement had to be implemented in practice. In this respect, they wondered how the implementation of the agreement was guaranteed and what steps would be taken to ensure that all those concerned were aware of its contents. While the peace agreement covered many issues, some details still needed to be resolved. They stressed the importance of returning abducted persons to their homes, granting compensation to victims, restoring their property, and prosecuting the abductors. The Employer members concluded that this case was being examined in the context of the events in the Darfur region, where hundreds of thousands of persons were forced to flee and were in danger of starvation. While these events were not within the scope of this case, they were in stark contrast to the new beginning which was hoped for as a result of the peace agreement. It was hoped that the peace agreement would be applied in practice. Nevertheless, this case required examination by the Committee again. In its conclusions, the Committee had to express its deep concern about the situation in the country.

The Worker member of Sudan condemned the abduction of women and children in some areas of Sudan which took place in the context of tribal conflicts. He recalled that Sudan was the largest country in Africa, that it had undergone the longest civil war in the continent, lasting from 1955 to last month, and that there were more than 500 tribes in the country competing for water, grazing lands and land in an area severely affected by drought in the past few years. He noted the positive achievements in the fight against forced labour including the establishment of CEAWC and its attachment directly to the Presidency, the financing of this body despite limited resources, the fact that fewer cases of abductions had been reported in recent years, and that more than 2,000 victims had been restored to their families. The most positive achievement was the recent signing of the peace agreement which included power-sharing, wealth-sharing and security arrangements. He stated that these positive achievements should be built upon and that the peace agreement offered hope that the problem of abductions would be resolved, since it was linked to civil war and underdevelopment. He noted the recommendations adopted in April 2004 at the second ordinary session of the Labour and Social Affairs Commission of the Organization of African Unity, which included measures to combat the trafficking of human beings. Drawing on these recommendations, he urged the Government to seek international technical support, especially from the ILO, in order to abolish forced labour, to use the resources that had been previously spent on war to develop areas which had been afflicted by inter-tribal conflict, and to make efforts to punish those who encouraged or engaged in forced labour.

The Employer member of Sudan stated that there were many reasons which led the Committee of Experts to devote a special paragraph on Sudan. Matters were compounded by the civil war in southern Sudan – a war which had lasted for a great many years. On 26 May 2004, the Government signed six essential protocols, mentioned by the Government representative. The protocols provided for the establishment of a mechanism for human rights and the inclusion of such a mechanism in a national constitution. Although the protocols were signed by the Sudan People's Liberation Army and the Sudan Government, these protocols were nevertheless the product of a negotiation process in which all the social actors and their organizations participated. The peace protocols were totally endorsed at the national, regional and international levels. The employers' organization was preparing seriously to support the protocols and to consolidate the principles of negotiation and peace through sustainable development in which the private sector was expected to take a leading role.

The peace agreement confirmed the importance of national reconciliation, social participation and democratic change. In this regard the role of the organizations of civil society as well as the role of social dialogue were highlighted. Civil society was called upon to supervise the implementation of the peace agreement. For its part, the employers' organization, in order to contribute to the overall development, had prepared a plan of action to review and strengthen employers' institutions. Taking into account the federal structure of Sudan, the employers' organization intended to establish branch offices in all areas that had been adversely affected by the war situation. Accordingly, the employers' organization: worked with the few employers in the areas of concern to enable them to initiate their organization; participated in the preparation of a master plan for the reconstruction of southern Sudan; encouraged investment by initiating the process of establishing a number of public shareholding companies (this was done together with a number of southerners); facilitated donors' operations in the country (a donors' meeting was envisaged to take place within two months of the current session); and assisted in attracting and organizing the inflow of foreign investment as well as using it in accordance with the master plan. In this regard the speaker informed that several agreements had been signed with their counterparts. The employers' organization intended to continue to carry out a participatory and supervisory role after the signature of the peace agreements in Sudan.

The Government member of Egypt expressed her thanks to the Government representative and the Worker member of Sudan on the positive measures taken by the Government in order to eradicate the phenomenon of abduction. She explained to the Conference Committee that Sudan was the biggest African country inhabited by more than 500 tribes. She added that Sudan was suffering from civil wars, which had afflicted the country for more than 50 years. The majority of neighbouring countries were also conflict-ridden, which in turn had a negative impact on the region. This caused an environment of instability and the emergence of negative phenomena such as abduction. She commended the efforts made by the Government and the allocation of large sums of money to CEAWC for the return of abductees, which was a positive measure, especially in the light of the deteriorating situation in the country. She expressed the hope that the protocol signed recently by the Government would lead to security and stability, and would therefore address any negative consequences brought on by the civil war. The speaker added that the entire world was following with interest the situation in Sudan and hoped that the Government's continued efforts in pushing forward the peace process would be fruitful. She referred to the statement made by the Minister of Labour of Sudan before the African group, in which he indicated the various measures adopted by the Government to push forward the peace process for the purpose of ensuring peace and stability in Sudan. His statement was well received and appreciated by all present. She concluded that it was clear to all that the Government was making concrete efforts to overcome the phenomenon of abduction in spite of the difficult development context. She hoped that the conclusions reached by the Conference Committee would take into account the measures taken by the Government without diminishing their importance. She urged the international community to intervene as quickly as possible, on that issue, in a positive manner, to help Sudan and avoid a mere condemnation of the situation.

The Worker member of South Africa condemned the violation of the Convention by Sudan and the slow actions taken by the Government to stop these practices**.** Despite the Government's apparent willingness to collaborate with international institutions and its plan of action, numerous reports, including the CEAWC report of October 2003, the ICFTU's observations of September 2002 and 2003 and this Committee's report of 2003, had pointed to continuing problems and insufficient actions by the Government. There had been no criminal prosecutions for abduction in the past 16 years and the attachment of CEAWC to the Sudanese Presidency had not brought about significant results. He noted that the recent peace agreement presented an opportunity to bring about lasting solutions to the problem of abduction. The implementation of the agreement would require long-term commitment from all sectors of society. The South African experience of reconciliation had underlined the importance of forgiving, but not forgetting, past suffering, and the need for honesty and truth in the building of a new nation. He hoped that the people of Sudan could draw on this experience.

The Government member of Cuba stated that there was a lack of balance among some elements in the Committee of Experts' report, in which the difficulties being faced by Sudan had been disproportionally exaggerated, whereas the measures taken by the Government had been minimized or ignored, as well as the progress that had taken place due to the firm political will and the efforts made. On the other hand, the speaker considered that there was a lack of objectivity in the analysis. When evaluating the situation in Sudan, it was indispensable to take into consideration that it was a Third World country facing the difficulties and shortage of resources, which caused its underdevelopment. Also, it should not have been overlooked in the analysis that Sudan was the biggest country in Africa, which counted about 500 tribes continuously fighting each other for access to resources. Another key element in the analysis should have been the fact that Sudan had been suffering from a civil war since 1955, and the majority of the problems of the country were a direct consequence of that conflict. The recent conclusion of the peace agreements constituted the most important and positive step forward made by the Government. The re-establishment of peace would provide, without any doubt, a decisive contribution to the elimination of difficulties referred to in the report, and would allow the Government to concentrate its efforts on the reconstruction and development of the country. In that context, the speaker

considered it necessary to give some more time for these positive steps to bear some practical results. If account were taken of the fact that the major cause of the difficulties was underdevelopment aggravated by the civil strife, the re-establishment of peace would certainly have a direct and decisive impact on the solution of the problems. In the speaker's view, in this scenario the ILO and the international community should support the efforts made by the Government in order to consolidate peace. This should be done through promotion of genuine cooperation, and not through accusations and demands which did not duly take into account the reality of the country.

The Worker member of Cuba stated that the report of the Committee of Experts revealed the complexity of the case under discussion. Without a doubt, the situation described in the observations was of serious concern, even though little reference had been made to the causes. Nevertheless, as the Committee had recognized, the Government of Sudan had indeed adopted positive measures to address the situation and had reiterated its commitment to solving the problem of forced labour. It was obvious that the Government of Sudan faced major challenges in trying to fulfil its responsibilities effectively. It had recently been learnt that a peace agreement had been signed on the armed conflict afflicting Sudan since 1955 – an agreement which would no doubt play a significant role in improving the situation in the country. Much time and energy was still needed for those efforts to bear fruit. The Committee should thus call for the cooperation of the ILO and the international community in helping the Government to make greater progress towards resolving the problems that the Committee had identified and that the Government needed to face.

The Government member of Denmark, also speaking on behalf of the Governments of Finland, Iceland, Norway and Sweden. She recalled that the Committee of Experts had been examining this case of non-compliance for several years and that this Committee again in 2002 had cited the case in a special paragraph of its report as a case of continued failure to implement the Convention. To our disappointment, the Government had then refused to accept an ILO direct contacts mission. The persistence of reports from various sources made it clear that the situation remained extremely serious and constituted a severe breach of the Convention and other international obligations. It was a fact that forced labour in its worst forms persisted and that the measures taken by the Government to combat this serious problem had been inadequate. She noted the information that a number of steps had been taken by the Government to improve the situation, inter alia the adoption of the Presidential Decree to re-establish the Committee for the Eradication of Abduction of Women and Children and the setting up by the Minister of Justice of special courts for the prosecution of the abductors. She urged the Government to provide information on the functioning of these courts to enable the Committee to assess any improvements concerning the situation of impunity that protected the perpetrators. The speaker noted the Government's indication that the number of abducted persons had declined. However, there was no credible evidence that the overall human rights situation had improved in the country. She therefore welcomed the recent agreement between the Government of Sudan and the Sudan People's Liberation Movement (SPLM), signed on 26 May 2004, on power-sharing. This agreement demonstrated a political consensus to secure respect for human rights, and stipulated that Sudan should comply with its international obligations. This was a very positive development and she hoped and expected that the parties would respectively comply with the principles set out in this peace agreement.

The Worker member of the United Kingdom recalled that his organization, the Trades Union Congress, had joined with others in this Committee in condemning the failures of the Government and its complicity with and sponsorship of the murahalleen militias in using abduction and slavery as an instrument of war in the south of the country. The United Nations Commissioner on Human Rights had argued the same. The current situation in Darfur was a grave cause for concern and overshadowed recent, more positive developments. His Government had described it as the gravest humanitarianism crisis in the world today. Anti-Slavery International continued to report new abductions during 2003 and 2004, and the Janjaweed militias were wreaking the same havoc and destruction in Darfur as the murahalleen did in the south. It was alarming that the United Nations Secretary-General compared these events to the genocide in Rwanda. He noted that on 26 May 2004, the Sudanese Government and the Sudanese People's Liberation Movement had signed a protocol on power-sharing at Naivasha, Kenya. While the fighting in Darfur inevitably undermined confidence in this agreement, the text of the protocol indicated recognition of several points which were pertinent to the case. Paragraph 1.6 on human rights and fundamental freedom committed Sudan to fulfilling its obligations, inter alia, under the Convention on the Rights of the Child and the 1926 Slavery Convention, as amended. While the protocol made no reference to ILO Convention No. 29, the same paragraph also stated that no one should be held in slavery, that slavery and the slave trade in all their forms should be prohibited, and that no one should be held in servitude or be required to perform forced or compulsory labour. Paragraph 1.8 of the protocol required a population census within two years.

The speaker stated that, if the war in the south was really over, this Committee had the right to expect, as a result of these developments and the commitments proclaimed in Naivasha, rapid and substantial progress in this case. He further noted that the Worker members had not been convinced in the past about the good faith of the Committee for the Eradication of Abduction of Women and Children. Yet CEAWC's most recent report, which covered the period from January 2002 until April 2004, indicated for the first time an acceptance of the estimates by the international agencies of the extent of the number of victims. There now appeared to be agreement that there were some 17,000. Moreover, there appeared to be an acceptance that these people were victims of abduction and enslavement. He also noted that the Rift Valley Institute's Slavery and Abduction Project had identified some 12,000 victims, over half of them under 18 years of age, most of them male. Eleven thousand were still unaccounted for. The CEAWC should take this into account. Nonetheless, only some 2,000 people had been repatriated by CEAWC over the last five years. The identification of victims, their return to their families and communities, and compensation that would enable them to rebuild their lives in freedom was an absolute priority and should be completed at the latest by the time of the 2005 ILC. The Government should avail itself of ILO technical assistance to help and speed this process. He concluded that the Committee should reflect the gravity of the case in its conclusions, and he asked the Government to report in full to both the Committee of Experts and this Committee again at next year's Conference.

The Government member of the Syrian Arab Republic declared his support for the report submitted by the Government representative and endorsed the proposals made by the Worker member of Sudan. He welcomed the signing of the peace agreement concluded in the past weeks which would create an appropriate environment for an improved situation in general in Sudan. He expressed his hope that it would put an end to all problems. He concluded by underlining the role of the international community in assisting the Government in resolving its problems.

Another Government member (Minister of Labour and Administrative Reform) stated that his Government fully shared the view that forced labour and the abduction of women and children were unacceptable and inhuman. He recalled the numerous steps that had been taken to address this problem which had been enumerated in his Government's opening remarks. He highlighted the work of CEAWC and the Committee of Chiefs, whose efforts had brought about some results. With regard to the question of criminal prosecution, he stated that while his Government did not rule out such an approach, legal proceedings were often very lengthy and sometimes endangered victims. His Government preferred an approach that focused on reuniting families. He recalled that the problem of abduction occurred in a vast area, covering over 500,000 square kilometres, which had been marked by inter-tribal conflict between the major regional tribes. This conflict appeared to have been resolved. One positive sign was that around 500,000 Dinka people had been recently displaced to an area where the Messiria (Baggara) people were a majority. The displaced Dinka had been given land and grazing fields and lived peacefully with the other tribes in the region. Observers from Germany and other European countries had witnessed this development. Turning to the recent peace agreement, he stated that this was the greatest hope for eliminating forced labour, as this problem was mostly due to the armed conflict which had raged in the area. All groups to the conflict had been invited to the peace process. The peace agreement included the two protocols already mentioned. His Government intended to make the peace agreement an agreement of the Sudanese people and not just been the Government and the SPLM/A. He raised some questions as to whether the case had been always accurately understood by this Committee, as his Government could not confirm the figure of 17,000 victims of abduction. In his view, this number confused abducted persons and persons displaced by the civil war. He was confident that the peace agreement and the ongoing efforts of his Government would solve the problem of forced labour in his country and that this case would no longer appear in the Committee's agenda. In conclusion, he noted that his Government was now focusing on the crisis in Darfur. He hoped that the international community would provide for support in the search for solutions to this crisis.

The Worker members stated that they had been shocked by the statement made by the Government member of Cuba. Any ques-

tioning of the objectivity of the Committee of Experts should be strongly challenged or it would run the risk of undermining the ILO's supervisory system. Collective security in Sudan was at the heart of the problem and constituted a humanitarian emergency to which the Government should respond. Fine words were not enough; it was important to find solutions and to take a stand vis-à-vis the concerns prompted by the situation. The Worker members would have asked to have that case included in a special paragraph once again if they had not received the information that a peace agreement had recently been signed. Taking that development into account, they asked the Government to accept the assistance of the ILO and to indicate the concrete improvements in the situation in its next reports.

The Employer members referred to the statement by the Government member of Cuba. In their view, she had expressed a strange understanding of the objectivity needed to assess cases. According to her statement, the objectivity needed to assess cases was not related to facts but determined by the size of a country, its political system and its economic situation. According to her, the Committee could only decide whether or not a country was fulfilling its obligations under a Convention by reference to these factors. These views were based on an old East-West conflict which was no longer relevant. Turning to the case being discussed, the Employer members noted the Minister of Labour's statement that the end of the war was the prerequisite for ending abductions, trafficking of persons and forced labour. While they agreed with the Minister, they recalled that the Government also bore responsibility for establishing peace in the country as its military forces had participated in the war. They also recalled that the peace agreement and the protocols of May 2004 were not the final peace agreement. The Government would have to transmit the final agreement to the ILO and indicate what changes had been introduced and what issues still needed to be addressed. In particular, the Government should report on the implementation of the peace agreement in practice. Only this information would allow the Committee to assess whether positive developments had taken place. Finally, they stated that the conclusions of the Committee should also mention the dramatic situation prevailing in the province of Darfur, since the Minister had referred to it.

The Committee took note of the information supplied by the Government representative on measures taken to eradicate the abduction of women and children and of the detailed discussion which ensued. The Committee pointed out that it was an extremely serious case affecting fundamental human rights, as witnessed by the fact that it had been discussed in this Committee seven times over the past eight years (with the inclusion in a special paragraph in 1997, 1998, 2000 and 2002) and the fact that numerous comments had been received from international workers' organizations. The Committee took note of the positive measures taken by the Government, including the re-establishment of the Committee for the Eradication of Abduction of Women and Children (CEAWC), the setting up of special courts for the prosecution of abductors, as well as the Government's renewed commitment to resolve the problem. The Government had specified the number of cases in which abducted persons were liberated with the collaboration of United Nations agencies and other organizations, and added that abductions had stopped completely. The Government also informed about the conclusion of three peace agreements in May 2004 and stated that consolidation of these agreements would lead to the solution of the problems raised. While having noted this information, the Committee expressed its deep concern at continuing reports of abductions and slavery, particularly in the region of south Darfur, and considered it necessary to invite the Government to take effective and quick measures to bring to an end these practices and to punish those responsible, thus ending the impunity. The Committee understood that the situation had been exacerbated by the continuing civil conflict. It expressed therefore the firm hope that the Government's next report to the ILO would describe the concrete results obtained, so that the full application of the Convention, in law and in practice, could be noted in the near future, as well as the progress in the implementation of the peace agreements. The Committee recalled that the Government could request technical assistance of the ILO.

The Government representative (Minister of Labour and Administrative Reform) objected to the mention of the conflict in the Darfur region in the Committee's conclusions. This situation was not mentioned in the observation of the Committee of Experts and was a separate matter.

The Worker members stated that they would have liked the matter of compensation for released persons to have been included in the conclusions.

The Government member of Cuba asked for the floor in order to state that she could not disregard certain comments made in this Committee, which she considered unacceptable for the lack of respect.

The Worker member of the United Kingdom stated that every delegation had the right to speak in the Committee, including the Workers.

Convention No. 77: Medical Examination of Young Persons (Industry) Convention, 1946

Bolivia (ratification: 1973). **A Government representative** (Minister of Labour and Employment) stated that he would be self-critical as his country had not provided information in due time and that this communication failure could be explained by factors related to political changes. With reference to the comments made by the Committee of Experts concerning the absence of laws or regulations, he indicated that such provisions did indeed exist, namely: (a) the Code of Children and Adolescents, of 27 October 1999, section 137 of which set forth guarantees and rights while section 140 provided for compulsory social security coverage; (b) the regulations under the Code, of 8 April 2004; and (c) a joint ministerial resolution according to which the Ministries of Labour and Health provided for free medical examinations for young workers in rural and urban areas. The suitability for work of young persons had to be certified. This was also related to the plan for the progressive eradication of the worst forms of child labour. He also referred to Ministerial Resolution No. 301 of 7 June 2004, which set the extent and the limits of working hours. Regulations were being prepared for other provisions so as to bring rural employees within the scope of the General Labour Act. Regulations were also being prepared under the Act respecting health, occupational safety and welfare. He added that legislative provisions and concerted action existed and he regretted the lack of appropriate information. For example, with regard to the strategy for the eradication of child labour, action was focused on two sectors, namely sugar cane and mining. The mechanisms to combat these problems were of a tripartite nature. He noted that great efforts were being made to consolidate social dialogue machinery for the development of policies, programmes and projects related to social and labour rights. Activities were being undertaken with the Bolivian Workers Confederation (COB) and the Confederation of Private Employers of Bolivia (CEPB) and it was hoped to establish a National Industrial Relations Council. He reiterated that the Government was profoundly self-critical with regard to the information that it ought to have provided, but he indicated that it was making progress in the establishment of appropriate provisions and he hoped that the written report provided by the Government would prove to be satisfactory in relation to the matters raised by the Committee.

The Worker members recalled that 31 years ago Bolivia had ratified the Convention and that the Committee of Experts had been making comments on its application for 25 years. The Convention itself was closely linked to Conventions Nos. 182 and 111. Unemployment and underemployment, which were hitting young people hard in Bolivia, gave additional topicality to the provisions of the Convention. Good protection in safety and health at the workplace depended on an efficient inspection system. However, this system was deficient in Bolivia, despite the country having ratified Convention No. 81 thirty years ago and, contrary to the provisions of the Convention, no annual report had ever been sent to the ILO. The Worker members also deplored the fact that in Bolivia the social protection system foreseen by the Convention was in the hands of private bodies. The Worker members urged the Government to take the necessary measures without delay to implement the VALORA plan together with the social partners, and to make use of ILO's technical assistance.

The Employer members observed that requests to rectify the law and practice concerning the medical examination of young persons had been made for more than 25 years, the reason for which a footnote had been added calling on the Government to supply full particulars to the Conference. They observed that the Government had referred to a joint ministerial resolution to put into effect a Voluntary Plan on the Adaptation of Work (VALORA) and that it had also provided information to the Committee on additional decrees and statements. The Committee of Experts had already taken note of the VALORA plan which was supposed to be a sort of miracle instrument, aiming at achieving a formidable range of objectives including: a decrease in accidents and occupational diseases; increased efficiency and work quality; decreased production costs and social conflicts; increased worker motivation and commitment of the enterprises; and finally, acknowledgement by society for healthy enterprises. While it was certainly very positive that the Government was promising advantages to all stakeholders, enterprises would have to be prepared to implement this plan on a volun-

tary basis. In addition, the plan involved many steps. Once the results were obtained from the plan, they would then be analysed and evaluated to serve as a basis for the elaboration of legal standards. The Employer members noted that since the plan was voluntary, a lot of work and probably special incentives would be necessary in order to convince the enterprises to participate. If such a voluntary scheme worked, it would certainly be better than a compulsory one. As for the analysis of the results with a view to adopting legislation, they noted that such evaluation would take a lot of time and the Government had already spent many years in stagnation. They therefore urged the Government to speed up the process of implementation and suggested that the Government should provide specific information as to when the process would be completed so that everybody could be protected by law. The Government had presented to the Committee new information about recent steps (an agreement, a form and a draft decree on the medical examination of young persons in the agricultural sector) which could not be evaluated at this stage. The Employer members concluded by emphasizing that the Government should take all necessary steps to implement its plans and report to the Committee of Experts on a comprehensive basis so that the matter could be examined thoroughly. The numerous measures adopted after all these years needed to be analysed in detail on the basis of a precise written report.

The Employer member of Bolivia regretted that the Experts did not have sufficient information at their disposal on the Bolivian legislation and indicated that many legal provisions existed in Bolivia with regard to medical examination at the time of admission to employment, some of which preceded the ratification of the Convention. Section 95 of the General Labour Act established a medical examination at the time of admission to employment as an essential precondition to obtaining a contract. This provision was in conformity with the Occupational Health and Safety Act (section 4.1), the Regulatory Decree of the Pensions Act (section 56) and the Social Security Code (section 117). Other legal provisions established, for example, the employer's obligation to maintain a record of medical certificates or to repeat the medical examinations 12 months after a change of employer. With regard to the medical examination of young workers in particular, he indicated that the Code of Children and Adolescents, Act No. 2026 of 1999, established the obligation to have young workers undergo a periodic medical examination. Moreover, as it was indicated by the Government representative, a joint ministerial resolution had recently been approved in order to adequately regulate the application of the Convention. The social security authorities had called upon the Bolivian employers to verify implementation, although it should be clarified that the management of risks and accidents was the responsibility of public institutions. It emerged from this comprehensive examination that the necessary measures had been adopted with regard to the application of the Convention.

The Worker member of France welcomed the wealth of information presented by the Government after 25 years of silence. He was satisfied that it was a sign of good will from the Government which recognized its past negligence and showed a constructive attitude. However, the Government had demonstrated no concrete evidence of practical measures or regulations giving effect to Articles 2, 3, 5 and 7 of the Convention. The Convention provided for a compulsory medical examination upon admission to work for those less than 18 years of age and that the latter should have regular medical examinations until the age of 21 if the work presented high health risks; that these examinations should be free and that work aptitude certificates should be made available to the labour inspectors; and that finally, in a case of proven inaptitude, measures would be taken. Using these technical provisions, the Convention aimed at protecting the right to health, which was directly linked to the right to life. He stressed that the VALORA plan, mentioned by the Government, was in fact only a voluntary scheme and not a binding standard as laid down by the Convention. In addition, this instrument did not make a distinction between health and safety at work, productivity cost reduction and reduction of social conflicts. However, the Convention demanded strict laws and regulations to ensure the protection of adolescents at work. The voluntary measures, though useful, did not replace legislation. Finally, he asked the Committee of Experts to examine all the details presented by the Government to determine how much they gave effect to the Convention.

The Government member of Argentina stated that the information and documentation presented by the Government of Bolivia demonstrated concrete progress.

The Government representative expressed the Government's firm will to regulate the medical examination of young persons in industry. The VALORA plan was a general programme providing employers with incentives to participate in the adoption of preventive measures against occupational health and safety risks. When the employer was voluntarily engaged in this programme, he received certain benefits, such as compensation. He added that the immediate objective to protect young persons entering the labour market included the regulation of the situation of salaried work in rural areas. Until now, this sector had not had any protection, and this had led in the past to cases of forced labour and non-application of basic workers' rights. Efforts were currently being made to regulate work in the agricultural sector in order to bring it within the scope of the General Labour Act. He indicated that labour provisions were very dispersed and required ordering, as certain areas of labour had not been regulated until now.

The Worker members stated that the points they wished to make were linked to Conventions Nos. 138 and 182, which forbade work in mines to adolescents of less than 18 years of age. They wished the Committee to recall the compulsory nature of a medical examination for admission to work for those under 18; the frequency of medical aptitude examinations at work; the frequency of medical examinations until 21 years of age for work which involved high health risks; the principle of free examinations; the measures to be taken when an examination showed the inaptitude of an adolescent for work; and labour inspection access to a medical aptitude certificate and workbook. Finally, the Worker members maintained that the Government should be encouraged to accept ILO's technical assistance in this field.

The Employer members indicated that the link between the fundamental Conventions dealing with the age of admission to employment and the eradication of the worst forms of child labour – Conventions Nos. 138 and 182 – was evident from facts evoked in the discussion but might not be formally established by the Committee as they were not mentioned in the report of the Committee of Experts.

The Committee took note of the information provided by the Minister of Labour and Employment and the discussion that followed. The Committee took note of the measures foreseen in order to address the problems relative to the medical examination of minors and the information on the current revision of laws and regulations relating to minors, the provisions of the Code of Children and Adolescents of 1999 and 2004, the Regulation of the Labour Code, and resolution No. 301 of 7 June 2004 which concerned the implementation of fundamental rights at work. The Committee noted in particular that the Ministry of Labour had adopted an agreement with the Bolivian Standardization and Quality Institute for the elaboration of a provision which regulated the General Law on Occupational Hygiene, Security and Well-Being, of adolescents in industrial undertakings and the mining industry. It also noted that a Supreme Decree on the incorporation of wage-earning rural workers in the labour legislation was in the process of approval and contained a specific chapter on work by adolescents in order to protect their rights.

While noting with interest the abovementioned reform, the Committee urged the Government to adopt rapidly the announced regulation, in order to ensure the application of this important Convention, which was one of the fundamental Conventions in the area of child labour and had been ratified 30 years ago by Bolivia. The Worker members referred to the relationship between this Convention and Conventions Nos. 138 and 182, in particular with regard to the minimum age for work which was harmful to health and safety. Moreover, the Committee requested the Government to adopt the necessary measures in coordination and collaboration with the most representative organizations of employers and workers concerned, in order to guarantee the dissemination of information to all persons interested in the medical examination of minors under 18 years of age before their admission to employment so that the Convention could be implemented in law as well as in practice. The Committee requested in particular information on the action taken by the Labour Inspectorate. The Committee expressed the hope that the Government would avail itself of the technical assistance of the Office in order to resolve the problems raised by the Committee of Experts.

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

Republic of Korea (ratification: 1992).**A Government representative** indicated that since the ratification of the Convention, the Government had made utmost efforts to ensure that the Republic of Korea's labour inspection was in line with the principles and provisions of this Convention. Noting that Korean workers' and employers' organizations had submitted some comments on the application of the Convention, he wished to explain several issues on the current status and future plans of labour inspection systems in the Republic of Korea. The Korea Employers' Federation (KEF) had commented in relation to Article 3 of the Convention, that training

programmes for labour inspectors should be reinforced and specified, and that this should be stipulated in a legal provision. With regard to Article 5, the KEF had contended that the Government should present information on its efforts to have consultations with employers' and workers' organizations. The Committee of Experts had requested that relevant information be provided on the Industrial Safety and Health Policy Deliberation Committee (ISHPDC). The Federation of Korean Trade Unions (FKTU), with regard to Article 8, had asked for information on the measures taken to increase the proportion of female labour inspectors, in view of the significant increase in the number of female workers.

Concerning the need to strengthen labour inspector training programmes and to stipulate them in a legal provision, he pointed out that the Government was operating various educational and training programmes to enhance labour inspectors' capacity to perform their duty. In 2003 the Government ran two basic training courses for 73 newly recruited labour inspectors and nine advanced training courses for 307 labour inspectors. In addition, in order to provide technical assistance and information, the Government had offered three separate on-line courses. Both the basic and advanced training courses contained 10 specialized subjects such as dispute mediation, counselling, investigation skills and labour laws. They provided training to more than 400 labour inspectors with a total of 280 hours of training. In addition, the Government constantly published training materials on revised legislation such as working hours reduction, labour standards and employment security. In 2004, the Ministry of Labour had provided special workshops on working hours reduction to more than 960 labour inspectors at the local labour administration. Regarding the question raised by KEF in respect of Article 5 about appropriate arrangements to promote collaboration between officials of the labour inspectorate and workers and employers or their organizations and by the Committee of Experts on the functioning of the ISHPDC, he indicated that the latter was being operated by the Government in order to collect information from workers' and employers' organizations on major industrial safety and health policies and to strengthen cooperation among tripartite members. For the efficient running of the ISHPDC, the meetings were often replaced by consultations of the committee members in written form. In 2003, there were two such information gatherings in March and September to deliberate on the Enforcement Decree of the Industrial Safety and Health Act. The Government had also taken measures to collect information from workers' and employers' organizations, including tripartite discussions on industrial safety and health. At the regional level, directors of regional labour offices collected opinions from workers' and employers' organizations. The Government was preparing measures to facilitate the operation of the ISHPDC and to increase its functions. Implementation of the measure was expected to facilitate discussions among workers, employers and the Government.

Lastly, the speaker addressed the question raised by FKTU on the increase of female labour inspectors and the request for information by the Experts' Committee. As the number of female workers increased the Government was working hard to recruit more female labour inspectors to handle and respond to the rising issues of maternity protection and sexual harassment. As a result of such efforts, the proportion of female labour inspectors had continually risen annually from 12 per cent in 2001, 14.6 per cent in 2002 to 14.9 per cent in 2003. He expected that this rising trend would continue in the future. In May 2004, 140 labour inspectors were added in order to deal with rising labour issues. As of February 2004, the ratio of female public officials with grades 7 and 8 who mainly carried out the role of labour inspectors stood at 40.3 per cent and 37 per cent respectively. Given this, the ratio of female labour inspectors was expected to increase further. Considering that 70.2 per cent of grade 9 public officials were women, the proportion of female labour inspectors was forecast to rise more rapidly. The Government was also encouraging female public officials to apply for labour inspector posts.

The Worker member of the Republic of Korea observed that, as noted by the Committee of Experts and acknowledged by the Government, one of the major functions of labour inspection was to provide advice to workers. This included advice and information on unjust labour practices on the part of employers or middle management. One of the main aims of the labour inspection system was to prevent violations of basic labour rights by inspecting and offering assistance before accidents or violations occurred. However, in order for this to become possible, a sufficient number of labour inspectors were required to carry out inspections and give technical assistance. In the Republic of Korea, there was a significant shortage of labour inspectors, leading to a situation where one labour inspector was often responsible for several hundred workplaces. This resulted not only in one of the original purposes of the institution – preventing unjust labour practices – being rendered largely obsolete, but also meant that labour inspectors did not always receive proper training or education in the courses mentioned by the Committee of Experts. For this reason, he requested that the Committee of Experts further examined, and the Government provided information on the number of workplaces that were allotted to individual labour inspectors on a comparative basis, both domestically between regions/industries, and internationally. The great disparity in the workload of labour inspectors in the Republic of Korea also seemed to reflect a lack of effective follow-up measures and evaluation systems, an area in which the active participation of workers could potentially play a role in improving the labour inspection system.

Another point was that, despite the fact that the labour inspectors needed to remain completely impartial in their work, there had been instances where they had shown a propensity to bias towards certain parties. Complaints had been received by FKTU from migrant workers who had filed complaints to labour inspectors about unpaid wages at their workplace, only to be threatened with being reported to the Immigration Bureau as being undocumented. Needless to say, the problem of unpaid wages had gone unresolved despite the complaint being filed. The Special Labour Inspection system had been put into effect to make up for these shortcomings. However, the non-binding nature of ordinances by the labour inspectors had limitations in correcting labour practices in violation of relevant labour laws, as illustrated by the suicide of two workers through self-immolation in protest at unjust labour practices. This suggested that the strengthening of procedures for the enforcement of penalties against employers in violation of labour laws needed to be seriously considered. Labour inspectors should be required to have a certain amount of direct experience in labour and industrial relations, and the participation of workers should be guaranteed in the operation and running of the system in order to overcome such deficiencies. Regarding the observation of KEF concerning the ISHPDC, he pointed out that the evaluation and provision of information on this issue might need to be reconsidered in the light of the fact that new preparatory talks were ongoing in the Republic of Korea about a new tripartite framework that included all relevant trade unions. He finally noted that a certain amount of progress had been made regarding the number of women inspectors, and expressed the hope that the Government would provide information on progress made in this area.

The Worker members welcomed the information provided by the Government. The Convention was a key element in protecting workers' rights. Without a well-structured and independent labour inspectorate, the rights of workers were likely to remain meaningless. For the Worker members, the objectives of labour inspection were not simply to give advice to employers and workers, but to ensure that legislation and regulations were adhered to in practice. In the Republic of Korea, women workers represented 41 per cent of the working population. However, in 2000, there were only 59 female inspectors out of a total of 711. The Government had noted that an increase of 8.3 per cent was implemented between 1999 and 2001. The Worker members were encouraged by this trend but requested that this issue remained under the review of the Committee of Experts and that the Government sent statistics to the Committee. They requested information on whether the total number of labour inspectors was sufficient to carry out the mission, given the number of enterprises, the number of workers and the various areas of activity, and the complexity of the applicable provisions, as well as the means at its disposal. Furthermore, the Worker members hoped to be informed of how labour inspections functioned in the informal sector and, finally, how the Government ensured the continued training of labour inspectors.

The Employer members recalled that the full application of the Convention was crucial for a functioning labour inspection system as an effective means to enforce labour legislation. They emphasized that information and advice for workers and employers was of importance in this regard. Such activities could prevent non-compliance with national legislation. They noted the information provided by the Government with regard to promoting collaboration between labour inspection services and workers' and employers' organizations, as well as with regard to the increase of the number of female labour inspectors. The Government should provide this information in its next report, as well as written detailed replies to the other points raised by the Committee of Experts.

The Worker member of Japan emphasized the importance of labour inspection. Implementing labour inspection was a difficult task and as the Committee of Experts had pointed out in its report, it was necessary to ensure sufficient human resources with professional capability, not only quantitively but also qualitatively, in order to exercise labour inspection effectively. He said that many governments had adopted a "small government" ideology, which led to personnel reduction in public services, especially in the field of

labour administration. The Republic of Korea was no exception and the resulting impact in a country where women workers accounted for some 41 per cent of the total labour force and where many industrial disputes were the result of unfair practices, was severe. As the Committee of Experts had pointed out, four measures, based on tripartite consultation with concrete provisions, were required in order to implement effective labour inspection: ensuring a sufficient number of inspectors; increasing the number of female inspectors; providing for qualitative skills training; and improving terms of employment for the inspectors. He strongly urged the Government to take measures to improve the situation immediately.

Another Worker member of the Republic of Korea wished to comment mainly on the issue of the number of women labour inspectors, while noting every effort and progress made by the Korean Government in this respect. The Republic of Korea had seen a steady increase of women workers in its labour market, which had resulted in an increase of various cases of women victims of unfair practices at the workplace, such as sexual harassment, gender discrimination, infringement of maternity protection legislation and others. Given their nature and characteristics, there was a need for more training on gender-related issues and debates among male and female labour inspectors. He requested the Government to make more efforts to ensure an adequate number of women labour inspectors as soon as possible. As to the argument that the post of labour inspector was not preferred by women officials within the Government, not only because of the difficult nature of the job but also because of the terms and conditions of work of labour inspectors, he urged the Government to come up with proper measures in this area in order to render the position of labour inspector more attractive. Finally, he expressed the hope that the Government would use this opportunity to review and develop the whole labour inspection system and make it more effective, and suggested that the matter might be discussed within the National Tripartite Commission.

The Government representative indicated that new measures were planned to enhance the availability of information and advice to workers and employers, such as the establishment of a counselling call centre. With regard to tripartite cooperation, the Government was working to set up tripartite labour inspection committees. These would be a forum for dialogue charged with developing training materials and sharing best practices. Finally, the Government would also continue to increase the number of female labour inspectors, including through improving the terms and conditions of labour inspectors.

The Worker members were satisfied with the constructive attitude of the Government. They recalled that the Convention was essential for guaranteeing respect for the rights of workers. The discussion had covered numerous points: the determination of whether the work carried out by the Labour Inspectorate fully complied with the principles of the Convention; the continuous training of labour inspectors; the proportion of women in the Labour Inspectorate as compared to the proportion of women workers in the national workforce; and the total number of employees in the Labour Inspectorate. The Worker members requested the Government to provide statistics to the Committee of Experts in order to review the situation.

The Employer members stated that there was no basis for concluding that there were major deficiencies in the Korean labour inspection system. The Government was working to improve the provision of information and advice to workers and employers. It also strengthened tripartite cooperation on labour inspection and made efforts to achieve a greater gender balance among labour inspectors. The Committee should request the Government to provide in its next report to the Committee of Experts the information on the points raised.

The Committee took note of the statement made by the Government representative and the discussion that followed. The Committee underlined the fundamental importance of this Convention. The Committee took note of the labour inspectors' capacity-building programmes and expressed the hope that the Government would continue to make efforts to guarantee the training of labour inspectors in order to provide them with the means to address in the best way the requests of employers' and workers' organizations for technical information and advice. It underlined that the number of inspectors and the means at their disposal should be sufficient so that the inspectors could carry out their functions of advice as well as control, which was an essential function. With regard to the cooperation between employers and workers, the Committee took note of the information provided by the Government on tripartite dialogue on this subject and urged it to enhance it. Taking into account the constant increase of women at work, the Committee invited the Government to further reinforce the female composition of the labour inspectorate, so that inspection services could adequately address certain questions which specifically related to the conditions of work of women. The Committee requested the Government to send to the Committee of Experts complete and documented information as well as statistics on each of the questions raised.

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

Canada (ratification: 1972). **A Government representative** began her presentation by briefly outlining the main elements of the Canadian labour relations system, to demonstrate that, in Canada, freedom of association and the right to organize were both recognized and protected. The Government of Canada wished to emphasize that the principle of freedom of association was enshrined in the Canadian Charter of Rights and Freedoms, which applied to the federal, provincial and territorial governments. The Charter was part of Canada's Constitution, and could only be changed by constitutional amendment. The Canadian Bill of Rights, a statute applicable to the federal Government, also enshrined the principle of freedom of association. Under the Constitution, each of Canada's 14 governments, that is the federal Government, the ten provincial governments and the three territorial governments, had exclusive authority to legislate with respect to labour matters within its own jurisdiction. Most Canadian workers were subject to the labour laws of the provinces, with the federal jurisdiction covering about 10 per cent of the workforce.

Generally, Canadian industrial relations legislation – whether federal, provincial or territorial – guaranteed workers in both the public and private sectors the right to join unions and to participate in their lawful activities. The Canada Labour Code, and equivalent laws in each jurisdiction, ensured not only that the right to organize existed, but also that it was protected. There were provisions to protect workers' and employers' organizations from interference by the other party, and to prohibit unfair labour practices. Mechanisms were in place for the enforcement of these protective measures. Each jurisdiction had labour legislation regulating collective bargaining, and an independent labour relations board with equal worker and employer representation, to administer the legislation. The legislation generally promoted free collective bargaining and recognized the right to strike or lock out. Legislation set out conditions for the exercise of strike and lockout rights and, at the same time, encouraged the parties to engage in meaningful bargaining to achieve an effective collective agreement which would meet their respective socio-economic needs. Bargaining agents and employers concerned had a duty to meet and bargain in good faith. This was understood to mean that they would meet for collective bargaining and make every reasonable effort to conclude a collective agreement. A complaint could be made by either party to the appropriate labour board, where good faith bargaining was felt to be absent, in order to obtain a remedial order. The parties' right to negotiate collective agreements was thus guaranteed in all jurisdictions. The importance of conciliation and mediation as a means of helping the parties to come to an agreement voluntarily was recognized across Canada.

Her Government acknowledged that not all workers in Canadian jurisdictions were covered by collective bargaining legislation. The statutory definitions of employee and bargaining unit and the relevant case law developed on these issues determined who could participate in collective bargaining. Also, as the ILO supervisory bodies had recalled on various occasions, groups such as members of the medical, dental, architectural, legal and engineering professions, when employed in their professional capacity, agricultural workers and privately employed domestics were excluded from coverage under the legislation in a few Canadian jurisdictions. However, even where workers were excluded from legislative regimes, they were entitled to negotiate with their employers on a voluntary basis.

The Government pointed out that, although there was a large consensus among the jurisdictions on the rights of employers and workers within their regime of labour relations, the autonomy of the various jurisdictions gave rise to a diversity of provisions. In the Government's view, this diversity, characterized by each jurisdiction's labour market circumstances, could provide opportunities for Experts' comments, more so possibly than in a country with a unified labour market. Nevertheless, she stressed that governments had both a mandate and a duty in democratic societies, to reconcile legitimate, but divergent interests and conflicting demands for the greater public good. Hence, ensuring full implementation of international labour obligations in a context where the federal Government had the authority to ratify ILO Conventions, but had to rely on the provinces and territories to implement their provisions in areas of their exclusive authority, presented certain challenges. It

was in this context that the Government wished to inform this Committee of some of the initiatives undertaken at the federal level to engage the provincial and territorial governments, as well as the social partners, with respect to Canada's international labour obligations.

Canada had always met its reporting obligations in a thorough and timely manner. To achieve this, the International Labour Affairs Unit of Human Resources and Skills Development Canada engaged on a continuous basis with representatives in the provinces and territories, to ensure that full and transparent information was made available to the ILO with respect to ratified Conventions, and that other reporting obligations were met. To further facilitate access to accurate information on Canadian labour laws, the Labour Law Analysis Unit of the Department annually compiled and made available on the Internet a report on all legislative and regulatory changes related to labour issues in all Canadian jurisdictions.

Furthermore, deputy ministers from federal, provincial and territorial departments and agencies responsible for labour met twice a year, in a forum known as the Canadian Association of Administrators of Labour Legislation, or CAALL. ILO issues had always been prominent on the meeting agenda but, in recent years, international labour obligations had become a much greater focus of discussions. In recent years, federal-provincial-territorial ministers responsible for labour had also met annually and, again, Canada's international labour obligations had been discussed. In 2002, the federal Minister of Labour established an Advisory Committee on International Labour Affairs, composed of senior representatives of Canadian workers' and employers' organizations. Since then, the Advisory Committee had examined a wide range of international labour issues, primarily related to the social dimension of globalization and Canada's labour cooperation agreements with its trading partners. At its last meeting, in February 2004, the Advisory Committee's opinion was sought on how the federal Government could more effectively promote the principles of the ILO Declaration in Canada, better engage the provinces and territories with respect to Canada's international labour obligations, and how the social partners could support such initiatives. These were some of the more recent measures which the Government of Canada had undertaken to better engage the provinces and territories with respect to Canada's obligations as a Member of the ILO and, in particular, with respect to implementation of ratified ILO Conventions.

Turning to some of the observations of the Committee of Experts in its report, the speaker first of all indicated that, when Canada submitted its last report on Convention No. 87, an election was under way in the Province of Ontario. As a result, the report did not include developments with respect to the Committee of Experts' observations on a number of issues in that province. The Government therefore wished to inform the Committee of the most recent information provided by the Government of Ontario. The Government of Ontario was currently engaged in a review of its labour and employment law statutes, including the Labour Relations Act. At the most general level, the Government was committed to restoring balance to Ontario's labour relations regime and to working with stakeholders to ensure that the province's labour laws were fair to employees, unions and employers alike. While it was not possible to comment on specifics at this point in time, the Government of Ontario had already made a public commitment to repeal certain provisions that had been serious irritants to organized labour. Developments would be fully reported on in Canada's next report to the Committee of Experts.

With respect to the right to strike of workers in the health sector in the Province of Alberta, the Government of Alberta was responsible for implementing and ensuring compliance with health-care policy. Patients' access to health services and patients' safety could therefore not be compromised. It was the view of the Government that, like police officers and firefighters, health-care employees of regional health authorities provided essential services. In response to the Experts' specific question, the Government of Alberta confirmed that the Labour Relations (Regional Health Authorities Restructuring) Amendment Act did extend the prohibition on strikes and lockouts to all employees and employers within the regional health authorities. This reflected the growing interdependence and integration of health-care delivery within the regional health authorities, where the withholding of services could have potentially life-threatening consequences for Alberta citizens whose legitimate health-care needs needed to be met. The Government of Alberta believed that public health-care employees should have a common, fair, objective and transparent means to resolve labour disputes without jeopardizing public safety, and that the Act provided for this.

With respect to discussions undertaken by the Government of British Columbia with employers and unions in the education sector, in particular regarding dispute settlement regulations or machinery, the Government of British Columbia advised that section 5 of Bill No. 27 (the Education Services Collective Agreement Act) provided for the appointment of a commission to review the structure and procedure of collective bargaining in the education sector. In September 2003, the Minister of Skills, Development and Labour appointed an individual to consult with interested parties and to recommend terms of reference of the review commission. Based on the report, the Minister appointed a one-person commission in December 2003. The commissioner was consulting with groups in the education sector and reviewing procedures used in other jurisdictions to recommend procedures for a new collective bargaining arrangement. It was anticipated that the commission would complete its work by the fall of 2004. Finally, she invited the Deputy Minister of Labour for Newfoundland and Labrador to provide updated information with respect to changes to the Fishing Industry Collective Bargaining Act.

Another Government representative, referring to the Fishing Industry Collective Bargaining Act (Bill No. 31) of Newfoundland and Labrador, informed the Committee of the background to the present case. He said that in 1997, following a 15-week strike in the fishing sector, the Government of Newfoundland and Labrador had indicated to the social partners that the province could not afford to lose such a vital part of its economy in the future and set up a task force to find a peaceful solution in consultation with the social partners. The solution agreed to was the so-called "final offer selection process" (FOS), which the social partners had agreed following a two-year Pilot Project that the process should be set out in legislation, with the provision for either party to opt out of the process every two years. The final offer selection process had been in force since 1998, but last year one of the social partners had opted out, bringing the mechanism to an end. As a consequence, the Fishing Industry Collective Bargaining Act had reverted to its traditional format, which included the right to strike and to lock out. Very recently, the question had arisen once again in relation to a dispute concerning crab fishing. It had been very important to find an amicable collective solution so that the critical period for crab fishing was not missed. It had therefore been incumbent upon all those concerned to find a rapid solution. In conclusion, he reaffirmed the importance attached to ILO-related matters at the annual meeting of Deputy Ministers of Labour as well as the provincial level in Canada and indicated that in Newfoundland and Labrador there was an official concerned solely with ILO matters.

The Worker members stated that, despite the explanations provided by the Government on the application of the Convention, the observation of the Committee of Experts contained a long list of cases concerning violations of the right to organize, the right to strike and the right to collective bargaining. They noted that measures had been taken to resolve these problems, particularly with respect to Newfoundland and Labrador. In the provinces of Alberta, New Brunswick and Ontario, legislation on labour relations did not apply to agricultural or horticultural workers, with the result that workers in this sector did not benefit from protection of the right to organize and to collective bargaining. With respect to the Province of Ontario, domestic workers, architects, dentists, land surveyors, lawyers and doctors were also excluded from the application of this law. However, the governments of these provinces were not considering modifying their legislation, nor was the Government of Ontario, despite a ruling of the Supreme Court of Canada in December 2001, which found that Ontario's impugned provincial legislation was unconstitutional. In certain provinces, workers did not have the right to organize freely. In this respect, in the provinces of Prince Edward Island, Nova Scotia and Alberta, certain laws designated by name the union recognized as the bargaining agent. Finally, in some provinces, workers did not have the right to strike or to collective bargaining. This was the case in Alberta, where certain categories of workers in the hospital sector did not have the right to strike. The adoption of a law in 2003 had not changed the situation. This restriction on exercising the right to strike also applied to personnel who did not provide essential services, such as cooks, porters and gardeners in hospitals. In British Columbia, the right to strike was limited or removed in the health sector. Workers did not benefit from an impartial procedure for resolving disputes, as the final offer of the employer was imposed. In Manitoba, arbitration could be imposed at the request of one of the parties following the expiry of a 60-day period. In Ontario, teachers did not have the right to strike. In Newfoundland and Labrador, Bill No. 31 on collective bargaining in the fishing industry had been amended to allow workers the right to strike in that sector. This enumeration demonstrated the violation of the rights set forth in the Convention, especially in the public education and hospital sectors. These violations should be condemned.

The Employer members observed that the comments of the Committee of Experts addressed various cases of the violation of

the principle of freedom of association in several provinces and referred to comments received from the ICFTU. However, they would confine their comments to the general subjects raised, rather than going into details concerning each province. The Employer members noted that workers in agriculture and horticulture were excluded from the coverage of the labour relations legislation and therefore deprived of protection relating to the right to organize and collective bargaining, which was a clear violation of the Convention. The Supreme Court had ruled that the exclusion of agricultural workers was unconstitutional and had instructed the provincial government concerned to amend the legislation in question. Although a bill had been introduced conferring to agricultural workers the right to form or join an association of employees, the Committee of Experts suspected that it did not give them the right to establish and join trade unions and to bargain collectively. The Employer members wondered how the Committee of Experts had come to this conclusion, which did not appear to be based on the indications available. Turning to the trade union monopoly established by law in certain provinces for the education sector, the Employer members said that this constituted a clear violation of the Convention. The designation by name of the union recognized as the bargaining agent had the effect of excluding other unions from the possibility of engaging in collective bargaining. With regard to the right to organize of university staff, the Employer members indicated that the appointment of academic staff under the condition that they could not join a professional association was a violation of the Convention. They noted the statement by the Government representative that elections had taken place in the province concerned and that a further report would be provided by the province on this issue. It would therefore be opportune to await the submission of the new report.

The Employer members observed that all the other issues referred to by the Committee of Experts involved the right to strike and recalled that they did not agree with the conclusions of the Committee of Experts on this matter, as the Convention neither provided for a right to strike, nor guaranteed certain forms of strike action. With regard to the restriction of the right to strike in certain provinces in the case of workers in the health sector, they indicated that, even though the right to strike was not provided for in the Convention, this restriction was not in any case a violation of the Convention, as the effects of a strike in the sector could constitute a serious danger to the health of the population. Moreover, the definition of essential services used by the Committee of Experts was somewhat outdated, as it only took into account specific production sectors. They added that strikes in the education sector concerned not only the parties involved, but society as a whole, in view of the danger that children would be denied education. With regard to the issue of arbitration imposed at the request of one party after 20 days if no solution to industrial action appeared to be possible, the Employer members referred to the 1994 General Survey in which the Committee of Experts did not completely exclude the right of the State to intervene in the collective bargaining process. However, the Government representative had indicated that the Government was prepared to amend the legislation and should therefore be requested to supply the relevant information in a report. Finally, with regard to the issue of the relations between federal and provincial governments, the Employer members recalled that it was the federal Government which had assumed an obligation with regard to the ILO to ensure the application of the Convention. They therefore welcomed the indications provided of the efforts that were being made by the federal Government in this respect. The Government would have to decide whether it was willing to pursue its efforts to apply the Convention, or be the subject of continued criticism by the Committee of Experts. The Government should be requested to provide a report addressing all the issues discussed by the Conference Committee.

The Worker member of Canada indicated that the main interest of the statement made by the Government representative resided in its general aspect. The long list of violations of the Convention contained in the observation made by the Committee of Experts concerned a number of provinces individually or collectively. Canada had only ratified four out of eight fundamental Conventions. Since 1982, Canada had only ratified Convention No. 182, as well as two out of 30 Conventions adopted since that date. A total of 67 complaints, that is three a year, had been submitted to the Committee on Freedom of Association against the federal and provincial governments, and 54 out of 67 complaints had been declared receivable. Of that number, the Committee on Freedom of Association had found that there were violations of the principles set out in the Convention in 40 cases. Three-quarters of the complaints submitted to the Committee on Freedom of Association concerned some 70 laws which had been adopted in Canada since 1982 and which had been or continued to be in violation of the obligations arising from the ratification of the Convention. The cases mentioned in the observation of the Committee of Experts concerned eight provinces out of ten. An additional province would also be cited shortly.

He added that, in addition to the earlier measures taken by the Government of British Columbia to outlaw the right to strike in the health and education sectors, it had continued to use its near legislative monopoly to erode rights, repeal standards and undermine social and economic equity in the province. Its legislative agenda targeted areas including employment standards, training, forest tenure, safety standards, the regulation of private universities and trainers and the governance of the teachers' organizations. For example, the Health Sector Partnerships Agreement Act (Bill No. 94) stipulated that collective agreements could not limit contracting out, thereby fundamentally limiting the ability of trade unions to represent the interests of their members. The Coastal Forest Industry Dispute Settlement Act (Bill No. 99) made collective agreements in force prior to 2003 binding on the trade union and the employer concerned. The University of British Columbia Services Continuation Act (Bill No. 21) authorized the Minister, despite the provisions of the Labour Relations Code, to impose a cooling-off period during which strikes and lockouts were illegal. In Ontario, following a Supreme Court ruling, the response of the Government had been to adopt legislation allowing agricultural workers to make representations to an employer through an employees' association, but did not expressly afford them the rights guaranteed to unions under the Labour Relations Act. Also in Ontario, a proposed change would compel employers to post prominently at the workplace the procedures to be followed for the decertification of trade unions. In conclusion, the speaker noted that, despite the inclusion of the right to freedom of association in the Canadian Charter of Rights, it had to be concluded that provinces such as those mentioned, as well as others, cared nothing about the internationally recognized fundamental rights set out in the Convention and would do everything possible to undermine them. He therefore called for the Government of Canada, with the assistance of the ILO, to ensure that the Convention was implemented and respected in practice.

The Government representative thanked all the speakers and assured them that points made in the discussion would be conveyed to the jurisdictions concerned and that her Government would report any further developments to the Committee of Experts. The Government of Canada also looked forward to further support from the ILO with regard to the application of the Convention.

The Worker members indicated that they had noted the information supplied by the Government, by virtue of which, the federal Government was not competent in labour law, insofar as the provinces exercised competence to legislate on labour issues. However, a member State could not invoke its Constitution and shared competences as an excuse for failing to fulfil its responsibilities. Moreover, the provinces could not simply say that they would not amend their legislation. It was necessary to recall the principles set out in the Convention. First, all workers had the right to establish and join organizations of their own choosing without previous authorization, with the sole possible exception of members of the armed forces and the police. Second, the right to strike was a corollary of the right to organize and any restrictions on the exercise of that right should only concern public servants exercising authority in the name of the State or essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the population. Despite the fact that the Government was making certain efforts to resolve the situation, the Worker members called for a technical mission to Canada to explain to the federal and provincial authorities, especially in the provinces of British Columbia and Ontario, the principles enshrined in the Convention, with the involvement of social partners.

The Employer members observed that the Government representative had referred to all the various matters raised by the Committee of Experts. With regard to the right to strike, they expressed the opinion that no legislative changes were required. Although the Committee of Experts had developed the view over the years that the right to strike derived from the Convention, they recalled that the Conference, as the legislator, had clearly decided in 1948 that the right to strike was not dealt with by the Convention, as indicated in all the preparatory documents. Indeed, during the preparatory work, the majority of member States had indicated that the right to strike should not be addressed within the framework of the Convention.

The Committee noted the information provided by the Government representative and the discussion that followed. The Committee noted that the comments of the Committee of Experts related

to a number of discrepancies between the law and practice in various provinces, on the one hand, and the Convention on the other. The Committee noted that the issues that were pending related in particular to the exclusion of agricultural and horticultural workers from the coverage of the labour relations legislation, as a result of which they were denied full protection in relation to freedom of association. Other issues raised by the Committee of Experts related to the explicit designation by the law of a particular trade union as a collective bargaining agent and the rights of teaching staff and workers in the education sector in a number of provinces. The Committee noted the action taken by the federal Government, in cooperation with the ILO, to draw the attention of the provincial governments to the comments of the Committee of Experts. The Committee noted the information provided by the Government on the various measures that were being taken in a number of provinces, particularly in Newfoundland and Labrador, in order to promote the full application of the Convention. It also noted that the provinces were largely sovereign in relation to labour legislation. The Committee nevertheless recalled the need to amend certain legislative texts in different provinces with a view to guaranteeing the full application of the Convention, particularly in relation to the right of association in general and the right to engage in trade union activities in such an important sector as agriculture, which had suffered from restrictions for many years. The Committee accordingly expressed the firm hope that all the necessary measures would be adopted in the near future to provide full guarantees of the rights set forth in the Convention for all workers. The Committee requested the Government to provide detailed information in its next report to the Committee of Experts on the measures adopted in this connection. It requested the Government to continue examining the matters raised with regard to the application of the Convention. It also reminded the Government of the possibility to request technical assistance from the Office in order to facilitate the implementation of the Convention.

Colombia (ratification: 1976). **A Government representative** (Vice-Minister of Labour Relations) stated that year after year Colombia had been before this Committee providing information and explanations necessary so that each time a more objective picture of the situation in the country became apparent. She reiterated the permanent willingness for dialogue with the aim of a constructive debate from which conclusions could be derived to strengthen freedom of association. She noted that Convention No. 87 generated the most observations in the Committee, which reflected the complexities of the process of adjusting national legislation to the provisions of the Convention. In the case of Colombia the process of adjustment had continued throughout the years. The Committee of Experts had listed her country as a case of progress in its General Survey on freedom of association of 1994, in relation to law No. 50 of 1990, one of the laws most attacked by Colombian workers as a violation of freedom of association.

She recalled that in 2000 the Committee of Experts still pointed to 13 discrepancies between national legislation and Convention No. 87 and its principles. In its report of 2001, the Committee noted with satisfaction the adoption of law No. 584 of 13 June 2000 which derogated or modified 10 of the discrepancies, leaving only the three discrepancies the Committee currently noted. Despite the changes which had been incorporated in the legislation over time, a clear indication of a sustained state policy respecting the trade union movement and freedom of association, Colombia had been called year after year before this Committee. The first discrepancy which still existed was the prohibition for federations and confederations to declare a strike. The Government considered that negotiation should take place between the employer and the trade union and not people outside of the enterprise, which only complicated the negotiations. These reasons of convenience which aimed at strengthening dialogue between employers and workers explained this discrepancy in respect to which the Government continued to have an open dialogue with the ILO.

The second discrepancy referred to the prohibition to strike in a range of services, which for the Committee were too wide, in relation to the concept of essential services which had been accepted, as well as the possibility to dismiss trade union leaders who had participated in an "illegal strike". This observation touched on two aspects: the concept of essential services and the power to dismiss workers who participated in an illegal cessation of work. In Colombia the notion of public service came from a long tradition of French law which gave great importance to this concept in regard to the functions of the State. Over time Colombian legislation had come to refer to public services as "all organized activity which satisfied needs of a general interest in a regular and continuous manner in accordance with a special legal framework, provided by the State, directly or indirectly, or by private persons". For this school of thought public service was in its very nature essential and this quality was due to the fact that the State directly or through decentralized functions was in charge of providing such services, given the importance they represented for the development of society. The concept of "essential services" developed by the ILO was not the product of the same legal tradition which animated the Colombian system, which was the result of the need to balance the particular interests of workers and their right to strike – which the ILO had derived from Conventions Nos. 87 and 98 – and the general interests of society which was affected by the strike.

Each one of these concepts came from different legal conceptions which explained the discrepancies. These were not due to a Government policy of non-respect of international labour conventions, as affirmed by the workers. The Government was open to dialogue with the ILO to identify alternatives to meet or surpass obligations. With respect to the second aspect regarding "the possibility of dismissing trade union officers who had intervened or participated in an unlawful strike (section 450(2) of the Labour Code)", she underlined that there were no "unlawful strikes" in Colombia. Strikes were consecrated and guaranteed in legislation in both their substantive and procedural aspects, and none of the laws relating to the same had figured in the observation of the Committee of Experts, leading to the conclusion that the law was in conformity with the provisions of Convention No. 87. From this perspective there was not even the possibility to fire workers for having participated in a strike.

Another matter was the collective cessation of activities which was illegal when occurring in cases foreseen in article 450 of the substantive Labour Code, supplemented by article 56 of the Political Constitution and the decisions of the Supreme Court, both in the Labour Cassation and Constitutional chambers, in relation to essential public services. Such was the case of decision C-450 of October 1995 of the Supreme Court according to which essential public services were the exploitation, refining and transport of petroleum and its derivatives. This pronouncement was in conformity with the provisions of article 56 of the Political Constitution which guaranteed the right to strike, except in essential public services. Of the seven reasons foreseen in legislation to declare a cessation of activities illegal, only the one relating to stoppage in the public services had been the subject of observations by the Committee of Experts. As a result, elementary logic would lead one to conclude that if the point on the illegal cessation of activities was not questioned by the Committee of Experts as being contrary to Convention No. 87, except in respect to public services, there was no reason to question the legal power which permitted employers to fire those who had participated in one of these illegal cessations of activity. Concerning the third discrepancy regarding "the authority of the Minister of Labour to refer a dispute to arbitration when a strike exceeded a certain period (section 448(4) of the Labour Code)", the attribution foreseen in the aforementioned law was voluntary and not obligatory for the Government. This authority was used on few occasions, and she could affirm that the current Government had never used this possibility. This indicated that the discrepancies in the legislation were due to different interpretations by the Government and the Committee of Experts of the same standards. Therefore, an open dialogue with the Office to allow for an exchange of ideas and arguments with the aim of finding alternatives was needed. In relation to the comment that the Government's report had not contained observations on the comments made by the ICFTU, she noted that these comments had been received by the Government after the meeting of the Committee.

With regard to the decrease in the number of trade unionists and trade union leaders assassinated, the Government was aware that one death was reason enough to reaffirm its support for a policy of democratic security, and even if the decrease in the number was not, and could not be, a motive for satisfaction, it did encourage the Government to move forward after proving that it had produced advances in the right direction and in a sustained manner. With regard to the "grave climate" of persistent violence which the Committee mentioned, there had existed for the past five years the Protection Programme under the Ministry of the Interior and Justice, which was unique in the world and which offered protection to the populations most affected by narco-terrorist violence. Four thousand five hundred and seventy-six trade unionists benefited from approximately 2,218 means of protection. The programme offered escorts, small weapons, cars or armoured cars, protection for headquarters of trade unions, transportation support, communications, temporary relocation and national and international "tickets". To this effect it was necessary to increase the budget of the programme to the point where 70 per cent of resources went to the protection of trade unionists. Thanks to this programme an important decrease in assassinations and acts of violence against trade unionists had

been registered, although this was still insufficient. There had been 120 homicides in 2002, committed presumably for the exercise of trade union activities; 54 occurred in 2003; and this year 17 violent deaths had been registered in comparison to 22 registered in the same period last year. Finally, the speaker stated that she had not noticed in the report of the Committee of Experts any encouragement to the Government in its struggle to improve conditions of freedom of association. Nevertheless, her country would redouble efforts in its policy of democratic security and in the fight for bigger and better protection to trade unionists and trade union leaders who were at risk. She reiterated the willingness of her Government to continue the fight for freedom of association and fundamental rights of workers.

The Worker members stressed that, over the past number of years, the extremely serious violations of the freedom of association in Colombia had consistently appeared as an agenda item in the Committee's work. The ILO, as a whole, had been very much concerned with these violations. On several occasions, the Governing Body had considered actions to be undertaken, particularly when the Special Rapporteur of the Director-General presented his reports following a request made by the Worker members to find means of action that would address the situation accordingly. Subsequently, the Worker members requested a Commission of Inquiry to be dispatched to Colombia to break the inertia that prevailed year after year on the issues of concern. This impasse was confirmed by the Committee of Experts' report which stated: "... The Committee nonetheless observes with deep concern the persistent climate of violence in the country and the conclusions of May 2003 of the Committee on Freedom of Association in Case No. 1787 and those of the Conference Committee on the Application of Standards citing new murders and other acts of violence. The Committee echoes the two abovementioned bodies in requesting the Government to strengthen the relevant institutions still further in order to put an end to the intolerable situation of impunity, which constitutes a serious obstacle to the free exercise of the trade union rights protected by the Convention, so as to punish all those responsible effectively." In the past, numerous violations were the subject of discussions, in particular the violence exercised against trade unionists who were killed by the thousands more than a decade ago; the characterization of trade union activities as criminal offences; and the impunity which prevented all types of measures of having any effect whatsoever. The impunity was seen as the heart of the problem. As long as the life of a person had no value and was allowed to be taken with no punishment, the assassins would continue their practice. The Government had reported a lower rate of assassinations. Was that a reason for applauding? Once again, hundreds of people have lost their lives since the last meeting of this Committee. The latter had no information whatsoever concerning any investigations to find the perpetrators of atrocities and to punish them accordingly. A state of law and courage should prevail over a state of cowardice and impunity.

The Experts, once again, had pointed to problems regarding the implementation of Convention No. 87 relating to the right of trade unionists to freely organize their activities. In this regard, the Committee of Experts recalled, the prohibition on the calling of strikes by federations and confederations as provided for in the Labour Code; the prohibition on strikes not only in essential services in the strict sense of the term but also in a wide range of services which are not necessarily essential; and the authority of the Labour Minister to submit disputes to arbitration within a certain timeframe. The response of the Government was difficult to accept since, instead of taking the necessary measures to harmonize national law with the Convention, the Government limited itself to stating that the review of the labour legislative proposal, of which the Consultative Commission on Labour and Social Policies had been seized in 2002, had not yet taken place. The Government should have provided a report on the reform proposals, or more generally, on the observations of the Committee of Experts. Instead, the Colombian Government presented a press communiqué which related to political issues of no concern to the items listed on the agenda of the meeting, namely the impunity issue and the questions on the restrictions of trade union activities. The debate should have been focused on the implementation of standards and not on political questions, nor should it have been addressed through the press.

The Colombian situation required a common political will to resolve the serious problems facing male and female Colombian workers and the public at large. This political will was to target accurately the responsibilities concerned. In the press communiqué, the Minister of Labour presented a difficult reading of his report which reflected his perception of the situation. According to the press release, the true problem was the trade unions themselves: "union movements must help us resolve several problems which the country is facing instead of being part of the problem itself". Hence, the fault laid upon those who refused to submit passively to the Government's demands. On several occasions, the ILO's inability to act in an independent manner and with the necessary courage was observed. Last year the Committee was not able to arrive at a decision with regard to placing its conclusions in a special paragraph, even in the face of a situation where dozens of trade unionists had lost their lives due to the Government's inaction in taking adequate measures to halt the carnage which had persisted for several decades. Moreover, the Governing Body did not reach a decision to dispatch a Commission of Inquiry to Colombia. The ILO had adopted several Conventions on freedom of association and free collective bargaining and considered them as fundamental standards for the very reason of preventing any avoidance of responsibilities, and to enable workers, on their own account and in the interest of their families, to carry out freely their activities and express their grievances. The Worker members would have liked to have seen progress made on the punishment of assassins as well as on the issue of freedom of association in law and in practice. They expressed the hope that the Government would change the laws and the practice vis-à-vis the observations that had previously been made and that a true spirit of dialogue and openness would lead to the review by the Colombian Government, together with trade unions, of the problems faced, instead of creating more in their place.

The Employer members stated that this case took place within the context of conditions similar to a civil war. Violence touched on politicians, economic leaders, lawyers as well as union leaders, and was perpetrated by groups such as the FARC and other paramilitary groups who often committed crimes in the name of different ideologies. There was no unique recipe for establishing peace in Colombia and they noted that it was not the mandate of this Committee to evaluate different measures to this effect. Freedom of association was not possible in a climate of violence, yet the full guarantee of freedom of association would not end violence either. They recalled that in 2001 the Committee of Experts had noted a number of changes in legislation in relation to the application of Conventions Nos. 87 and 98 and had classified this case as a case of progress. For the Committee of Experts there remained three legal obstacles to the exercise of freedom of association. The Employer members stressed that they disagreed with the views of the Committee of Experts with regard to the right to strike, recalling that the preparatory works to Convention No. 87 and the decision taken by the Conference in 1948 in relation to the right to strike pointed out that the right to strike was not covered by the Convention. Therefore, the Employer members did not call upon the Government to undertake changes in existing legislation in this regard.

They stressed that in order to achieve the exercise of freedom of association, all measures would have to be taken to end the climate of violence in this country. The current Government appeared to follow a different path in this regard. While violence had not disappeared in Colombia, the statistical data indicated that violence had slightly decreased over the past two years. Nevertheless, the persisting level of violence remained unacceptable, as it endangered not only freedom of association but other rights as well. The Government had to adopt sterner measures with regard to the prosecution of crimes. The Employer members noted programmes for the protection of trade unionists, and the fact that police stations had been established in nearly all villages and that trade union leaders now occupied important public posts. The Government also appeared to be actively fighting right-wing paramilitary groups. The Employer members noted the slight improvement in the Colombian national economy and the agreement between the ILO and Colombia on technical cooperation projects. They also noted the offer made by the Government of Mexico to carry out difficult negotiations to end the violence. In this respect the Employer members concluded that the Government should not be weakened as this might jeopardize such projects and give the criminal groups operating in Colombia an upper hand. They therefore urged the Committee to request the Government to be even more determined in its efforts to put an end to the violence in the country.

The Government member of the United States stated that her Government remained deeply concerned about the environment in Colombia that bred such devastating violence against trade unionists. Her Government continued to support efforts aimed at finding solutions to the core problems that had created this situation, improving the skills and effectiveness of Colombian trade unionists, and protecting the lives of trade unionists at risk. She noted that although the number of murders and other acts of violence had dropped, this number was still appallingly high, and threats of violence continued to occur with distressing frequency. At the same time, the number of convictions against the perpetrators of violence was still unacceptably low.

Freedom of association was critical if Colombia was to move successfully along the path to peace, social justice, reconciliation and democracy. Yet freedom of association could only thrive in conditions where fundamental human rights – in particular those relating to human life and personal safety – were fully respected and guaranteed. Therefore her Government called on the Government of Colombia – in the context of ILO technical cooperation and assistance – to reinforce protection measures and security schemes for Colombian trade unionists, to ensure that all acts of violence were investigated and prosecuted and that those responsible were convicted and punished, and to move forward in the process of labour law reform so that law and practice fully conformed to ratified ILO Conventions on freedom of association.

A Worker member of Colombia stated that unfortunately he had to say in all honesty that the trade unions and workers' organizations of Colombia were deeply disappointed by the results obtained in two areas: the protection of the right to life and the exercise of trade union activities, which was becoming day after day even more difficult in the country. This Committee had been occupied with the topic of Colombia for the last 18 years, especially with respect to violations of Conventions Nos. 87, 98 and 151, which had become a kind of ritual repeated year after year: the workers denounced, the ILO queried the Government, the Government responded, the workers persisted, the ILO requested new information, the Committee of Experts noted its concerns in its reports, this Committee dealt with the case, time passed and the situation, instead of improving, deteriorated. It was necessary to recognize that there was a big difference between 108 trade unionists killed last year and 182 trade unionists killed the year before. Nevertheless, it would be perverse to interpret this number as a case of progress, above all because no-one anywhere should be assassinated for having exercised a trade union activity. It was a deep problem because, when talking about the survival of trade unionism in Colombia, one talked about freedom of association in a country where during the last 14 years anti-union behaviour and a systematic campaign on the part of different governments and certain business sectors intensified, with the goal of exterminating trade unionism.

Last year, while this Committee was debating about freedom of association in Colombia the installations of TELECOM and 14 other telecommunications companies were staffed by public forces since all the workers had been dismissed without legal reason affecting more than 7,000 families. At the same time unacceptable violations were being committed against collective agreements, the Labour Code, the Political Constitution, and ILO Conventions. In the largest beer company in Colombia there existed three years ago a union of 4,000 members. Today, after having deprived these workers of their right to strike, the organization had been dismantled and the collective agreement converted into a *pacto colectivo*, and so far there had been no sign of any government action to investigate the facts or to apply relevant sanctions.

Concerns regarding freedom of association became clear when the Ministry of Labour and Ministry of Health fused to create the Ministry of Social Protection, with grave consequences for workers with respect to freedom of association, which could be evidenced by the current situations of those affiliated with the social security union, the chaotic situation of workers and their organizations in the health sector, and by the total lack of protection which assured that in the Labour Ministry there would be no attention paid to claims, and the situation in the public sector as well as the private sector. This was happening to the extent that courts had become accustomed to make decisions more in the area of politics than in the domain of law as had occurred with the workers of the Red Cross (Cundinamarca and Bogota sections) on whom an arbitration tribunal was imposed illegally. One of the courts had not only validated the decision in an absolutely unacceptable manner, but had stripped the workers of all their rights.

The speaker said that he did not want to open a political debate, he just wanted the trade union movement to remain alive and that the rights of organizations, of collective bargaining and of strike be maintained. The best example of this was the signing on 17 May of a collective agreement between the Mayor of Bogota and 53,000 public servants. He stressed the importance of the freedom of expression and of the right to strike without fear of losing one's life, which would prevent the re-occurrence of situations such as that of the Ecopetrol Company where 248 workers were dismissed for having exercised this constitutional right. In this sense the speaker trusted that the ILO would conclude – as it had done in the case concerning the petroleum strike in Venezuela – that such actions were lawful since that they did not relate to an essential public service. Finally, he indicated his desire to establish a Fact-Finding and Conciliation Commission in the country, for the purpose of clarifying what had occurred in a search for the truth in a drama that had touched everyone. This was not a sanction but a precautionary measure of general utility. Furthermore, it was necessary to guarantee the continuation of the ILO technical cooperation programme. It was hoped that on this occasion there would be no double standards – as was the case last year – when it was decided not to apply precautionary measures to Colombia but nonetheless to adopt a special paragraph for Venezuela, in an unjust manner and without satisfactory explanation, for a much less serious situation.

Another Worker member of Colombia stated that for many years, the Committee had been discussing practices violating certain Conventions in the field of freedom of association and human rights, like in the case of Convention No. 87, and that the Committee of Experts repeatedly requested the Government of Colombia to ensure compliance with the Conventions. However, nothing had been done, and on the contrary, the violations of labour rights, trade union rights and civil rights became more frequent. The speaker urged that, facing such a situation, the Committee on the Application of Standards should on the basis of ILO principles and the Declaration of Philadelphia examine objectively the evolution of the situation in Colombia and act accordingly beyond political interests.

The speaker pointed out that the human rights situation in Colombia was critical. Violations of the right to life, of personal freedom and integrity was common practice. It was a tragedy which required outstanding commitments on the part of the Government, the judiciary and the public forces, in order to ensure and respect the right to life, in conformity with the Political Constitution. The debate should not concentrate on whether the number of victims had been reduced or not, since a murder was a human tragedy, especially when committed out of intolerance or differences in opinions. There were also other forms of human rights violations in Colombia, like arbitrary detention on a massive scale, threats and harassment. Impunity was the most shocking phenomenon, since it fed the constant threat of crimes against trade union leaders and activists. It was also extremely worrying because of certain doubts raised on several occasions as regards the functioning of the Office of the Attorney-General.

The speaker indicated that, besides the above, the State was pursuing an anti-union policy, in collaboration with employers, aiming at the destruction of trade unions, which was a flagrant violation of Conventions and which involved the suspension of the Ministry of Labour and Social Security, as well as the elimination of individual contracts between workers and employers, thus impeding the exercise of the right to organize. Similarly, the collective bargaining procedures were violated and denied contrary to the provisions of Convention No. 151. According to official statistics, in 2003, out of 4 million workers employed in the formal sector, only 49,200 could benefit from collective bargaining. Restrictions on the right to strike were clearly reflected in the fact that, out of 30 industrial disputes, 26 had been declared unlawful. Under the circumstances, the speaker requested the ILO to reaffirm, in connection with the strike organized by USO at the Ecopetrol Company, the principles referred to in the cases of Costa Rica and Venezuela, and remind the Government of Colombia of the legality of strikes in the oil sector. As regards the technical cooperation programme, the speaker recognized its contribution to the protection of life of threatened trade unionists. He regretted that no social dialogue was developed, which could help the creation of a culture of trade union tolerance among the Government and employers, but also the perception of technical cooperation as a cooperation mechanism, and not as a sanction. For the above reasons, the speaker requested the establishment of a Fact-Finding and Conciliation Commission in Colombia.

Another Worker member of Colombia stated that the Government and the Colombian enterprises had developed an anti-trade union policy, as had been confirmed by the supervisory bodies of the ILO, which had made observations and recommendations with a view to ensuring the realization of freedom of association. The Government had also not pursued a policy of consultation with the trade union movement. To the contrary, it had ignored workers' rights and had imposed economic and social policies against these rights, and it promoted draft legislation without first submitting it to the National Consultation Commission, as required by the Colombian Constitution and the principles of social dialogue.

He stated that the Government had previously announced the adoption of a working plan of the Inter-Institutional Committee for the Promotion and Protection of Human Rights of Workers, which was applied only minimally due to the lack of will and sufficient resources. Even though the ILO had noted acts of violence against Colombian trade unionists since 1987, it was important to point out that, between 1 May 2003 and 30 April 2004, 108 trade unionists had been assassinated, of which 55 were educators. Between January and May 2004, 22 trade unionists had been assassinated. If the

impunity which protected the perpetrators and instigators of crimes against trade unionists continued, as the Committee on Freedom of Association and the Committee of Experts recently reiterated, one could not speak of human rights of workers nor of conditions necessary for the exercise of freedom of association. The non-respect for Convention No. 87 was once again shown by declaring unlawful the strike at the Colombian Petroleum Enterprise, the firing of 248 workers, including trade union leaders, and the replacement of striking workers by managerial staff of the enterprise. All this went on in spite of the discrepancies that the ILO had been signalling since 1987 and also contrary to the jurisprudence of the Constitutional Court of Colombia.

The speaker stated that, according to the Court, when the State acted as an employer, it was contrary to the principle of good faith for a government body to declare a strike unlawful, since this decision would be manifestly partial. The other arbitrary decision taken by the Government was to consider oil-related activities an essential public service. The ILO had stated on numerous occasions that the extraction, distribution, production, transport and refining of oil could not be considered, in itself, an essential public service. The report of the Committee of Experts this year recalled in the case of Costa Rica that oil refineries were not essential services in the strict sense of the term and that the exercise of the right to strike should be guaranteed in such services, without it being possible, for example, to replace striking workers by other workers.

He indicated that currently a strike was coming to a head in the banana sector, led by SINTRAINAGRO, which had as its objective to prevent enterprises for eliminating the system of contracting labour and that of social security. In compliance with ILO standards, the exercise of the right to strike and the conclusion of collective agreements should be respected. He called upon the Committee to reiterate its recommendations so that Colombia could bring its legislation into line with the Conventions of the ILO. For this reason, he requested: the abolition of the authority of the Minister of Social Protection to declare strikes unlawful; the determination of essential services in conformity with ILO criteria; the repeal of the authority of the Minister to name arbitrators in the context of obligatory arbitration for labour disputes in state enterprises; the repeal of the authority of the Minister to refer a dispute to arbitration when a strike exceeded a certain period; the removal of the authority to fire workers as a consequence of having declared a strike unlawful; the derogation of the prohibition on the calling of strikes by federations and confederations; and the full application of Convention No. 151, through which state workers could exercise their trade union rights, as noted in this year's report of the Committee of Experts. At the same time, enterprises should not be allowed to conclude or give preference to *pactos colectivos* with non-unionized workers, a practice which was supported by the judiciary and the Government. Finally, he noted that the satisfaction and the interest which had been expressed by the Committee of Experts as regards the application of Conventions Nos. 29, 111, 129 and 169 left one to wonder, since this clearly did not reflect reality. To the contrary, what was apparent was a plan to eliminate trade unionism. For this reason he requested the setting-up of a Fact-Finding and Conciliation Commission.

The Worker member of the United States recalled that in 1999, the Committee on Freedom of Association, in its conclusion to case No. 1787, had deplored that no significant progress had taken place and that it had trusted the Governing Body to take this into account in its deliberations on the establishment of a Commission of Inquiry on Colombia. Since then this Committee had reviewed the case of Colombia in all of its sessions. A direct contacts mission had been despatched, a technical cooperation programme had been launched, and a Special Representative of the Director-General had been appointed, yet hundreds of Colombian trade unionists had been assassinated, kidnapped, assaulted or threatened with impunity. He noted that the Colombian Government had pointed to the relative decline in the number of assassinations. He wondered whether the 90 trade unionists murdered in 2003 or the 26 murdered already this year were really a reason for congratulations. He also stated that the coverage provided to the 1,424 unionists by the Interior Ministry's trade union protection programme was woefully insufficient given the thousands of unionists at risk. According to the *Escuela Nacional Sindical* (ENS), this figure was in any case inflated as it covered other sectors than trade unions, and according to the Colombian Commission of Jurists, the protection programme consisted of nothing more than furnishing a mobile phone to a potential victim in some cases. He further noted that the decline in assassinations had more to do with the temporary ceasefire in force between the paramilitaries and the Government than the protection programme. Indeed, the ENS had pointed to an increase in death threats against unionists since 2002.

He stressed that the key element in protecting Colombian trade unionists was the effective prosecution and conviction of those responsible for the violence. Unfortunately, Colombia's National Prosecutorial Unit on Human Rights had admitted that of 3,000 cases of assassinated trade unionists between 30 August 1986 and 30 April 2002, only five had led to a conviction. He noted that the Office of the United Nations High Commissioner for Human Rights had concluded, in 2003, that the Colombian Attorney-General had interfered in the investigations of murders.

He also stated that Colombian law continued to be in violation of Convention No. 87. In addition to the points raised by the Committee of Experts in this regard, he pointed to the continued existence of "*pactos colectivos directos*" between employers and groups of individual employees. Section 46 of Law No. 50 continued to restrict registration of new trade unions, and the same law continued to hamper the establishment of collective bargaining representatives for the public sector and industry. He concluded that this case was of particular concern to the United States and Colombian trade unions as both these countries were negotiating a free trade agreement in which there would be no requirement to harmonize labour legislation with ILO standards, but merely to enforce existing national law.

The Worker member of Sweden stated that an anti-unions mentality had taken hold in Colombia, both among the State and the employers. As mentioned in the previous reports, high officials of the State had a habit of making declarations in public making the trade union movement and collective bargaining responsible for the recurrent economic crises in the country. As pointed out in the study published in the economics magazine "Portafolio", the employers did not view trade unions favourably. In these circumstances, Colombian workers deserved a maximum support at the moment when the exercise of the freedom of association rights continued to have dramatic consequences. One hundred and eight trade unionists had been assassinated last year and already 22 since the beginning of this year, which showed very explicitly the seriousness of the situation.

Another serious problem was that of the destruction of collective bargaining, which in 2003 covered only 49,000 workers out of 4 million employed in the formal sector. These facts pointed to the need to reinforce the Special Technical Cooperation Programme for Colombia. The ILO Governing Body already had an opportunity to request the Government to urgently put an end to the impunity of persons who committed acts of violence against trade unionists. The cooperation programme should not be looked upon as a sanction, but rather as a valid instrument contributing to facilitating and improving the exercise of the freedom of association rights and also facilitating the promotion and application of the fundamental rights at work.

The speaker requested the ILO to reinforce the technical cooperation programme, which implied the guarantees for the necessary economic resources for reaching objectives identified by the Governing Body. There was great concern among workers all over the world and among the international community at the very serious situation faced by Colombian trade unionism. Everything possible should be done to put an end to assassinations and to promote respect for freedom of association. For all these reasons, the technical cooperation programme was an instrument which the ILO should reinforce.

The Worker member of Chile, upon affirming that for the workers respect for freedom of association was imperative as much in Chile as in Colombia, stated that it was clear that the violations of fundamental human rights of trade unionists were related to their trade union activities. War was an instrument used by different sectors in the country to weaken, neutralize and eliminate workers' organizations. Therefore, it was not surprising that the majority of violations of human rights of Colombian workers gained in intensity when negotiations to resolve labour conflicts were under way or terminated, meaning that these violations took place during the negotiation of documents and collective agreements or during national and local strikes. This situation was not the result of indiscriminate, irrational, uncalculated and casual violence; on the contrary, it was selective, discriminatory and calculated, and was aimed at trade union leaders and leaders of organizations which were involved at high levels of social intervention, and which had an important public presence and great capacity for political mobilization. This was the case, for example, of sectoral federations like Fecode, which played a predominant role in the elaboration of public policy, workers' federations with a great capacity for intervention and mobilization, and national unions such as Sinaltrainal, USO, Sintraelecol, amongst many others, which operated in strategic sectors of the national economy. The kidnappings, threats and assassinations of workers were strategies calculated to put an end to trade union organizations.

To illustrate the fact that the violence against trade unionists intensified in times of labour conflicts, the speaker mentioned the case of the "voluntary renouncement" of acquired rights in the collective agreement of workers in La Ceja Hospital in Eastern Antioquia affiliated with a National Association of Hospital and Clinic Workers (ANTHOC), after pressure had been exerted by paramilitary organizations. Another example was the threats directed at the union leaders of Sinaltrainal, which occurred during negotiations held with the Femsa Coca-Cola Company in May 2003, and the forced withdrawal, as a consequence of threats, of the negotiator chosen to represent this organization in its labour conflict with the transnational enterprise Nestlé-Cicolac in Valledupar in February 2003. He also pointed to the assassination of the president of the sub-directorate of Sintrainagro at the very moment when his organization had finished direct negotiations with the Palmas del Cesar company and was preparing to initiate a strike movement in this enterprise.

The speaker referred to other examples, such as the judgement against the leader of USO based on induced testimony and false evidence, the declaration of a USO strike as unlawful, and the dismissal of 248 workers and the militarization of labour conflicts. He also mentioned threats against trade unions affiliated with the CUT, the Teachers' Union of Risaralda, the Union of Drivers and the Street Vendors' Union. These cases were only a sample of the situation in question, which cast doubt on the position of the Government and employers, according to which the Government bore no direct responsibility for violations of workers' human rights because the armed conflict had stripped it of its capacity to control and regulate social life. These facts demonstrated that the war had been instrumentalized by sectors of the state and business to regulate strictly labour-related conflicts without resolving them. The Government had an obligation to put an end to this unbearable situation of impunity which constituted a major obstacle to the free exercise of trade union rights.

The Government member of Ireland spoke on behalf of the European Union. He indicated that the EFTA countries Iceland, Norway and Switzerland had aligned themselves with his statement. The EU wished to reaffirm its full support to the Colombian people and the Colombian Government in their efforts to bring about justice, social advancement and national reconciliation and tackle impunity and human rights violations. This year they were pleased to note the efforts of the Colombian Government to improve the human rights situation and the position of trade unionists in Colombia. They welcomed recent positive developments, including the adoption of a workplan to promote and encourage workers' rights, and the reported decrease in the number of deaths of trade unionists. While noting these recent positive developments, the EU wished, however, to reiterate its grave concern regarding the general climate of the constant violence that was present at all levels of Colombian society and the threat that such a situation represented for social dialogue and reconciliation. The EU strongly condemned the murders and kidnappings of trade union officials and members of the population. The EU expressed concern that the Colombian Government had not taken the necessary measures to amend legislation inconsistent with Convention No. 87. The EU stressed the importance of social dialogue and called on the Government to redouble its efforts in this area, and indeed its efforts to meet all its commitments under the Convention.

The Government member of Brazil stated that his Government was closely following developments in Colombia regarding freedom of association and, in this context, he welcomed the response made by the Colombian Vice-Minister which summarized the efforts deployed by her Government in order to stop the climate of violence that was prevailing in the country. He called upon the Committee to support the measures already taken by the Colombian Government to reinforce and stimulate social dialogue and, in this regard, account should be taken of the information provided by the Colombian Vice-Minister. It was equally important to consider the good results obtained in the framework of the technical cooperation programme undertaken by the ILO and Colombia which was meant to promote social dialogue and freedom of association and to harmonize the Colombian national legislation with international labour standards. The speaker was convinced that, with the constructive support of the ILO, the Colombian Government would continue to improve labour conditions in its territory in a manner that would enhance democratic institutions.

The Government member of Costa Rica pointed out that the acts of violence performed by the narco-terrorists did not discriminate either between rich landlords and trade unionists or between diplomats and politicians, young and old, children and women. No doubt, Colombia would be able to find a way out with the assistance of friendly States and international organizations, as well as through dialogue and reinforcement of democratic institutions.

The Worker member of the United Kingdom stated that in February he had visited the small town of Saravena which had been under total military control since November 2002. The armoured cars circling the union building where he met with local trade unionists and their families and the armed troops outside were, according to the army, for their own protection. When the army took over the town, half the adult population was rounded up and processed by the army in the football stadium. Families told him how their loved ones had been taken from their beds. At the stadium, circling the pitch, paid informers in cars with dark windows apparently pointed out the so-called dissidents (or those against whom they had a grudge). Of the hundreds arrested, some 40 were eventually sent to prisons far away. Arbitrary arrests in Saravena and throughout Arauca department were a daily occurrence. In the same area, the army and the paramilitaries patrolled together and had committed a further massacre of 13 *campesinos* just three weeks ago in Flor Amarillo and in Pinalto. All the opposition candidates in Saravena had been arrested before the October elections. A meeting with the local CUT leader was not possible because a warrant was out for his arrest.

He had also visited Bogota's two main prisons, including a closed wing of the women's prison, where 84 women were held in a space designed for 31. The overwhelming majority of the detainees were members of trade unions or community-based organizations. Of the 84 prisoners, more than 50 had either not been tried or in many cases even charged. Among them were women trade unionists arrested in Saravena in November 2002, imprisoned for 15 months without charge. Some arrest warrants had been "mislaid"; the women concerned had become non-persons with no record of their detention. He was pleased to hear that, soon after his visit, 11 members of the health workers' union had been released from the two prisons but only on bail.

Among the many victims of arbitrary detention was Luz Perly Cordoba, General-Secretary of the agricultural workers' union, FENSUAGRO, arrested on 18 February, after his meeting with her in Saravena. There was still no explanation for her detention. These were just some of the 7,000 political prisoner cases in Colombia. It was remarkable that a state apparently incapable of arresting and convicting the murderers of trade unionists over the past decade seemed adept at arresting and imprisoning so many of the potential victims. There was impunity for the murderers, and arbitrary detention for those who dared to oppose the neo-liberal, anti-union crusade of the regime and those wealthy and shadowy forces which supported it. The speaker recalled that at Ecopetrol, 43 workers had been confined to overcrowded, dirty offices, in separate cubicles facing the wall for six months of "behaviour and skills improvement", which was degrading, psychological torture and brainwashing. The programme was used to threaten other trade unionists at Ecopetrol.

Yet too many members of this Committee still insisted that this was a democracy fighting a war against terrorism rather than a government, backed by paramilitary terrorists, which was waging a war on democracy. The Government refused to implement two key UN recommendations on the ending of judicial power for the army and of maintenance of military intelligence files on trade union and NGO activists. Senior public officials continued to vilify trade union leaders, making them targets for the paramilitaries. The Committee could invite the Fiscalia General to explain the remarkable relationship this department, according to Human Rights Watch, now had with the paramilitary right.

He concluded that it was delusional to pretend that freedom of association in Colombia was improving. The opposite was true and this Committee had failed to recommend appropriate measures. All ratifying member States should be subject to impartial judgement regardless of their economic system or attitude to globalization. The fact that Colombia's Government was pursuing a neo-liberal economic model was no excuse to ignore its flagrant and persistent violations of freedom of association.

The Worker member of Swaziland, speaking on behalf of the workers of Africa, expressed his solidarity with Colombian workers and supported the requests made to this Committee, by the Worker members' spokespersons and by the Colombian Worker members.

The Government member of Canada reiterated Canada's support for the ILO special technical cooperation programme for Colombia. Her country believed in the power of social dialogue and supported the full implementation of appropriate legislative measures in line with the ILO recommendations related to the application of Conventions Nos. 87 and 98. She was pleased that some components of this programme were being implemented in Colombia.

She noted the Government's report indicating that the number of violent acts against trade unionists had been somewhat reduced and that additional funds had been earmarked for the protection of trade unionists. She welcomed this indication that some progress was being made, and recognized that some measures had been taken by the Government against impunity. At the same time, the international community was anxious to see concrete results from these measures so that perpetrators of human rights violations were punished according to the seriousness of their crimes.

The situation of violence in Colombia was very complex; however, addressing the problem of impunity was crucial. The human rights situation for trade unionists in Colombia continued to be extremely difficult and called for urgent, transparent and decisive measures to address the problem.

The Worker member of Pakistan expressed the solidarity of workers from his country and called upon the Government of Colombia to improve the protection of rights of all workers, make the improvements in legislation called for by the Committee of Experts, and prosecute those responsible for violence against trade union members. He supported the request for the establishment of a Fact-Finding and Conciliation Commission to deal with this matter.

The Government member of Mexico stated that the information provided by the Government representative of Colombia had not only provided a detailed reply to the comments of the Committee of Experts, but had also revealed a constructive attitude of the Government of Colombia which, every four months and every year, reported on the measures adopted and efforts made to guarantee the exercise of trade union rights provided for in Convention No. 87. Although the reported results might not have been fully satisfactory, the speaker acknowledged positive trends, despite the fact that there were discrepancies between Convention No. 87 and the national legislation. The Committee members were familiar with the difficult situation of violence in the country, which made the application of measures allowing the full exercise of trade union rights more difficult. The speaker pointed out that she shared the Worker members' concern that trade unionists continued to be victims of violence, though the violence did not concern exclusively trade unions, but affected all sectors of Colombian society. This situation required a political solution, which could not be found in this Committee.

The speaker considered, like in all the previous discussions of the case of Colombia, that the Special Technical Cooperation Programme for Colombia represented an ideal instrument for the ILO, within the limits of its mandate, the Government of Colombia, and the employers' and workers' organizations to reach in close collaboration a solution to the problems affecting Colombian workers.

The Government member of China noted the efforts undertaken by the Government of Colombia to improve social and economic policies and promote social dialogue in the country. She hoped the ILO would strengthen its technical cooperation with Colombia, and stressed that her country supported social dialogue as an alternative to violence. She stated that this case should not appear in a special paragraph in the report of this Committee.

The Government member of Denmark spoke on behalf of Denmark, Finland, Iceland, Norway, and Sweden. She expressed her support for the statement made by the Government member of Ireland on behalf of the European Union. The Governments for whom she spoke remain concerned and deeply disappointed that the Colombian Government had still not taken the necessary measures to amend in full the legislation which was inconsistent with Convention No. 87. She urged the Government to address this problem without delay. At the same time she recognized that legal reform was not in itself enough. It was crucial to press ahead with urgently needed socio-economic reforms, including an employment policy aimed at providing jobs in dignified and fair conditions.

She reiterated the request to the Colombian Government to cooperate constructively with the social partners to secure freedom of association. The Government needed to support social dialogue through effective labour market administration. She further noted with concern the persistent climate of violence in the country, and although the number of trade unionists killed had declined, the Colombian Government had to urgently strengthen the relevant institutions further in order to end the intolerable impunity which protected perpetrators. In this context she underlined the importance of the Colombian Government's pledge to protect civil society leaders, including trade unionists, that had been made at the international meeting on Colombia which was held in London last year.

After having taken into account the information given by the representative of the Government of Colombia, she could find no credible evidence that the situation had improved substantially. She underlined the support of the governments she represented for the work of the ILO and Colombia which could be strengthened, especially in regard to the ILO's cooperation with the Office of the United Nations High Commissioner for Human Rights and other institutions of the United Nations system. She urged all parties to enhance dialogue to find the necessary solutions.

The Government representative emphasized the importance for her country of the reinforcement of the technical cooperation programme which should receive adequate financial support and be operational as long as necessary, and of the guarantees of the freedom of association rights and of the tripartism. The Government undertook concrete actions aiming at combating impunity, including the organization of workshops with the participation of the Attorney-General and judges.

The speaker revealed the existing problems as regards the refusal of the victims' relatives to make declarations for fear of becoming victims of reprisals. Thus, a programme of victim protection had been launched, which helped certain people to leave the country. Besides, the regional round tables of social dialogue had been created with a view to reactivating social dialogue in the cities where the problem was particularly serious and where there was the biggest number of murders of trade unionists; agreements were signed for fighting against the evil of violence. Regarding the "behaviour and skills improvement" programme at Ecopetrol, the speaker recognized that certain workers had been mistreated, but due to the Government's intervention, the programme had been discontinued.

The speaker pointed out that, contrary to the views expressed by certain members of the Committee, terrorism was not a selective, but rather a generalized phenomenon. The Government was combating the *guerilleros*, as well as drug traffickers, and firmly refused any collaboration with the paramilitaries. The Attorney General was conducting all the relevant investigations.

The Worker members regretted that the Officers of the Committee could not agree on giving the floor to the World Organization against Torture (OMCT). It was also regrettable that the information provided by Colombia was not included in the report required under article 22 of the Constitution.

After having listened to all of the interventions, the Worker members wanted to stress certain points by way of conclusion. Firstly, the climate of the systematic anti-union violence and impunity continued to reign, resulting in an unacceptable state of affairs. Secondly, the violations to Convention No. 87 went beyond this violent climate. There was an anti-union climate which was demonstrated by certain practices and measures seriously affecting the exercise of freedom of association and, as the Committee of Experts had noted, the Colombian legislation continued to infringe upon the Convention even if the Government stated that it was a question of simple divergence of interpretation. In practice, the violations revolved around the following: the criminalization of union activities, particularly the right to strike, massive and abusive dismissal of workers who exercised their right to organize, restrictions to the right to strike, ignorance of the conventions on the part of those who were responsible for its implementation and other anti-union behaviour.

Last year, the Worker members had considered the situation to be sufficiently worrying for the conclusions to be taken up in a special paragraph. This year, the number of murders and the anti-union climate did not show the least tangible improvement in the situation as a whole. There was more than adequate reason to reproduce conclusions in a special paragraph and therefore it was regrettable that the Employer members had once again objected to it. Apart from practices and realities brought to the attention of all, it was important to recall that, in legal terms, no effect was given to the Convention. To ignore the illegal violations and to reject the proposal for a special paragraph in such a grave and serious situation as that of Colombia opened the door to the politicization of the Committee. The politicization of the work of this Committee was to be avoided at all costs since it provided a good justification for those who did not believe in the objectivity of the Commission's conclusions or considered that the Commission was only critical of those countries hostile to the established world neo-liberal order.

The Worker members stressed the need for reflecting on the aforementioned situation which risked to undermine the mission of the Committee which is to establish a dialogue with governments on violations observed. Having been confronted with the existing deadlock, it was indispensable to find other means and ways that would put an end to the confrontation and aggression towards the union movement so that the ILO could retrieve its credibility as an interlocutor in such serious situations as that of Colombia. The Office and the Governing Body had to pay particular attention to the situation in Colombia and the repeated failure to find a consensus to resolve outstanding issues. Consequently, the Worker members requested the Governing Body to send a Fact-Finding and Conciliation Commission to Colombia.

The Employer members said that the Government had shown its readiness to collaborate closely with the ILO. It was essential for

the Government to determine what measures were needed. For the Employer members the institutional framework for the persecution of crimes under the Penal Code had to be improved. While the Penal Code covered the crimes in question, the Government representative had indicated that problems in the investigation of crimes persisted. This was not surprising given the climate of violence which made it difficult for persons to testify in a credible manner. In its conclusions, the Committee should ask the Government to report in detail on matters raised during the discussion. They did not believe that placing this case in a special paragraph would be productive. They reiterated their objection to matters raised by the Worker members with regard to the right to strike.

The Committee took note of the oral information provided by the Government representative, Vice-Minister of Labour Relations, and of the discussion which ensued. The Committee noted with great concern that the problems pending were extremely serious and related, in particular, to murders of trade union leaders and members, other acts of violence against trade unionists and the situation of impunity from which benefited the perpetrators. The Committee noted that the Committee on Freedom of Association had examined serious complaints concerning assassinations and acts of violence against trade unionists. The Committee observed that acts of violence also touched other sectors including employers, in particular through kidnapping. The Committee condemned once again all these acts of violence in the context of the dramatic situation of violence which was experienced by the country.

The Committee took note of the Government's declarations according to which the number of murders of trade unionists and other acts of violence had dropped and the authorities had adopted measures to protect trade unionists. The Committee also took note of the Work Plan of the Inter-Institutional Committee for the Prevention and Protection of the Human Rights of Workers and the functioning of the Special Committee to Promote Investigation into human rights violations. Nonetheless, the Committee expressed its deep concern with the still high number of victims.

The Committee recalled that workers' and employers' organizations could only exercise their activities freely and effectively in a climate devoid of violence and again requested the Government to guarantee the right to life and security and to reinforce urgently the necessary institutions in order to put an end to the situation of impunity, which was a serious obstacle to the exercise of the trade union rights protected by the Convention. The Committee pointed out, more generally, that the climate prevailing in the country was not favourable to the development of trade union activities.

As regards legal amendments requested by the Committee of Experts, the Committee noted that the Government was open for the dialogue with the ILO on the legal issues pending and was convinced that the exchange of points of view on the comments made by the Committee of Experts would allow to find alternatives and to overcome discrepancies mentioned by the said Committee. The Committee once again urged the Government to immediately take the necessary measures in order to guarantee the full implementation of the Convention. The Committee requested the Government to send a detailed report for the examination by the Committee of Experts at its next session, so as to enable it to assess the development of the situation, including a reply to comments submitted by the trade union organizations. The Committee expressed the firm hope that, in the nearest future, a tangible progress could be noted, with the help of the Technical Cooperation Programme whose financial resources should be reinforced, particularly in overcoming all the obstacles to the full exercise of the freedom of association, so that the trade union organizations could exercise the rights guaranteed by the Convention in the climate of full security free from threats and fear. The Committee emphasized the importance of reaching these objectives through social dialogue and cooperation.

The Worker members noted with regret that the idea of a Fact-Finding and Conciliation Commission was not retained.

Guatemala (ratification: 1952). **A Government representative** said that the good will of his Government had been demonstrated through such concrete actions as its welcoming, in May, the direct contacts mission, the mandate of which the Government had requested to be extended to cover this Convention. A report on the May mission was currently being prepared. Other actions had included the submission to the competent authorities of all the Conventions, Recommendations and Protocols that had been mentioned in the Committee's report of the current year. Guatemala thus demonstrated that it was strengthening the rule of law, and, in particular, its labour relations system, with a focus on fundamental labour rights. Progress had been made, and would continue to be made in that regard. With respect to the first observation in the Committee's report, the speaker agreed that the effective respect of human rights and public freedoms was essential to guaranteeing trade union rights. Consequently, the Special Prosecutor for crimes committed against journalists and trade union members, since its establishment, had considered 58 cases, of which: 71 per cent were threats; 0.5 per cent were homicides or murders; and 28.5 per cent were other. Of the total number of cases, three involved threats to the lives of trade unionists. Investigations had been conducted accordingly, the perpetrators had been identified and relevant legal action had been initiated. No cases of homicides or injuries of trade unionists had been reported for that year. The new Government Prosecutor had replaced the Special Prosecutor investigating such cases, with the goal of guaranteeing enhanced effectiveness of the prosecutor's role. The speaker said that efforts were continuing to be made to further strengthen the Office of the Public Prosecutor so as to improve the effectiveness of criminal prosecution, a task that required the technical and financial cooperation of various national and international bodies. As follow-up to actions already taken and in order to prevent conflicts, the Ministry of Labour and Social Security had, for that year, created a system to address the obstacles that had arisen, so as to ensure that trade union rights were protected, with the valuable support of the recent direct contacts mission of the ILO. He said that an integrated approach to inspection needed to be adopted, so as to involve not only verification and prevention of labour conflicts, but enforcement of the law in cases of infringements or violations as well. The new sanctions system enhanced the role of labour inspection. In that framework, various complaints had been received, all of which had been handled, and had either resulted in conciliatory dispute resolutions, or suitable sanctions. From 2001 to February 2004, efforts had been made to ensure that labour rights were respected as effectively as possible. The new sanctions system had thus started to work and had already produced a decline in acts of violence against trade unionists.

With respect to the second observation in the Committee's report, the speaker agreed that labour legislation should have more flexible eligibility requirements for becoming a trade union leader. In that respect, an important technical-legal aspect needed to be pointed out. Since 1991, Guatemala's Constitution had been considered to be inconsistent with the Convention, and a request for its amendment had been made. However, that did not appear to be necessary since the Constitution in fact developed the principle of *in dubio pro operario* in article 106, one of the objectives and consequences of labour law, whereby the standard that prevailed was the one which was most favourable to workers. With respect to the third observation in the Committee's report, he said that the Government had submitted to tripartite consultation the relevance and content of the possible legal reform initiative, which would enable overcoming current limitations in terms of calculating how many workers constituted a majority for a strike to be declared legal. With respect to the fourth observation in the Committee's report, he said that the provision of article 106 of the Constitution was taken into account in that the standard that prevailed was the one which was most favourable to workers, that is, the one which had fewer restrictions, in line with the new provision of section 243 of the Labour Code. He recalled that, in 2002, the Committee had warmly received the new provision on the prohibition of strikes in essential services. In that regard, two court judgements had been pronounced over the past three years: one declared calling a strike illegal, and the other, of significant historic value, declared calling a strike legal. The Committee of Experts, the Conference Committee and the recent direct contacts mission had been extremely useful and provided valuable guidance. The indulgence of the Committee was requested with respect to the points contained in the report, and the Committee should have faith in the Government's ability to further advance trade union rights. He requested technical cooperation from the ILO and welcomed the financial cooperation of certain countries. Lastly, it was important that the Committee bear in mind that the peace process in Guatemala was under way.

The Worker members thanked the Government representative for the information that he had provided. The Conference Committee had examined the case of violations of this Convention almost systematically since the 1980s. Year after year, the Government invoked the history of this country and the difficulties encountered in establishing a democratic government following a long period of totalitarian rule and armed conflict. In 2003, the Government had still referred to the structural crisis in Guatemala. Yet, the years were passing and the problems persisted. In 2001, following the direct contacts mission, some legislative developments had been noted. Since then, the comments made by the Committee of Experts noted a persistent situation which seriously undermined the provisions of the Convention. In practice, there was no progress to note with respect to the main points raised by the Committee of Experts. With regard to the Constitutional requirement that union leaders should be of Guatemalan origin, it was the union by-laws and not

the legislation that should set the criteria for the eligibility of union leaders. In this respect, the Committee of Experts noted from the Government's report that there had been no legislative progress in this field. With regard to the requirement that workers had to be working in the enterprise or the occupation in order to be eligible for trade union office, the Committee of Experts had pointed out that it could be in the interests of unions to have some officers with legal, economic or other experience, without their necessarily working in the occupation in which the trade union operated, but it had not noted any legislative developments on this matter. With respect to the requirement that, in order to call a strike to obtain the agreement of those working in the enterprise, only the votes cast should be taken into account. However, no improvement had been noted in this regard. Finally, with regard to the imposition of compulsory arbitration without the possibility of having recourse to a strike in the public transport and fuel-related services, the Committee of Experts had indicated that these were not essential services in the strict sense of the term. The Government had said that these decrees had been implicitly repealed in part. But, the Committee of Experts rightly insisted that union rights had to be specifically laid out in the legislation.

The Committee of Experts had been making some of these comments since 1989, that is to say, for 25 years. The legal analysis of this case led to the conclusion that the legislation cited for several years had never been changed. In its observation, the Committee of Experts noted that the Government had submitted its comments to the Committee on Tripartite Affairs and that the Labour Code was currently under reform. The Committee of Experts hoped that it would soon be able to note substantial progress on these matters. However, nothing suggested that a change was forthcoming. In fact, for several years, the Committee of Experts had noted a serious deterioration in the situation, which had worsened in 2003 and 2004, particularly in view of the persistence of impunity in the event of murders and acts of violence, and new cases of death threats and intimidation against trade unionists with the complicity, among others, of the judicial authorities. In this respect, the arbitrary detention of Rigoberto Dueñas, Secretary-General of the General Confederation of Workers of Guatemala (CGTG), for over a year was a good example. Mr. Dueñas was accused of corruption in the Guatemalan Social Security Institute although he completely denied any fraud. Several prominent and respectable employers insisted on his innocence. The members of the ILO direct contacts mission, which had taken place in May 2004, had been able to meet Mr. Dueñas and other imprisoned trade unionists. The imprisonment of Mr. Dueñas derived from the performance of his duties as a union representative. The members of the mission had therefore demanded on 19 May 2004 that he be afforded alternative treatment. Moreover, the period of preventive detention went well beyond the minimum sentences handed down for the offences of which he was accused. In Case No. 2241, the Committee on Freedom of Association had demanded the immediate release of the union leader.

Why was freedom of association not respected in law or practice? Why had those who defended workers been the target of so much injustice? Why were there so many denials of justice in the treatment of the cases? What action was being taken by the special unit created in the Public Prosecutor's Office to improve the effectiveness of criminal investigations of cases relating to trade unionists? Why had the agreement between the United Nations and the Government of Guatemala, signed on 7 January 2004 in New York to establish a commission of inquiry on the existence of illegal entities and clandestine security forces, been rejected by the Guatemalan Congress? The governments and administrations of the country had continually raised the issue of separation of the three branches, a principle that could be respected, but which in no way implied that law and justice should not be respected. In democratic societies, independence was the basis for charging and penalizing those who did not respect the legal procedures. However, in the present case, in the light of the punishments imposed upon those who defended workers and the prison sentences imposed on trade unionists, it could only be concluded that no progress had been made.

The Employer members recalled that the Conference Committee had discussed cases relating to violations of freedom of association in Guatemala for the past ten years, either in relation to this Convention or Convention No. 98. They noted that, in the present case, the Committee of Experts had commented on five points, of which three were related to the right to strike, which was not covered by the present Convention. Nevertheless, two of the issues raised by the Committee of Experts did indeed deserve the attention of the Conference Committee. The first of these points concerned serious acts of violence against trade unionists, including cases of murders and death threats, which were entirely unacceptable. According to the Government, a special unit had been established in the Public Prosecutor's Office and had begun operations with a view to improving the effectiveness of investigations into acts of violence and murders of trade unionists. The Government representative had also said that since 2002 there had been no new reported cases of violence or the murder of trade unionists. The Employer members also recalled that the Committee on Freedom of Association had not reported any new cases. They nevertheless shared the deep concern of the trade unions with regard to this situation and recalled that a climate of violence and pressure was not conducive to the exercise to the rights related to freedom of association. They further noted the statement by the Government representative that the special unit had already dealt with 58 cases and that labour inspectors had special orders to investigate cases of violence against trade unionists. However, the Employer members did not believe that they were in conditions to determine whether these measures were adequate in practice.

In recognition of the fact that Guatemala was still suffering the consequences of a long civil war, they endorsed the request by the Committee of Experts for further information on the outcome of the work of the special unit. They also noted the direct contacts mission that had taken place recently and called upon the Government to provide a detailed report relating to the results of the mission. Although the Government had already indicated its willingness to take the appropriate measures to the Conference Committee in 2002, they considered that the Government should once again be called upon to take the necessary measures to eradicate all threats of violence against trade unionists. With regard to the requirement under the Constitution of being of Guatemalan origin in order to be a trade union leader and to be actually working in the enterprise or occupation to be eligible for trade union office, they recalled that this was not in accordance with the Convention. In this regard, they noted the Government representative's statement according to which the Constitution stipulated that, in the event of conflict between two labour law provisions, the most favourable provision to the worker was applicable. However, they wondered whether another more favourable position existed on this particular subject, as they only had knowledge of the provisions contained in the Labour Code, on which the Committee of Experts had based its comments. With regard to the view expressed by the Committee of Experts recognizing that a State might require foreign workers to have resided in a country for a reasonable period before becoming eligible for trade union office, they observed that this was a matter for internal regulation and did not therefore need to be addressed by the legislator. However, the Government could decide to follow the advice provided by the Committee of Experts on this subject and the Government representative had indeed expressed his Government's willingness to do so.

On the subject of the requirement that, in order to call a strike, the workers needed to constitute 50 per cent plus one of those working in the enterprise or industry, the Employer members observed that the Committee of Experts had created its own jurisprudence in this respect. Irrespective of the fact that the Convention did not address the right to strike, they recalled that the issue of the quorum to call a strike was the subject of widely differing regulations in the countries of the world. It was not therefore surprising that the Committee of Experts had not been able to establish a model on this matter which was valid throughout the world. With regard to the question of compulsory arbitration, the Employer members merely wished to recall their well-known position on this matter, particularly in relation to the definition of essential services. In conclusion, the Employer members expressed concern about the first two issues raised by the Committee of Experts and hoped that the new Government would be prepared and able to take further measures in this respect. They also hoped that the Committee would not need to examine this case again in the future, although this would depend on the measures adopted by the Government.

The Worker member of Guatemala affirmed that Guatemala was relapsing into violations of freedom of association. Fifty years after the ratification of the Convention, it was not permitted to set up new trade unions in Guatemala and attempts were being made to eliminate those that existed. He confirmed that there was no state policy designed to respect this right. He indicated that there were countless administrative obstacles to setting up trade unions, and finally when workers who had organized achieved the recognition of a trade union, they were threatened, intimidated, persecuted and dismissed. He referred by way of illustration to the propane gas enterprise that belonged to the TOMZA group as an example of the dismantling of trade unions. He stated that the workers of the *maquila* industries were the victims of major trade union repression. According to the Labour Code, if a worker was dismissed on trade union grounds he should be reinstated within 24 hours, but that nevertheless there were workers who had been waiting for up to eight years for their cases to be resolved, and when there were judicial decisions in favour of workers, they were not observed, as

the general environment was one of total impunity. He indicated that, although the Tripartite Commission on International Labour Affairs existed in application of Convention No. 144, there was still no forum where labour disputes were resolved or where the issue of freedom of association was dealt with, although these measures had already been proposed by the workers. Although the Government liked to mention that it had established the Office of the Public Prosecutor for offences against journalists and trade unionists, this body was merely used to deceive the international community. He expressed concern that penalties were being imposed in cases of labour disputes, as in the case of the María de Lourdes plantation. The courts were not impartial and they did not react to the requests of the workers that their rights be respected, although they did so when it was the employers who were making the accusations. Lastly, he referred to imprisoned trade unionists accused of terrorism and to Mr. Rigoberto Dueñas who, he said, had been imprisoned for a year, accused without any evidence of being involved in social security fraud. He indicated that the ILO direct contacts mission had visited them in prison.

The Employer member of Guatemala expressed the belief that the examination of the case of Guatemala by the Committee was premature, as the report of the direct contacts mission that had recently visited the country had not yet been received. He expressed his concern at the comments of the Committee of Experts in paragraph 1 of the observation, as he considered that facts were given as true and proven when they were only complaints and comments conveyed to the Committee of Experts and the Committee on Freedom of Association. He also expressed concern with regard to the content of paragraph 5 which, in addition to referring to a subject that was not covered by the Convention, namely the right to strike, did so by suggesting that the inexistence of strike action and, what was worse, their declaration as being illegal, could be interpreted as a violation of freedom of association and that this interpretation would be contrary to the spirit and the letter of the Convention. He also considered that some of the comments of the Committee of Experts did not take into account the fact that the legal amendments proposed were faced with obstacles of a constitutional nature or relating to public policy. Furthermore, the subjects under discussion were legally questionable and the Committee of Experts should therefore have assessed in a positive manner the respective tripartite consultations held and the discussions before the Congress of the Republic. He concluded by requesting the Worker members to avoid making use of the ILO's supervisory machinery in order to call into question bilateral commercial agreements concluded by the member States of the Organization, as this could only prejudice the credibility of these mechanisms.

An observer representing the Latin American Central of Workers (CLAT) recalled that Mr. Rigoberto Dueñas, the workers' representative at the Guatemalan Social Security Institute, had now been in detention for a year for having denounced the corruption in that organization and that, despite the fact that the offences of which he was accused were not penalized by sentences of imprisonment, he was still under detention. He indicated that the ILO mission that had taken place some days previously had been able to visit the detainee and had collected numerous statements from various quarters claiming that Mr. Dueñas was innocent. He added that the fact that a new Government had just taken office could not be used to justify the unjust detention of workers' representatives and the high level of impunity prevailing in Guatemala. He added that since 1992 his trade union organization had suffered the murders of more than 15 of its officials and that no proceedings had been initiated in respect of these cases and no charges had been brought. At the end of February 2004, some 33 officials from the transport sector had been imprisoned for demonstrating against a decision by the Government of the City of Guatemala, and they had been accused of committing terrorist acts. He concluded by saying that, during the sad years of civil war in Guatemala, when many sectors backed violence as a way of overcoming violence, the trade union organizations promoted COCEPAZ, which had collaborated in bringing peace back to the country.

The Government member of Norway, also speaking on behalf of the Government members of Denmark, Finland, Iceland and Sweden, noted with great concern the many murders, acts of violence, death threats and intimidations against trade unionists in Guatemala. He welcomed the indication by the Government that a special unit had been established in the Public Prosecutor's Office and had begun operations to improve the efficiency of criminal investigations into acts of violence. He requested the Government to provide information on the activities of this unit in order to assess any improvements in the situation concerning impunity enjoyed by those perpetrating anti-trade union acts. He also welcomed the positive information provided by the Government representative. He expressed the firm hope that the Government would take immediate action to ensure that human rights and fundamental freedoms, which were essential to the exercise of trade union rights, were effectively observed. He noted with particular interest that the Government had requested technical assistance from the ILO and welcomed the visit to the country by the direct contacts mission in May 2004 in relation to Convention No. 98, which was a positive step forward. However, he emphasized the gravity of the situation and pointed out that trade union rights could only be exercised in a climate that was free from violence and pressure. Finally, he hoped that in the near future it would be possible to note that significant progress had been achieved in practice in these areas and stated that the Government's intervention had given confidence of their good intentions.

An observer representing the World Confederation of Labour (WCL) considered that, despite the fact that it was 52 years since Guatemala had ratified the Convention, successive governments had implemented policies and strategies of extermination, repression, persecution, imprisonment and the murder of trade union officials. He indicated that 30 workers had been detained, as confirmed by the ILO direct contacts missions of 2001 and 2004. Those cases demonstrated the impunity and precarious application of justice, and even judicial officials recognized that corruption was the most serious problem facing the judicial authorities. He recalled that it was a year since the detention of the assistant general secretary of the CGTG, Mr. Rigoberto Dueñas, and indicated that several public officials recognized that Mr. Dueñas was no more than a scapegoat. The direct contacts mission had consulted the trade union movement and the employers, which had both confirmed that the detention of Mr. Dueñas was unjust and that in the judicial proceedings against him due process had been infringed, and that it was probably for this reason that the direct contacts mission had requested an alternative to imprisonment for him. He considered that Guatemala was once again at fault with the Committee of Experts and the ILO itself. Successive governments had not had, and still did not have, the political will to protect and respect trade union rights and freedoms. He added that, during the 36 years of civil war, organized trade unionists constituted a mere 5 per cent of the economically active population, while during the 18 years of formal democracy this percentage had fallen to 2.5 per cent. He concluded that dozens of rural trade unions had been destroyed and thousands of workers dismissed, including rural workers, those in the *maquila* industry and in multinational enterprises, where unionized workers had been waiting for two years since their dismissal without being reinstated in their jobs.

The Worker member of France reiterated, with reference to the comment made by the Employer member of Guatemala, that his country had no interest in the bilateral trade agreements and economic questions that were often raised. For a number of years, Guatemala had constituted a case of continuous and serious violation of this Convention. The situation prevailing in the country was a matter of extreme concern, especially with regard to basic human rights and labour law in particular. The Committee of Experts had also commented on violations relating to the application of Conventions Nos. 29, 100, 111 and 144. This illustrated the situation of workers, which necessarily impinged upon freedom of association. In its observation, the Committee of Experts referred to a significant number of murders, acts of violence, death threats and intimidation against trade unionists, which reflected a general situation of non-compliance with human rights and public freedoms, which were essential for the effective exercise of trade union rights. With respect to the decrees imposing compulsory arbitration without the possibility of having recourse to a strike in many sectors, the Government had indicated in its report that the decrees criticized by the Committee of Experts had been implicitly repealed in part. He called upon the Government to explain this new form of explanation in a much more comprehensible manner. He wondered whether those decrees had been effectively repealed and whether the right to organize specified in the United Nations Covenant on Civil, Political and Social Rights needed to be recalled yet again. The exercise of this right allowed trade unionists to organize their activities. In conclusion, the case of Guatemala constituted a serious case of violation of civil and political freedoms and jeopardized freedom of association. The new Government bore a heavy burden if it wished to achieve observance of basic rights at work, thereby giving effect to the direct contacts mission. It was to be hoped that the good will demonstrated by the Government would be translated into practice and that the measures mentioned would be given effect.

The Worker member of Norway recalled that the case of Guatemala had been discussed for many years and that each year the Government had asked for time to resolve the discrepancies with Conventions Nos. 87 and 98. Yet the workers in Guatemala continued to be the victims of flagrant violations of labour rights, includ-

ing the right to strike. She welcomed the recent visit to the country by a direct contacts mission and looked forward to hearing the concrete measures proposed. The violations in question included the dismissal of workers because of union activities in both the public and private sectors, including cases in the Ministry of Health and Social Security, the Eskimo plantation in Port Quetzal and the banana firm COBSA. The Government had argued that all cases had been resolved through judicial proceedings, but in practice this merely meant that the claims by workers for reinstatement had been rejected by the courts. The violations of labour rights in the banana sector were well known. On the La Inca plantation, 600 workers had been dismissed under the pretext of lack of productivity, despite the fact that labour inspectors had confirmed that production was absolutely satisfactory. As in many other cases, private security forces had been used to intimidate the workers. Banana production was now being moved to the south coast, where the workers were not organized. The situation in free trade zones in the *maquila* industry was also well known. Organized workers were dismissed as soon as a trade union was established, which was in violation of the ILO's Conventions and Guatemala's labour laws.

Despite the firm hope expressed by the Committee of Experts that the Government would take prompt action to ensure that fundamental trade union rights were protected, the opposite was actually occurring. With regard to the right to strike, the Committee of Experts had clearly stated that the Government should amend section 241 of its Labour Code, respecting the required number of workers at a workplace to be able to call a strike. In her view it was astonishing that such a violation of the Convention still existed. She also shared the concerns of the Committee of Experts regarding the prohibition of sympathy strikes, the imposition of compulsory arbitration when a strike might occur in the public sector and the declaration of public services as essential, when they clearly were not according to the criteria of the ILO. She emphasized that there had been too many examples of the Government promising to amend labour laws and then failing to do so, while the harassment of workers continued in both the private and public sectors. She therefore called for the Government to assume its responsibility to change the situation and warned that a tripartite system would never function unless the Government changed the labour laws, respected the right to strike and stopped the violations of trade union rights.

The Worker member of Nicaragua expressed his profound concern at the violation of the right to freedom of association and at the related government repression. He confirmed that the current trend was becoming very dangerous, as labour disputes were being treated as criminal offences and penal proceedings were being brought against workers following pressure by governments and employers, including pressure to reform criminal and procedural codes for this purpose. An example was Guatemala, where there were cases of trade union officials belonging to the CGTG who were being accused of terrorist activities in the dispute in the transport sector. This had occurred previously in the banana sector and also in his own country, where he maintained that he had been the victim of repression by so-called "democratic" governments. Persecution was taking place in the export processing zones (EPZs) where there were "blacklists" to prevent workers from becoming organized and establishing trade unions. He endorsed the appeal to free the trade unionists being held prisoner in Guatemala. To conclude, he affirmed that the people of the region were becoming aware of the need to fight for their economic, social and labour rights and affirmed that in this struggle they would surely be supported by the ILO and the international community.

The Worker member of the United States noted that a new Government had been recently elected in Guatemala and he wished the Berger administration every success. However, the election of a new president was not a convincing reason for having accepted and received the ILO direct contacts mission only a couple of weeks before this year's Conference. Moreover, the fact that it was an election year in 2003 did not excuse the lack of progress in Guatemala regarding Conventions Nos. 87 and 98 since the 2002 and 2003 Conferences. In spite of the complaints heard from the Employers and Governments about the presence of Central American countries on this year's list, one should not be surprised that Guatemala was among them. As the Conference Committee had observed over the last 20 years, there were critical and chronic violations of Conventions Nos. 87 and 98. Between 1994 and 2002, the ILO's Committee on Freedom of Association examined 21 Guatemalan cases, nine involving trade unionists as targets of assassinations, disappearances, assaults and death threats, and 12 concerning anti-union dismissals. The Committee of Experts' report in 2004 accurately referred to several examples of how Guatemalan law violated the Convention. He regretted that conventional wisdom continued to circulate, without foundation, that Guatemala's compliance with the Convention substantially improved with the 2001 labour law reforms. The right to strike during the harvest in the rural sector was undermined by section 243 of the Labour Code which gave the Executive the power to prescribe work stoppages that affected economic activities essential to Guatemala. The reform of section 216 required signed and written proof from 20 or more workers to form a union and thereby created a list of pro-union activists susceptible to employer reprisals and imposed a literacy requirement. The law continued to impose a threshold of 50 per cent plus one of all workers in an entire industry to achieve industrial union recognition. In sectors with thousands of workers, such as agriculture, this was prohibitive. The revision of section 233 violated the Convention by increasing the requirement from two to four unions to form a federation, and from two to four federations to form a confederation. The reform of section 379 imposed liability on individual workers for legal damages resulting from a strike or other collective action and created a chilling effect on the exercise of freedom of association rights.

As noted by the United States State Department in its 2004 Human Rights Report, by the United Nations Verification Mission in Guatemala in its 2001 report and by the Committee on Freedom of Association in paragraph 91 of its November 2001 report, an ineffective labour court, labour inspectorate and enforcement regime fostered an environment of anti-union reprisals and dismissals. The United States State Department report found that, although the Labour Code provided that workers dismissed illegally for exercising union activities should be reinstated within 24 hours, in practice, employers filed a series of appeals or simply defied judicial orders for reinstatement. It should not be a surprise that, according to the Guatemalan Labour Ministry's own statistics, only about 2.3 per cent of the workforce were in registered unions. Nor was it a surprise that, given the labour law regime and labour relations climate, there was a total of two collective bargaining agreements covering only 1,300 workers in the EPZs which employed more than 125,000 workers. Even if all of the de jure violations of the Convention were corrected, there was still the disturbing, current climate of assassinations and death threats directed against trade unionists and impunity for the perpetrators. In 2002, the Inter-American Commission on Human Rights ruled that article 16 of the American Convention on Human Rights, which guaranteed freedom of association, was violated by Guatemala when Government agents, in collaboration with the owners of the plantation "La Exacta" killed three unionists and wounded 11 others. He reminded the Government representative that there had been active death threats directed against trade unionists since 2002, including those who were advocating the innocence of jailed union leader, Rigoberto Dueñas. With respect to the United States Central-American Free Trade Agreement, it only required governments to comply with their national labour laws and did not require any prior harmonization in law or practice with the fundamental ILO Conventions. He asked that the Conference Committee took the strongest and most effective measures in this case since there was much at stake, including the lives of Guatemalan workers.

The Government member of Costa Rica stated that she hoped that the efforts made by the new Government to promote fundamental human rights would be taken into account. She urged the Committee to acknowledge the efforts made by the Government to protect trade unionists and to penalize those who violated their rights. She hoped that the fact would be taken into account that Guatemala was recovering from a situation of war which it had experienced during the previous decade and that it needed time for reconstruction.

The Government representative declared that he had taken due note of the comments made and stated that, in the first place, he wished to refer to the aspects that were related to the observation of the Committee of Experts. He hoped that the documentation provided would shed light on the efforts made to combat the persecution of trade unionists. He indicated that the climate of violence had changed. Some speakers appeared to think that nothing had changed. He called upon them to look at the present from a forward-looking perspective. He maintained that the establishment of the special unit had not been done as a pretext, but was an expression of the will to resolve the problems and to take into account the points raised by the Conference Committee. He said that fundamentally many of the interventions had referred to the past and, even though many things could have been done in a different way in the past, what was important was to see what had been done and what was being done this year. However, he was not trying to say that what had been done was sufficient, as the social situation always required something more. But, he wanted it to be seen that measures were being taken against anti-union activities.

In the second place, he indicated that he wished to refer to matters that were not related to the observation of the Committee of Experts and the cases of the Committee on Freedom of Associa-

tion, namely the situation of Rigoberto Dueñas and Victoriano Zacarías. He said that Rigoberto Dueñas was facing trial for a common law crime, namely for social security fraud for a very high amount. He had not been detained as a trade unionist, but as a member of the Executive Board of the institution, alongside other persons not related to the trade union, but, for example, to the university. He recalled that corruption was a problem of absolute priority at the national level. He added that he had heard that Rigoberto Dueñas was being treated as a delinquent. He denied that this was the case and said that the accused benefited from full guarantees, as his case had not yet been tried, and enjoyed the presumption of innocence. His detention had been described as arbitrary, but he said an arbitrary detention in his view occurred only when it was not the outcome of a judicial order, and that in the present case an order had been issued by the competent judge. In his view, a case was being raised that bore no relation to the Convention, and it was being said that this case demonstrated anti-union attitudes and that labour disputes were being penalized, the case was being used to call into question the whole system. In his opinion, these allegations were extremely grave. He wondered whether they constituted an attempt to influence the decisions of the judges and to manipulate public opinion. The present Government had succeeded in raising the level of trust in the judicial system. It was therefore very serious to claim that there had been new cases of murders and that strikes were prohibited during harvest times, as this measure had been amended in 2001, as could be seen in the updated Labour Code. In conclusion, he called upon the Committee to strengthen the machinery for the application of international labour standards and declared that in future sessions he hoped to be able to demonstrate the progress made in his country with the collaboration of the ILO.

The Worker members said that there had been no progress in relation to the legislation in Guatemala for many years. The fulfilment of the commitments undertaken by the Government during the direct contacts missions and the tripartite meeting held on 20 May 2004 was still awaited. As indicated by the comments made by the Committee of Experts and the large number of cases dealt with recently by the Committee on Freedom of Association, the situation had deteriorated in practice, as noted by the members of the direct contacts mission. With regard to the case of Mr. Rigoberto Dueñas, a leader of the CGTG, his immediate release was called for, in accordance with the conclusions of Case No. 2241 of the Committee on Freedom of Association. The Worker members contested the statements made by the Government representative on the case of Mr. Dueñas. The arguments put forward were unacceptable and contradicted the findings of the direct contacts mission and the conclusions of the Committee on Freedom of Association. The Government of Guatemala had frequently requested technical assistance from the ILO. The Worker members evidently supported the assistance that could be offered by the ILO to a country to bring its law and practice into conformity with Conventions. In the present case, however, political will was needed, and particularly the will to establish the rule of law and respect for trade union rights. Urgent action was needed. The Worker members therefore called for the Committee's conclusions to be placed in a special paragraph of its report.

The Employer members noted that frequent reference had been made during the discussion to specific cases of individuals about which the Committee knew very little and which were not covered by the report of the Committee of Experts. This placed the Conference Committee in a dilemma, as it moved the discussion away from its traditional basis, which was the report of the Committee of Experts, on which the Worker members in particular often relied in their interventions. In such discussions, the danger arose from the fact that the only source of the information provided was the oral interventions of the members of the Committee. They recalled that this Committee was not a criminal or legal body with competence to establish whether or not alleged facts were true, even though the members of the Committee evidently benefited from the right to free speech. In conclusion, they called upon the Government to continue to strengthen the efforts that were being made to address the problems arising in relation to the application of the Convention and to provide a detailed report on the measures adopted.

The Committee noted the information provided orally by the Government representative and the discussion that followed. The Committee noted with concern that the pending problems related to acts of violence against trade unionists and various obstacles to the freedom of workers' organizations to undertake their activities. The Committee also noted that the Committee on Freedom of Association had examined a significant number of cases raising issues concerning the application of the Convention. The Committee noted that in May 2004 a direct contacts mission had visited the country; it also noted a number of commitments made by the Government during the mission. The Committee noted the measures indicated by the Government to ensure the security of trade unionists and to punish violations of trade union rights. The Committee noted that the Government had submitted the remaining problems relating to the application of the Convention to the Tripartite National Commission with a view to carrying out the necessary legal reforms as soon as possible. The Committee recalled that respect for civil liberties was essential for the exercise of trade union rights. In this respect, the Worker members had referred to the specific case of Mr. Rigoberto Dueñas, who was held under preventive detention. The Committee requested the Government, in consultation with the social partners, to take the necessary measures without delay in both law and practice to guarantee the full application of the Convention, with special reference to the pending problems concerning acts of violence against trade unionists. The Committee hoped that in the near future it would be able to note substantial progress in practice with regard to the various points raised, and requested the Government to provide a report to the Committee of Experts on all the remaining issues so that it could examine the report together with that of the recent direct contacts mission.

Myanmar (ratification: 1955). **A Government representative** supported the proposals made by a group of countries from the Non-Aligned Movement regarding the Committee's methods of work. Some member States had been asked to appear before the Committee for two or three consecutive years which proved that there was a need for fair and objective criteria for the selection of cases. While the Government fully supported these proposals, it would not try to evade the issue of its observance of the Convention. He recalled that some members of the Committee had previously queried when a new Constitution would be drawn up. In this regard, he emphasized that Myanmar was a country in transition. With this vision, the Prime Minister, General Khin Nyunt, had proclaimed a seven-step Road Map on 30 August 2003. This Road Map had been welcomed by countries in the region and beyond. The Ninth ASEAN Summit and the Seventh ASEAN +3 Summit, held in Bali in October 2003, had welcomed it as both a pragmatic approach and an important programme. The first step of the Road Map was the reconvening of the National Convention to lay down the basic principles for drafting a new Constitution. The speaker was pleased to inform the Committee that the National Convention was currently in session. The first step of the Road Map was thus being implemented. On 20 May 2004, the National Convention had held deliberations on the basic principles for the social sector, including the rights of workers. These deliberations had also dealt with the basic principle of forming workers' organizations. These basic principles would provide the framework for drafting detailed provisions in the process of drawing up the new Constitution.

The speaker recalled that workers' organizations that came quite close to the basic principles of the Convention already existed in the country. As an example, he mentioned the Myanmar Writers' and Journalists' Association. Its president, a well-known writer, had not been appointed by the Government, but freely elected by the members of the Association. The same applied to its secretary and other members of the Central Executive Committee of the Association. On a historical note, he stated that Myanmar writers had formed an association on 8 March 1944, during British colonial rule. It had been formed by writers of their own free will to look after their interests in the light of financial and other difficulties faced by most Myanmar writers at the time. In 1993, this Association was reconstituted as the "Myanmar Writers' and Journalists' Association" (MWJA). The same basic principles of independence and autonomy, non-compulsory affiliation, voluntary nature and the absence of intervention from central authorities had been preserved until now. The MWJA was an association of intellectual workers, freely formed by Myanmar writers and journalists. It was a nationwide confederation at the central level, with associations or branches at township or sub-township levels throughout the country. The Executive Committees at various levels were freely elected by members of their respective associations. Moreover, the MWJA was freely organizing a wide range of activities on its own. One noteworthy activity, peculiar to Myanmar, was the celebrating of Writers' Day. On Writers' Day, members of the MWJA organized lectures, talks and traditional gatherings of writers where junior writers paid homage and offered donations in cash and kind to senior veterans. Furthermore, the MWJA had contacts and cooperated with writers' and journalists' associations in other countries. The speaker believed that the MWJA was one of the organizations of intellectual workers that came quite close to the basic principles of the Convention. The existing workers' organizations such as the MWJA were the forerunners of trade unions, safeguarding and promoting the interests of workers as much as possible under prevailing circumstances. It was possible to further develop workers' organizations of a similar character, and take further appropriate

interim steps. This was the preparatory work, leading to the formation of workers' organizations in accordance with the new Constitution and relevant laws of the country. The MWJA could well be a pilot project that could be instrumental in exploring ways and means to make further progress in this respect.

With regard to Myanmar's cooperation with the ILO, the speaker recalled the technical assistance provided with regard to the Convention in 1995 and 1996. In addition, the Government was fully cooperating with the ILO in the implementation of Convention No. 29. This cooperation had very much advanced, with a landmark agreement reached between the Government and the ILO on a Joint Plan of Action for the eradication of forced labour in the country. Similar cooperation could and should be extended to Convention No. 87. If the ILO was willing to assist in respect of Convention No. 87, this could open new possibilities for cooperation. In the meantime, the Government would frequently consult with ILO officials, including those from the International Labour Standards Department and the InFocus Programme to Promote the Declaration. He concluded by emphasizing that his Government believed in dialogue and cooperation. Name calling, blaming and censuring a member State which was doing its utmost to advance the cause of workers under the prevailing circumstances would not be helpful. Nor would any attempt to isolate or pressure a member State serve any useful purpose. He hoped that the Committee would understand Myanmar's constraints and appreciate the genuine good will and intentions of the Government as well as the aforementioned developments and significant steps taken by it.

The Worker members recalled that the case had been discussed 16 times in the last 23 years. They mentioned that the Committee of Experts' comments had been supplemented by information contained in the Committee on Freedom of Association Case No. 2268, in which a comprehensive and disturbing picture of the total absence of freedom of association in Burma emerged.

They observed that the Committee of Experts had felt "obliged to recall that it had been commenting on the Government's failure to apply the Convention, both in law and practice, essentially since its ratification 50 years ago". The pattern of abuse in Burma was unique, and the Government's failure to apply the Convention took place in the face of a concerted effort by the ILO standards enforcement machinery to encourage it to do so. The Committee of Experts had once again noted "with deep regret the total lack of progress in providing a legislative framework in which free and independent workers' organizations can be established". In addition, the Committee of Experts had taken note of the Government's contention that the country was in transition to democracy – a transition which the Worker members found hard to detect – and that it was doing its utmost to promote the rights, interests and welfare of workers, as well as to find ways to take the appropriate interim steps before the drafting of a Constitution. In this context, the Government referred to the workers' welfare associations as the forerunner of trade unions. Concerning the Government's contention that these associations were embryonic workers' organizations, the Committee on Freedom of Association had examined the matter in paragraphs 739-742 of its 333rd report (document GB.289/9, March 2004) indicating that at the very least such associations should enjoy guarantees of independence in order to be considered embryonic workers' organizations. The Committee on Freedom of Association had concluded after examining the information provided that these associations "are not substitutes for free and independent trade unions" (paragraph 742). Similarly, the Committee of Experts had reiterated that "these associations have none of the attribute characteristics of free and independent workers' organizations". The Committee of Experts had estimated that the "Government's continued insistence on the role of the welfare associations in respect of the application of the Convention, without any other real progress in this application, is simply an indication of the lack of seriousness given to the fundamental matters raised by the Committee over these many years".

The Worker members noted that the Government representative had informed the Committee, as he had during the special sitting to examine the observance of the Forced Labour Convention, 1930 (No. 29), that a discussion had already taken place on 20 May 2004 at the National Convention on the inclusion of freedom of association principles in the new Constitution, upon which new legislation could be drafted. They indicated that in fact they had no idea what exactly had been discussed in the National Convention. In regard to the National Convention, the Worker members recalled from the special sitting discussion that the international community, including the United Nations, had uniformly condemned the National Convention process. Ms. Aung San Suu Kyi remained under house arrest. The regime was so concerned about her influence that she was being prohibited from making any statement to the National Convention. There was no effective participation in the National Convention by the political party, the National League for Democracy (NLD), which had won 82 per cent of the parliamentary seats in the 1990 national elections, nor by any of the ethnic political parties that had won seats in those elections. Furthermore, there were no credible worker representatives among the 1,000-plus handpicked participants. In addition, the fact that the ILO was not asked to provide advice in the drafting of any constitutional provisions protecting freedom of association at the National Convention, cast serious doubt on any claim by the regime that it intended to include freedom of association in a new Constitution. There were many examples of the ILO playing such a role at the request of a government, Brazil and Timor Leste among them.

The Worker members also recalled that many legislative decrees had been issued over the years despite the absence of a Constitution. The failure to do away with offending legislation and issue a new decree protecting freedom of association had always been a deliberate act of will on the part of the regime. However, even without such action and as the best way to demonstrate its good will, the Government could inform the Committee that it would not enforce any of the old colonial laws and military decrees that undermined freedom of association. It could even agree to recognize the right of Burmese workers to form and join organizations of their own choosing, such as the Federation of Trade Unions of Burma (FTUB), for the furtherance and defence of their interests inside the country. They observed, however, that the Committee knew what the regime thought of the FTUB General-Secretary. The Government had slandered him many times in the Committee and would probably do so again. But the Government could not plausibly argue that every Burmese worker associated with the FTUB was a terrorist. They stated that the Committee on Freedom of Association in paragraph 743 of its 333rd Report (Case No. 2268) indeed made a similar request after coming to the conclusion that any organization freely chosen by the workers would be considered to be unlawful by the Government. In the absence of legislation protecting freedom of association, the Committee on Freedom of Association had asked the Government to refrain from any acts preventing the free operation of any form of organized collective representation of workers, freely chosen by them to defend and promote their economic and social interests. The Committee on Freedom of Association's request "includes workers' organizations which operate in exile, since they cannot be recognized in the prevailing legislative context". They added that the Committee on Freedom of Association was clearly referring to the FTUB, which had been forced to operate clandestinely since its inception in 1991. The FTUB maintained structures both inside and outside the country. It was the effective voice of over 1.5 million Burmese migrants working in Thailand. But it also maintained underground unions in key industrial sectors in Burma proper, and operated in all the major cities of the country. It actively collected evidence of violations of workers' rights and monitored the denial of collective bargaining rights in industrial sectors, as well as evidence of forced labour, which it communicated to the ILO and to the international labour movement. FTUB members caught doing so, incurred the death penalty. The Government's propaganda apparatus regularly and virulently attacked the FTUB calling it an expatriate terrorist gang. The ICFTU itself had been accused of assisting and encouraging the FTUB to commit terrorist acts.

The Worker members recalled that the General-Secretary of the FTUB Mr. Maung Maung, had to leave the country at the time of the 1988 military coup, owing to his involvement in the democratic trade union movement. The Government had never denied that he was involved in trade union activity at his workplace during those years. He was under constant attack from the regime, which accused him of leading a terrorist organization, and he had been convicted of high treason in absentia. In paragraph 751 of its 333rd Report (Case No. 2268), the Committee on Freedom of Association had expressed its concern about the link between Mr. Maung Maung's alleged criminal activities and his trade union work. The Committee on Freedom of Association had requested the Government to provide all evidence, including copies of the court's decisions, illustrating that the grounds on which the criminal charges were pressed had no connection to his trade union activities. The Worker members supported the Committee on Freedom of Association's request and asked the Government to provide this information to the Committee of Experts for its review. They looked forward to learning the Committee of Experts' assessment of any evidence produced and whether it would conclude next year, as expected, that he was a victim of his legitimate trade union activity. They asked the Government once and for all to stop the accusations and threats against him and other FTUB leaders, and added that there were other worker activists under detention in Burma for legitimate trade union activity, including providing information to the ILO on forced labour. The Worker members raised the case of the

three workers who were convicted of high treason for having contacts with the ILO and FTUB. The ILO Director-General in his letter of 2 June 2004 to the Minister of Labour expressed his serious concern about obvious freedom of association issues raised by the Supreme Court judgement against Shwe Mahn, Min Kyi and Aye Myint. The judgement clearly indicated that Shwe Mahn's major crime was his association with the FTUB. In fact it specified that he had already been sentenced to two years' imprisonment in 1990 on these grounds. Apart from the fact that these convictions raised preoccupying issues of double jeopardy, they cast light on the absurdity of the legal system in Burma. As long as the authorities failed to recognize legitimate trade union activities, trade unionists would be threatened by the highest criminal penalties, which was in blatant violation of freedom of association. The criminal character could spread to all presumed accomplices and could include all Burmese workers in contact with the FTUB. The case of these three trade unionists confirmed once again the utmost importance for the Committee to urge all organs of the Government, including the judiciary, to implement the Committee on Freedom of Association's recommendation in paragraph 743 of its 333rd Report (Case No. 2268) to refrain from any act preventing the free exercise of FTUB activities. Finally, the Worker members said that it was clear that the accused had not benefited from the assistance of legal counsel of their own choice nor had they had the benefit of a public hearing in an open court. The absence of both was a common thread running through all of the worker detainee cases back to 1997 and went against all principles of international law and freedom of association. The second Supreme Court review of the conviction of Shwe Mahn and the other eight persons convicted of high treason, should ensure the minimum guarantees of judicial fairness, that the defendants be informed of the charges against them, enjoy sufficient time to prepare their cases and benefit from defence counsels of their own choosing. The Committee should strongly urge the Government to take all the necessary measures to ensure these guarantees as a matter of urgency.

The Employer members recalled that since 1993, this Committee had repeatedly dealt with this case which had also been repeatedly mentioned in special paragraphs of the Committee's report as a case of continued failure to apply the Convention. Summarizing the facts of the case, the Employer members stated that no free and independent trade unions existed in the country, a situation that was not denied by the Government. While the Government had once again referred to the future Constitution, indicating that the prevailing situation was provisional, the Employer members recalled that in fact the Government had failed to apply the Convention ever since its ratification some 50 years ago. Therefore the Committee of Experts had noted the total lack of progress in providing a legislative framework in which free and independent unions could be established. In this respect, the Employer members recalled that all trade union activities constituted punishable offences due to the fact that under national legislation trade unions were illegal organizations. The information provided by the Government representative did not indicate any change in this regard. The Committee of Experts had consistently stated that the welfare associations, which the Government considered to be forerunners of trade unions, were not substitutes for trade unions in the meaning of the Convention. The Employer members were not against the activities of these associations, but they agreed with the Committee of Experts that they did not satisfy the requirements of the Convention. Against this clear factual background, the Committee should urge the Government to finally apply the Convention to ensure that workers and employers could fully exercise their right to freedom of association. While in substance the Committee's conclusion should remain unchanged, the resolution of this case had become increasingly urgent.

The Government member of the United States said that this case was perennially disturbing and that her Government remained concerned about the total lack of progress by the Myanmar authorities in providing a legal framework in which free and independent workers' organizations could be established. The Government of the United States deplored the lack of seriousness the Myanmar authorities had given to a fundamental right that should have been guaranteed in the 50 years since Myanmar had ratified this Convention. Recent events in the country and the discussion held in the Committee served to dramatically illustrate the high price workers were paying for attempting to organize trade union rights, or even making contact with independent trade union organizations. Despite promises, the fact remained that law and practice were in stark contrast to the requirements of the Convention. Civil liberties were trampled. Due process was ignored. As her Government had already noted, strong and independent workers' organizations could provide significant help in the effort to eradicate forced labour and would make a valuable contribution to the transition to democracy. But genuine freedom of association did not exist in Myanmar. She asked the ILO to send the strongest possible message to the authorities to recognize, guarantee and promote freedom of association and the right to organize.

The Worker member of Italy stated that the 1964 legislation and other laws and orders, which had been the subject of comment by the Committee of Experts over many years, as well as military decrees and orders, had strangled all forms of democratic organization and collective bargaining in Myanmar. On 18 September 1988, the date of the military coup which abolished all state organs, the SLORC issued Order No. 2/88 which prohibited any activity by five persons or more, such as gathering, walking or marching in procession, chanting slogans, delivering speeches, regardless of whether the act is with the intention of creating disturbances, of committing a crime or not. Order No. 2/88 was further strengthened by the 1988 Unlawful Association Act, which stated that a member of an unlawful association would be punished with imprisonment of not less than two years. On 30 September 1988, Order No. 6/88, known as the Law on the Formation of Associations and Organizations was issued. It had been considered by the Conference Committee for many years. The Order stated that all organizations had to apply for permission to the Ministry of Home and Religious Affairs, provided that organizations that were not permitted could not form or continue to exist and pursue activities. This Order applied to workers' and employers' organizations. The reasons to deny an organization permission to be established were extremely broad and there was no mechanism for appeal against a decision denying permission. Violation of the Order could be punished with imprisonment of up to five years, while persons found guilty of being a member of an unlawful organization could be jailed for up to three years. The speaker recalled that in 1989, the Government had indicated that major political changes were under way in Burma and that the former single-party system was in the process of being transformed into a multi-party system. In 1991, after the March 1990 democratic elections, won by the NLD, the Government communicated to the Committee that although there had been no formal amendment or repeal made to Act No. 6 of 1964 and Regulation No. 5 of 1976, they had become automatically defunct.

The Government representative declared also that "general elections had been recognized as one of the most free and fair elections, and recognized that "the provisions of the law concerning the formation of workers' organizations in his country restricted the creation of trade unions to a single trade union structure, which was contrary to the provisions of Articles 2, 5 and 6 of the Convention". In 1992, the Government indicated that the Trade Union Act would have been redrafted to meet the new trends prevailing in this country, so trade union rights will prevail. The Government declared that in conformity with Declaration No. 11/92 of 24 April 1992 after the convocation of a national Convention, the new Constitution would incorporate the rights of all workers to form their own independent trade unions in conformity with the democratic system. In 1993, the Government had stated that after the emergence of the new Constitution, various laws would have to be reviewed to bring them in line, but during the transitional period, workers' rights had been ensured by legislation still in force. The speaker said that nothing had changed although more than a decade had passed since the democratic elections. The new National Convention, which had begun in May 2004 with democracy absent both in terms of participants and procedures and the number of workers in jail condemned to rigorous work (which is a way to define forced prison labour), should oblige the Government of Burma to put into practice, immediately and without any further delay, the conclusions of the Committee on Freedom of Association, thus using the expertise of the ILO Freedom of Association Branch. She concluded by asking the Government to implement without delay the recommendations of the Committee on Freedom of Association.

An observer of the International Confederation of Free Trade Unions (ICFTU) said that the Committee of Experts, the Committee on Freedom of Association and previous speakers had described the complete lack of freedom of association in Myanmar from the legal point of view. As General-Secretary of the Federation of Free Trade Unions of Burma (FTUB), he said that it was impossible for his organization to function freely or register officially and that activities had been conducted underground. Working for, cooperating with or simply being in contact with his organization could lead to the harshest possible sentence, i.e. the death penalty. The FTUB maintained structures both inside and outside the country, and activities inside Burma included organization and training, collecting evidence of worker's rights, involvement in labour disputes, and monitoring the denial of collective bargaining rights. Trade unions had also collected evidence of forced labour, which had been communicated to the ILO and the international trade union movement. As evidence of denial of freedom of

association he pointed to four cases described in Case No. 2268 of the Committee on Freedom of Association, concerning the Motorcar Tyre Factory, Unique Garment Factory, Myanmar Texcamp Industrial, and Myanmar Yes Garment Factory, the last three being located in the Hlaing That Ya industrial zone. The pattern of these cases was identical: on demanding their rights, workers faced threats, dismissals and arrests as police or army intervention was standard practice. In all the cases the FTUB had also written official letters to both the employer concerned, including, where necessary, to the foreign owners of the companies, for example in the United States, and to the Ministry of Labour. Despite these actions, FTUB members had been accused of high treason simply because they had been in contact with the ILO. Shwe Man, Min Kyi and Aye Myint had been in prison since July 2003. He appreciated the efforts deployed by the ILO, including visits to the prison where his three colleagues were detained, and asked the Committee to urge the authorities to release them. He drew the Committee's attention to another major case concerning three FTUB leaders and members, which was similar to that of the three other members detained since 1997 under life sentences: U Myo Aung Thant, Khin Kyaw and Thet Naing. He stressed the striking similarity between the cases of two of them, Myo Thant and Khin Kyaw, and those of the three other colleagues who had been sentenced to death in November 2003 and whose cases were not well known to the Committee. Like the three new cases, the colleagues detained since 1997 had not benefited from a fair trial and had been sentenced for alleged possession of terrorist equipment, whereas in fact they had been sentenced for having been in contact with the FTUB. U Myo Aung's conviction rested on a confession obtained through torture. He asked the Committee to demand their immediate release. Thet Naing was imprisoned for strike action, though the exact sentence was never announced. He expressed the hope that the Committee would demand the release of all detained trade union members, activists and leaders, and that the Government would fully respect the Convention both in law and in practice.

The Government member of Norway also speaking on behalf of the Government members of Denmark, Finland, Iceland and Sweden, expressed once again deep concern about the trade union situation in Myanmar and recalled that this Committee had been commenting upon the Government's failure to apply this Convention for several years. He noted with deep regret the total lack of progress in providing a legislative framework in which free and independent workers' and employers' organizations could be established, and considered this as an indication of the lack of seriousness given to these fundamental matters by the Government. He welcomed the information contained in the Government representative's letter to the Director-General of 3 June 2004, in which it was mentioned that, on 20 May 2004, the National Convention had discussed the basic principles relating to the rights of workers, including basic principles concerning labour organizations. However, he reminded the Government representative that these principles comprised the basic rights of workers and employers to form and join organizations of their own choosing, without previous authorization, and the right for these organizations to organize their activities freely and to affiliate with international organizations without any impediment. He again urged the Government to immediately take the necessary measures to ensure that workers and employers could fully exercise their rights guaranteed by the Convention in a climate of full security and in the absence of threats or fear. Finally, he asked the Government to provide the necessary information in reply to the serious matters raised by the ICFTU.

The Worker member of Thailand observed that up to two million migrant workers from Myanmar lived in Thailand. The FTUB organized these workers in cooperation with Thai organizations and assisted workers deported back to Myanmar where they ran the risk of being arrested. The FTUB and his union were discussing possible membership of migrant workers in Thai unions in order to protect their rights. Thai trade unions also helped Myanmar seafarers to organize.

The Worker member of Japan noted that the case had been discussed for many years and that it was one of the worst ever recorded. The statement by the Government representative did not in any way improve matters. The main reason why the Committee of Experts' recommendations were discarded was due to political support from countries mainly in the Asian region, but he was pleased to note that Malaysia had declared that it might no longer defend Myanmar against international criticism if Aung San Suu Kyi was not released. A second factor was continuing foreign economic support, which amounted to US$7,400 million at the end of March 2001. The ten major foreign investors in order of importance were: Singapore, United Kingdom, Thailand, Malaysia, United States, France, Indonesia, Netherlands, Japan and Republic of Korea. China also supported the Government of Myanmar. He especially pointed to serious violations of ILO principles in EPZs, where workers could not establish or join trade unions, and had no protection of their interests and rights. A primary purpose of anti-union policy was to attract foreign direct investment in EPZs.

The Government member of Cuba stated that her Government assigned great importance to solving the difficulties faced by Myanmar with respect to the application of the Convention. The Government had already provided, during the examination of the application of Convention No. 29, indications of its will to cooperate. She firmly trusted that the Government would make progress in relation to the application of the Convention through dialogue and cooperation. She noted the need for the Government of Myanmar to adopt a legislative framework favourable to the application of the Convention, a task for which the technical assistance of the ILO would be extremely useful.

The Government representative wished to respond to comments made during the discussion of the three individuals with an ILO connection who had been convicted of high treason. He stated that he had already informed the Committee during the special sitting on Myanmar, about the positive outcome of the first appeal lodged by these individuals before the Supreme Court, which had reviewed and commuted their sentences to much lighter ones. He emphasized that this was the first time that the judiciary had taken into account the views and concerns expressed by an international organization. Not only these three individuals but also the remaining six persons who had been convicted of high treason had received commutations of their sentences. He added that a letter which he had sent to the Director-General on 3 June 2004, addressed the crux of the problem. In that letter, he had conveyed the following points: (1) Min Kyi (a) Naing Min Kyi, Aye Myint (a) Myint Aye Maung and Shwe Mann (a) Zeyar Oo still had the right to a second appeal to the full bench of the Supreme Court for a further review of their cases. (2) On 28 November 2003, the judge of the Yangon Northern District Court, in passing judgement on Min Kyi (a) Naing Min Kyi and Aye Myint (a) Myint Aye Maung, had made an inadvertent and incorrect reference to the ILO; this was one of the reasons why the review of the cases of nine individuals including Min Kyi (a) Naing Min Kyi, Aye Myint (a) Myint Aye Maung and Shwe Mann (a) Zeyar Oo, had to be undertaken. (3) He provided assurances once again, that under no circumstances, did contact and cooperation by a Myanmar citizen with the ILO constitute an offence under the existing Myanmar law. (4) He expressed the hope that these points, including points (2) and (3) would be duly reflected in the judgement on the second appeal by the Supreme Court. In that letter, he had also brought attention to the fact, that the Facilitator designated by the ILO, as provided in the Formal Understanding concluded to this effect, had already been accorded "free access to the said person(s) and witnesses at every stage of the procedure", and that he had enjoyed the full cooperation of the Myanmar authorities in the performance of his duties, as had been demonstrated by the role he had played in the case of the three individuals. The Government representative assured the Committee that the Facilitator designated by the ILO would continue to enjoy the same kind of free access and cooperation in the future.

As to the issue of the National Convention, the Government representative emphasized that the responsibility of the present Government, which was interim in nature, was to pave the way for the adoption of a new Constitution and for the emergence of a government in accordance with the Constitution. Accordingly, it had been striving for the successful implementation of the Road Map. The National Convention was composed of all strata of society, representatives of political parties, national races, selected persons and representatives from different walks of life. Since the announcement of the date for reconvening the National Convention, the Government, through various contacts, demonstrated its willingness to accommodate the participation of the NLD in the National Convention. The NLD delegates had left the National Convention of their own accord in 1996 and were barred from participation by the standing rules and regulations. The Government had manifested its good will by sending invitations to the NLD delegations concerned, even without waiting for them to formally appeal. This demonstrated the Government's sincerity. The Government not only allowed the NLD headquarters to be reopened but had also lifted restrictions placed on five senior party officials as a gesture of magnanimity. Furthermore, the Government, through its contact person, had urged Daw Aung San Suu Kyi on several occasions to permit NLD delegates to participate in the National Convention. At the request of the NLD, arrangements had also been made to enable the Central Executive Committee members to meet with Daw Aung San Suu Kyi and freely discuss among themselves. He emphasized the crucial importance of successfully convening the National Convention. The maintenance of peace and stability was

of utmost importance to the success of the National Convention. One thousand and eighty-eight delegates were now participating in the National Convention and only 54 from the NLD; the Shan NLD and a small Kokang party had decided to stay away. In his view, it was evident that the NLD and its partners were placing the interests of the party and the individuals above that of the nation. The speaker finally protested against the abuse of the Committee by Mr. Maung Maung, a fugitive from justice, and recalled that he had already handed over a letter on this matter to the Chairperson of this Committee on 10 June 2004.

The Worker members noted that the Government representative had presented little new information. Despite claims of cooperation between the Government and the ILO, no progress had been made and there was a growing urgency to resolve this case. With regard to the Supreme Court's review of the cases concerning three individuals accused of high treason, mentioned in the Government's recent letter to the Director-General, the Worker members requested the Government to ensure their right to legal counsel of their choice and to a public hearing. The Committee should also request the Government to implement fully the recommendations of the Committee on Freedom of Association.

The Employer members stated that the Committee had dealt with the issues relating to the judiciary already under Convention No. 29. Finally, they reiterated that the facts constituting a violation of the Convention in this case were clear and not denied by the Government.

The Committee took note of the statement made by the Government representative and the detailed discussion that followed. The Committee recalled that it had discussed this serious case on many occasions during more than 20 years, and that since 1996 its conclusions had been included in a special paragraph for continued failure to implement the Convention. The Committee was nevertheless obliged to point out once again that despite the repeated examination of this case, there had been no progress with respect to the adoption of a legislative framework which would allow for the establishment of free and independent trade union organizations. The Committee noted with great concern the information provided about nine persons, including three persons who had been convicted of high treason for having maintained contacts with the ILO or having been affiliated to the Federation of Trade Unions of Burma. The Committee took note of the urgent and serious case before the Committee on Freedom of Association, the allegations of which referred to the conviction of three persons, two of whom were serving prison terms, for having exercised trade union activities. The Committee urged the Government to liberate those who remained in prison and to provide it with the text of a judgement which had convicted a trade union official in absentia. The Committee took due note of the information provided by the Government according to which the National Convention was preparing a Constitution and that once the Constitution was promulgated, it would make efforts to establish a legislative framework for the recognition of freedom of association. Recalling that fundamental divergences had existed between the national legislation and practice and the Convention since the Government had ratified the Convention 50 years ago, the Committee urged the Government in the strongest terms to urgently adopt the necessary measures and mechanisms to guarantee in law and in practice to all workers and employers the right to establish and join organizations of their own choosing without previous authorization, as well as the right of these organizations to affiliate with federations, confederations and international organizations, without interference from the public authorities. Moreover, the Committee underlined that respect for civil liberties was essential for the exercise of freedom of association and urged the Government to take the necessary measures so that workers and employers could exercise the rights guaranteed by the Convention in a climate of complete freedom and security, free from violence and threats. The Committee urged the Government to communicate all relevant draft laws as well as a detailed report on the concrete measures adopted to ensure improved conformity with the Convention, including a response to the comments presented by the ICFTU, so that this report could be examined by the Committee of Experts this year. The Committee expressed the hope that in the coming year it would be in a position to observe significant progress in this respect.

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

The Government representative stated that a certain confusion had prevailed as to the exact number of persons concerned by the discussion. Moreover, he indicated that his country would consider the inclusion of this case in a special paragraph as a denial of the fundamental ILO principles and that, if this decision were confirmed, his Government would draw the appropriate conclusions.

Serbia and Montenegro (ratification: 2000). **A Government representative** stated that since the constitutional change in his country, there had been a significant decentralization. He indicated that his Government had provided further information to the Committee on Freedom of Association on 2 June 2004 on legal measures to address the situation. He recalled that the Yugoslav Chamber of Commerce and Industry had been dissolved by the Law on the Termination of the Law on the Yugoslav Chamber of Commerce and Industry, and had been replaced by the Chamber of Commerce and Industry of Serbia and the Chamber of Commerce and Industry of Montenegro. He conceded that, while some ambiguities still existed with regard to the functions of these bodies, the current law provided that these bodies did not participate in collective agreements and no longer required compulsory membership. The Labour Law of Serbia provided that employers' associations at all levels participate in collective agreements. He further indicated that no collective agreement had been concluded with the Chamber of Commerce since the Labour Law took effect at the end of 2001. In Montenegro, a tripartite council was examining draft legislation which would bring about similar rectifications to the problem in that part of the country. He noted that his country was undergoing a period of transition and looked forward to cooperation with the ILO to address the matters raised by the Committee of Experts.

The Employer members recalled that this case had been examined in 2003 by the Committee of Experts and the Conference Committee based on information submitted by the International Organization of Employers (IOE). During the previous discussion of the case, the Employer members had criticized the compulsory membership for employers in the Yugoslav Chamber of Commerce and Industry, which also retained the sole power to sign collective agreements. This was a clear violation of the principle of freedom of association for employers. At the 2003 discussion of the case, the Government representative had assured that the Law on the Termination of the Law of the Yugoslav Chamber of Commerce and Industry, adopted shortly before the Conference, had resolved this problem. The Employer members now had to conclude that they had been fully deceived. While the Yugoslav Chamber of Commerce had been dissolved, its successor bodies, the Chamber of Commerce of Serbia and the Chamber of Commerce of Montenegro, had taken over the requirements for compulsory membership and the sole power of collective bargaining. As a result, independent employer organizations could not exist. This was a violation of Conventions Nos. 87 and 98. The statement of the Government representative at the 2003 discussion of this case was an unprecedented intentional deception of this Committee. This was an extremely serious incident. The Employer members noted that the Government representative had again announced that new information regarding the situation was available. This information would have to be examined since they could not rely on the meagre words of the Government. They requested the Government to supply detailed written information to the Committee of Experts for further consideration.

The Worker members stated that the conclusions of last year's discussion had not been implemented by the Government, which made it impossible for workers' organizations to negotiate with legitimate and representative employers' organizations, thereby denying both partners the chance of solving disputes, improving working conditions, and increasing productivity. They fully agreed with the position of the Employer members and criticized the fact that the successor organizations to the Yugoslav Chamber of Commerce and Industry still required compulsory membership of employers and maintained the sole right to sign collective agreements. The Government's non-respect of the Convention not only affected independent employers' organizations, but had a negative impact on trade unions as well. Legislation obliged an employer to certify that a trade unionist worked for his or her particular company for the purposes of trade union registration, yet did not oblige the employer to actually issue such a certification. As a result, trade unions could only operate on the permission of the employer. They recalled that, with respect to the Nezavisnost trade union confederation, over 200 applications for the registration of local branches had been delayed, and that an ILO mission had called for changes in the registration procedures. Furthermore, even though trade union monopoly had been legally removed, it was still difficult for workers to disaffiliate from an old trade union, and the Government still permitted the use of state-owned premises by the old union while new independent trade unions had to pay high rents. They called for an urgent implementation in practice of the recommendations of the Committee of Experts and the end of government interference in trade union and employer organization affairs.

The Worker member of Serbia and Montenegro noted that his country had emerged from 45 years of one-party, one trade union and one employers' organization rule and a subsequent ten year

brutal dictatorship. While his country had come a long way since then, there continued to be problems in the implementation of the Convention, especially with regard to registration of trade union members, obstacles to the establishment of independent workers' and employers' organizations, and difficulties in establishing full social dialogue. He noted that, despite the Government's claims to the contrary, the successor bodies to the Yugoslav Chamber of Commerce and Industry still participated in around 80 per cent of all collective agreements. Visiting delegations from other countries were steered exclusively to the Chamber of Commerce and not to independent organizations. The Chamber of Commerce used state property and appeared to be funded from the state budget, and it also played a predominant role in state enterprises. As a result, collective bargaining between trade unions and independent employers' organizations was rare, even at the branch level. Finally, he pointed to continuing difficulties in trade union member registration with regard to requirements to prove trade union membership before that very membership was registered.

The Government representative stated that he had followed the discussion with great interest and that he would duly report the comments made to his Government. With regard to the suggestion by the Employer members that his Government had intentionally deceived the Committee, he reassured the members that his country's dealing with this matter was transparent and that there was no intention to mislead. He recalled that his country was undergoing an important transition, although this did not excuse continuing problems. He concluded that his Government would supply full information to the Committee of Experts as requested.

The Employer members, referring to the Government representative's declaration to the effect that the Government never had the intention to deceive the Conference Committee, stated that intentions were difficult to prove, and that the Committee could only refer to facts. According to the facts at the disposal of this Committee, the Government had not taken the measures it had indicated. They noted the Government representative's declaration with regard to further measures on which information had been submitted recently, and which applied only to Serbia, but not yet to Montenegro. The Government was urgently required to take the necessary measures in order to extend the coverage of the Convention to Montenegro. They hoped that the Government would provide full information in writing on the issue in the near future. Turning to the statement of the Worker members which mentioned points which had not been raised by the Committee of Experts in its report, they emphasized that this case was the only one which dealt with the violation of the right of employers to establish organizations of their own choosing. The case should not be watered down by introducing other information of concern to the workers. In this respect they recalled that employers' associations also had the right to comment on the application of Conventions. Moreover, they recalled that the Committee of Experts had not referred in substance to the comments provided by the International Confederation of Free Trade Unions (ICFTU). This information was contained in a direct request not available to this Committee. Therefore, since the Conference Committee was not informed of the content of the ICFTU comments, it was not admissible for this Committee to discuss them.

The Worker members stated that they would carefully examine the new measures reported by the Government. They also hoped that, in addition to resolving problems with regard to the establishment of independent employers' organizations, the Government would address other matters related to the Convention, such as restrictive registration procedures, obstacles to disaffiliation, threats to inspectors, and continued state support to certain unions. They wished to have these concerns addressed in the conclusions.

The Committee took note of the information provided by the Government representative and of the discussion which ensued. The Committee noted that the Committee of Experts' comments again referred to compulsory membership in, and financing of, chambers of commerce, which had been vested with the powers of employers' organizations. The Committee observed in particular that, though the old Law on the Yugoslav Chamber of Commerce and Industry was modified in 2003, thus having dissolved the said Chamber, in fact all the rights, obligations and activities of the Yugoslav Chamber were taken over by the Chambers of Commerce and Industry of Serbia and of Montenegro. The Committee noted with concern that legislative measures announced by the Government last year and adopted in June 2003 had not resolved any of the problems raised. The Committee took note of the Government's statement concerning measures contemplated to ensure that the employers' organizations could fully benefit from the guarantees provided for in the Convention. The Committee firmly urged the Government to take, in the near future, the necessary measures to ensure that membership in and financing of the Chambers of Commerce and Industry of Serbia and of Montenegro were not compulsory and that employers' organizations were free to choose the organization to represent their interests. More generally, the Committee trusted that in the near future the employers' and workers' organizations would enjoy the rights laid down in the Convention. The Committee noted a request by the Worker members that the Government provide without delay a detailed reply in relation to the issues raised by the ICFTU. The Committee requested the Government to communicate detailed information on the concrete measures taken in this regard, in law and in practice, in its next report to be sent this year for examination by the Committee of Experts.

VENEZUELA (ratification: 1982). **A Government representative** recalled that his Government had accepted from the beginning the direct contacts mission recommended by the Conference Committee in 2003 and had repeatedly contacted the Office to fix the date on which the mission would be carried out, so that it could take place before the June 2004 session of the Governing Body. This new mission should take place in a context of technical cooperation aimed at facilitating the implementation and promotion of the Convention, taking into account the situation in Venezuela with due objectivity, impartiality and transparency. With regard to the alleged acts of violence denounced by the CTV and FEDECAMARAS which referred to the creation of paramilitary groups and alleged death threats against the Executive Board of the CTV, he regretted the general character of such affirmations and recalled that every year the leaders who were supposedly threatened could freely attend national and international meetings, a fact which demonstrated that the allegations were unfounded. Moreover, these allegations were not brought before the competent state organs, which prevented any investigation on the matter. With regard to the paramilitary groups in particular, he declared that investigations had been conducted and had resulted in the detention of paramilitary or mercenary groups of foreign origin in the surrounding areas of Caracas. Such groups originated in the extreme right and were financed from abroad by a part of the opposition involved in the coup d'état of 2002. With regard to the assassination of a trade union member last year, he indicated that the responsible person had been rapidly detained and put on trial. The speaker also referred to the consultations with the main social partners and emphasized the success of the sectoral dialogue processes promoted by the Government since the coup d'état of 2002, with the participation of trade unions and employers' organizations in order to raise productivity, protect employment and create jobs. These dialogue processes were a key factor in the rapid economic recovery with the participation of the main social partners of the country. He underlined the importance in this respect of the agreement concluded between the Government and the political opposition, including the representatives of the CTV and FEDECAMARAS with the assistance of the Organization of American States (OAS), the United Nations Development Programme (UNDP) and the Carter Center. The abovementioned industrial organizations had exercised their constitutional right to launch a referendum to revoke the President of the Republic, which would take place in the coming months and constituted a singular proof of the popular participation provided for in the Constitution of Venezuela of 1998. The reform of the Organic Labour Act was currently the subject of intensive consultations between the social partners.

With regard to certain legislative provisions which were contrary to the Convention, the speaker emphasized that all the observations made by the Committee of Experts had been incorporated in the Bill to amend the Organic Labour Act. The Government considered that the reforms would promote the organization of workers and employers and would enable workers to exercise voluntary collective bargaining. The reform was also in line with the proposal to strengthen the labour administration with regard to the protection of labour rights, inspection services and, in general, respect for the law. He expressed his surprise about the Committee of Experts' observation that "certain provisions […] are in line with the comments made by the Committee" and requested the Committee of Experts to indicate which of its comments had not been taken into account by the proposed amendment. He also requested clarifications about the phrase "the serious nature of the problems which are still pending" since it was not clear to which problems the Committee referred. He regretted in this respect that the efforts made by the Government had not been appreciated since the observations of the Committee of Experts on the legislative provisions in question dated from 1991 and it was only the current Government which had initiated in 2002 the process to reform those provisions which were contrary to the Convention. As to the labour reform, the speaker stated that the Bill had been approved at a first discussion in June 2003 and that 18 meetings had taken place with the

active participation of the social partners and advisers from CODESA, CGT, CUTV, CTV, UNT and FEDECAMARAS, as well as non-confederated organizations. The final discussion would take place in the second half of this year after ample consultations, in accordance with the requirements of the Constitution. These consultations would be open to the civil society. The reform process would lead to a final position on other questions, such as the compensation regime for dismissal, incentives for joint management by workers, reduction of the working day and detailed regulation of mass redundancies, for which the technical assistance of the ILO had been formally requested.

With respect to article 95 of the Constitution, which referred to the alternation of trade union officers, the speaker stated that the Constitution neither established nor prohibited the re-election of union leaders, but that such a principle should be interpreted as a guarantee of human rights and freedom of association of the workers who joined unions, especially with regard to the right to elect representatives freely. According to the speaker, this principle implied only and exclusively the obligation for unions to hold elections periodically in conformity with their statutes. This did not imply that there was an obstacle to the re-election of union representatives to hold the same post that they occupied before or another union office. This position was explained on the web site of the Ministry of Labour and it was also well known that the Organic Labour Law required the holding of union elections every two or three years, in conformity with the statutes of the organizations. It could therefore be seen that the amendment took into account the comments of the Committee of Experts on this point. With regard to article 293 of the Constitution, which established the competence of the National Electoral Council to organize elections, he pointed out that information had already been provided in 2003 that the regulation of these issues was moving forward and was also foreseen in the Bill to amend the Organic Labour Act, which provided that the participation of the National Electoral Council in internal electoral processes would depend on the will of the trade unions themselves, always in accordance with the provisions of their statutes. Consequently, the elections held without the participation of the National Electoral Council in conformity with the statutes would produce full judicial effects and belong to the exclusive competence of the union electoral bodies. The Constitution expressly referred to the legislation and the latter subordinated any participation of the National Electoral Council to the respect of international labour Conventions. Hence, interference in internal union matters would be impossible. He noted the continuation in any case of the electoral processes initiated in 2001, which had been regulated by a special electoral statute that expired in November 2002. The Government's position on this matter had also been indicated on the Ministry of Labour web site since May 2003.

The speaker stated that, just as the Committee of Experts had taken note of the entry into force of a new resolution of the Office of the Prosecutor of the Republic on the sworn statement of assets of the union leaders, if they wished to do so freely and voluntarily, it should also have taken note of the entry into force of the Organic Act on the Electoral Authority, which provided that the organization of trade union elections by the National Electoral Council could only take place if such organizations freely and willingly so requested in conformity with their statutes. With regard to the withdrawal of the Bill on the protection of trade union guarantees and of the draft Bill on the democratic rights of workers and their trade unions, federations and confederations, he announced that these Bills had been removed from the legislative agenda some years ago. He also referred to the refusal of the authorities to recognize the Executive Committee of the CTV and declared that this Executive Committee had always been recognized. After the elections of October 2001, this recognition had been acknowledged by accrediting the representatives of this Confederation to the different international conferences. The CTV also participated in the negotiating process and the agreement concluded under the auspices of the OAS, UNDP and the Carter Center. However, the Government could not interfere in an internal union's issue as three of the 16 union movements had contested the elections held in the CTV in 2001. The Government was responsible for maintaining a public registry of trade unions and there was no entry of the October 2001 election in this registry, which implied that the elections had not been officially notified to the Ministry of Labour by the CTV. The speaker declared that there was no obstacle to the official recognition of the Executive Committee of the CTV when the necessary information was sent by the competent organ of the trade union organization and the composition of the Executive Committee was indicated. He concluded by noting that the only proceedings which remained pending were those before the Electoral Tribunal and the Supreme Court of Justice and shared in this respect the point of view of the Committee on Freedom of Association that this issue depended exclusively upon the will of the CTV, since the Government could not intervene in trade union matters nor violate the internal legal order. He recalled the importance of the technical cooperation provided by the Office and expressed his thanks for recent missions undertaken by the ILO Regional Office in Lima in order to provide technical assistance to strengthen the labour administration.

The Employer members noted that this was a long-standing case and that in 2000, 2001 and 2003 the Conference Committee had placed its conclusions in a special paragraph noting continuous failure by the Government to respect freedom of association. They further recalled that the Government's position with regard to the acceptance of a direct contacts mission remained unclear. They stated that the situation of freedom of association in the country was not satisfactory. There were increasing violations against representatives of the social partners, and the Government denied all allegations made by the Committee of Experts, including the existence of paramilitary groups such as the *círculos bolivarianos*, which the Government claimed were simply welfare organizations. The Government maintained that workers' and employers' organizations had participated in the conspiracy that led to the coup in 2002. It appeared to the Employer members that the Government's strategy consisted simply of denials and attacks. Referring to the agreement concluded in May 2003 between the Government and political and social groups supporting it, they noted that the Government had practically concluded an agreement with itself, proving that there was no genuine attempt to engage in dialogue with the Government's opponents.

The Employer members also stated that legislation in force continued to violate fundamental principles of freedom of association. They noted that the Government representative had indicated that a bill to reform the Organic Labour Act would address points raised by the Committee of Experts, including the excessively high number of members required to establish an employers' or workers' organization, and the excessively long residency requirement for foreign workers before they could become members of the executive bodies of trade unions. They recalled, however, that these changes had been planned for years. Even if this bill was enacted, provisions in the Constitution would have to be amended in order to restrict the powers of the National Electoral Council which was responsible for organizing elections in trade unions. They noted that the Government always made promises and announcements for legislative changes, but nothing ever happened. Turning to the recent acceptance by the Government of a direct contacts mission, the Employer members requested the Government representative to indicate whether the Government had agreed to receive this mission under the usual conditions governing direct contacts missions, in particular with regard to the length of time and extent of such a mission. Noting the Government representative's mention of a technical cooperation mission, the Employer members wondered whether the Government had intentionally mixed up these terms to further hinder progress.

The Worker members noted that the Committee of Experts in its report of the preceding year had referred to the conclusions on Venezuela and it was hoped that the Government would respect the commitments it had then promised to undertake. The Government had shown its willingness to accept a direct contacts mission and it was of extreme importance that the said mission took place before the next meeting of the Committee of Experts. It was regrettable that the Government did not provide information on the investigation relating to allegations made by the CTV and FEDECAMARAS concerning acts of violence and anti-union activities. The workers' and employers' unions could not exercise their rights except under conditions of non-violence and threats. Moreover, it was hoped that the agreement signed on 28 May 2003 would encourage a constructive dialogue between the social partners as a whole. The Worker members noted the Government's adoption of a legislative reform project which addressed several issues previously raised by the Committee of Experts regarding the restrictions imposed on the training and functioning of workers' and employers' organizations. Regarding the constitutional provisions which had implications on the application of the Convention, the Government should remove, as it had been requested by the Committee of Experts, the powers accorded to the National Electoral Council which allowed it to interfere in the internal affairs of trade unions, and should allow the free organization of elections within the framework of the unions themselves. It was also noted that the Government had repealed the resolution which required the trade union leaders to produce official statements of their assets and withdraw the draft law on freedom of association which was criticized. They requested the Government to find an adequate solution to effectively recognize and acknowledge the Executive Committee of the CTV. To conclude, noting that the Government had made the effort to respond

to the Committee of Experts' observations, the Worker members wished that, in its next report, the Government would give an account on the effective implementation of the announced measures and the results of the direct contacts mission. The objective of the direct contacts mission would be to observe to what extent the draft laws were adopted and to allow the workers' and employers' organizations to freely express their views on their relations with the Government.

The Government member of Cuba referred to the measures that the Committee of Experts had highlighted, including the Bill to reform the Organic Labour Act which reflected the observations formulated by this Committee and the results of the direct contacts mission in 2002, and which incorporated measures for the protection of workers against acts of anti-union discrimination and other labour rights. The drafting of this Bill had involved many consultations with the social partners as had been indicated to the Committee of Experts in 2002. Other measures which stood out were the new Organic Act on the Electoral Authority which conditioned the participation of the National Electoral Council in trade union elections on a voluntary request by trade union members, if their rules so permitted. She had noted cases in which various trade union leaders had been re-elected by their constituents in elections in which the National Electoral Council had not participated. Referring to the climate of violence which was being propagated by certain extreme right-wing groups in the country and which was contrary to the will of the Government, she underlined the intransigence and the exclusion which were found within workers' and employers' organizations and which were indicative of complicity with this violent climate. This climate of violence, for instance the failed coup of 2002 and more recently the introduction of paramilitary groups financed from foreign centres, aimed at creating violent situations in order to discredit the participative democratic reform process which was undertaken in the name of the long-excluded people and its aspirations. What was therefore needed in this case was to proceed with the direct contacts mission accepted by the Government, with a view to encouraging the adoption of the new Organic Labour Act. The Committee of Experts should take note of the changes proposed in this Act which precisely corresponded to the comments it had made.

The Worker member of Venezuela stressed that it was important for the Government of Venezuela to recognize the rights of the CTV trade union. This was an important step in the path towards the peace and conciliation process. It was hoped that such measures would be put into practice. It was equally important that the direct contacts mission took place to evaluate the situation on the ground, in consultation with all social partners, with a view to ensuring the full application of the Convention. The Venezuelan trade unions asked that this mission imply all sectors. The speaker rejected all attempts to violate freedom of association, either on the part of the Government or on the part of employers, because hindering free exercise of trade union rights closed the path to the social development of peace and violated standards enshrined in labour law and in the Constitution. An autonomous trade union organization was the guardian of this inalienable right. There could be no social justice without freedom of association. He also referred to the high rate of unemployment in Venezuela as a result of dismissals in the public and private sectors, despite existing legislation on employment stability which had not prevented these dismissals. The collapse of the labour inspection was a result of these dismissals. Dismissed workers were forced to withdraw their social contributions and thus became part of the unstructured sector of the economy, that is to say, the informal economy. He concluded by asking the Government to indicate when the direct contacts mission would take place so as to facilitate its work.

The Worker member of the United States, noting recent developments in Venezuela, stated that the National Electoral Council had ruled that there were a sufficient number of valid signatures to support a revocation referendum, and that the President of Venezuela appeared to have accepted the Council's ruling. This decision also respected the terms of point 12 of the agreement signed in Caracas in May of last year between the Government and the Coordinadora Democrática. Both the Labour Minister and the CTV General-Secretary had negotiated and signed that document. He recalled that the AFL-CIO had condemned the coup of 2002 against the President of the Republic, and had commended the Venezuelan Government for its criticism regarding the failure to include labour and social rights provisions in trade agreements. His delegation's difference with the Government had to do with ongoing violations of Conventions Nos. 87 and 98, including the December 2000 plebiscite allowing all voters, including employers and the military, to determine the future of trade union governance; the seizing of assets of the CTV Agricultural Workers Federation; the President's public statement of 1999 that he would "demolish the CTV"; the firing of hundreds of PDVSA employees who may or may not have participated in the company's shutdown in 2002; and the suspension of collective bargaining in the petroleum and other public sectors. He noted that the Committee of Experts had commented on the ongoing violations of the Convention, based on article 293 of the Constitution, and the fact that the Government refused recognition of the CTV's national leadership, despite the lack of any judicial decision declaring the Confederation's elections invalid. The Government argued that CTV leaders had participated in the coup of 2002 and in the sabotage of the petroleum industry, but no Venezuelan court had ever found any individual CTV leader guilty of such criminal acts. Noting the observation by the Committee of Experts that the Government failed to hold consultations with the main social partners, he recalled that in 2003 a member of the CTV executive had publicly urged the CTV and other labour organizations such as the UNT and CUTV, business organizations including FEDECAMARAS, and the Government to draw up a plan for national growth and development based on tax and fiscal incentives and employment policies. This indicated that the CTV was not out to sabotage the Venezuelan economy. He wondered why it was possible for the CTV General Secretary and the Labour Minister to sign an agreement on the constitutional and electoral process but not for the Government to invite the social partners to systematic, regular and authentic social dialogue. He asked the Committee to adopt the most effective and constructive conclusions as possible in this regard.

The Worker member of Brazil stated that Venezuela was a country which within a short period of time had achieved a significant improvement of the workers' living conditions. There had been a decrease in the unemployment rate, an improvement of the health services for the poor, oil production had attained more than 72 per cent of its previous capacity and the production costs had decreased by half, while currency control measures had made it possible to stop financial speculation. All these achievements became possible with the active and enthusiastic participation of workers and their unions. The speaker urged the ILO to show solidarity with Venezuela and to provide firm support to the socio-economic development of this country.

The Government member of Sweden spoke on behalf of the Governments of Denmark, Finland, Iceland and Norway. She welcomed the information that the Government had decided to accept a direct contacts mission, and expressed the hope that it would take place in the near future. She regretted that the Government had not ordered investigations into the reported acts of violence. She stressed that the rights of workers' and employers' organizations could only be exercised in a climate that was free from violence, pressure or threats of any kind against the leaders and members of these organizations. She urged the Government to take measures to ensure that this principle was respected. Last year the governments she represented had addressed the fact that the Government of Venezuela had not held adequate consultations with the social partners. This year, while taking note of the information that the Government had signed an agreement with some political and social elements, they hoped that the Government would immediately initiate social dialogue with all the social partners, without any exclusion whatsoever, with a view to finding solutions in the very near future to the serious problems relating to the application of the Convention.

The Worker member of Cuba stated that the climate of violence which existed in Venezuela had been instigated by the opposition, with the enormous support of the mass media, in order to overthrow the Government. In his opinion, no other government had shown more aspiration for the dialogue with the social partners or more respect for the rights of citizens laid down in the Constitution. The speaker expressed a deep conviction that the Government would endeavour to bring all its legislation into conformity with the Convention and to apply it in practice. He pointed out that the Government of Venezuela deserved the trust, respect and support of workers. The employers of this country who acted with honesty should support the current policy of the President of Venezuela.

The Worker member of India congratulated, on behalf of the Indian workers, the Government of Venezuela for having withstood the military coup of 2002 organized by high ranked military officers with direct support of mass media network owners. He noted that this was the first time Venezuelan workers were being represented at the Conference by all five trade union confederations. This reflected the principle that delegations should be representative. He also noted with satisfaction that the Government had accepted the direct contacts mission. The attitude of the Government should be recognized, especially in view of the fact that in other similar cases countries were less cooperative. He stated that while the amendment of the Constitution of a sovereign country was an internal matter, such an amendment should be considered if the

Constitution contradicted legislation providing full freedom of association. The Indian workers supported the provision in the Venezuelan Constitution requiring a sworn statement of assets of trade union leaders at the beginning and end of their mandate. This was necessary to prevent corruption. He concluded by noting that the verification of membership of all trade union confederations could be undertaken by government machinery, with a view to giving the unions recognition on the basis of verified membership every four years, as was the practice in India.

The Worker member of France noted that the political climate described in the Committee of Experts' report had not improved neither with the coup that had taken place with the involvement of certain leaders of the CTV and FEDECAMARAS nor with the strikes of 2002-03 against the constitutional regime in the country. Freedom of association was recognized and interpreted broadly by the supervisory organs of the ILO. However, it was obvious that the political situation aimed at toppling the constitutional Government was outside the ambit of the Convention. The social situation was of concern, as 80 per cent of the population was poor and did not enjoy any of the benefits derived from the country's oil riches, while the minority which benefited from such oil income wanted to conserve their privileges through a failed coup. It was hoped that the referendum which was then taking place enabled changes in the overall climate. A legal reform process was under way. It was hoped that the new legislation would address the criticisms expressed in the Committee of Experts' reports over the last several years. Regarding certain constitutional provisions criticized by the Committee of Experts, it was obvious that these provisions were of an autocratic nature in relation to trade union elections and the right of unions to organize freely their activities and designate their leaders. In this regard, it was recalled that the judicial authority did not have the competence to regulate or organize the election of trade unionists. Trade union leaders were not to be required by law to make a declaration of their assets. It was for the workers to judge the actions of their elected leaders, and for the unions' statutes to regulate union affairs. The Government should also be requested to respond to all allegations of discrimination against union leaders. Moreover, the laws should ensure that all representative institutions were able to negotiate freely. The current situation was in a flux. In the event of uncertainty regarding the representative character of an organization which had signed a collective bargaining agreement, the workers concerned should be allowed to express their views. Objective criteria were called for at all levels of the enterprises to determine the necessary representativity of trade unions. In conclusion, the direct contacts mission, agreed to by the Government, should take place rapidly so as to enable the Committee of Experts to take account in their next report of observations emanating from this mission.

Another Worker member of Venezuela stated that the opposition forces, headed by the CTV and FEDECAMARAS, acted as generators of violence in Venezuela. During the past few years, numerous agricultural unions' leaders from the National Coordination Ezequiel Zamora and COFAGAN had been assassinated. This year, the construction trade union leaders had been assaulted and assassinated by the armed gangs of the CTV. The electricity sector was under co-management by the workers and the state, in order to prevent its privatization signed by the CTV in 1998. The speaker requested the Government to impose an obligation on FEDECAMARAS, in compliance with the law, to reinstate more than 250,000 of dismissed workers. Regarding the recognition of the CTV, the speaker stated that it was well known that this organization had lost its representativity, by having abandoned the workers' interests, over the past five years, for the sake of exclusively political activities aiming at overthrowing the Government. The CTV opposed the decrees concerning employment security, supported by other trade union confederations, because it wished, as well as FEDECAMARAS, to use dismissals as a weapon in the internal conflict. As regards freedom of association, the speaker considered that there had never been more such freedom as in this period of time, which had been recently proved in the collective labour conflict in the iron and steel industry enterprise SIDOR, which had lasted 23 days and in which the right to strike was fully respected. There was also an unprecedented freedom for collective bargaining, for example, the conclusion of important collective agreements in the public sector, like recently for the judges, which involved significant achievements for workers through the participation of all trade union organizations of the CTV and UNT, including in the private sector. This was also the case in the construction sector, as well as in the multinational enterprises.

An observer representing the International Confederation of Free Trade Unions (ICFTU) stated that the Government of Venezuela, in breach of the ILO Constitution and the Standing Orders of the Conference, had designated an illegal and illegitimate delegation which had prevented the main organization of the country, the CTV, from being represented. He recalled that, in 2001, the direct contacts mission had concluded that "in Venezuela, the necessary conditions for the full exercise of trade union rights did not exist". Three years later, this situation had worsened, resulting in violations, especially of this Convention. Moreover, the CTV had not been recognized, workers were discriminated against and persecuted for pursuing trade union activities, trade union leaders were harassed, and the Ministry of Labour illegally used its power to hinder the recognition of workers' organizations. There had also been repeated violations of Convention No. 98, including the exclusion of main trade unions from their right to contest and negotiate collective agreements. The speaker recalled that tripartism, which was the foundation of the ILO, had been stigmatized and violated by the authorities. Moreover, in the last three months, more than 32,000 workers in the public sector had been dismissed. All this demonstrated that the intention of the Government was not to accept the recommendations of the ILO. In view of all these violations and repeated lies, he asked the Committee to urge the Government to comply with the recommendations of the Committee on Freedom of Association in the case of Venezuela.

The Government representative said that the open spirit of the Venezuelan Government was proven by the fact that the spokesperson of the ICFTU, who had taken the floor and who had spoken about his country, belonged to the CTV and to the Workers' delegation of Venezuela and it was in that capacity that he had travelled to the Conference. There could be no doubt of the readiness of the Government to receive a direct contacts mission, and moreover meetings had been held on an ongoing basis since last November, until the Government's request was formalized in April 2004. This direct contacts mission should be well-balanced and should take all the social partners into account. Therefore, despite the misunderstanding of the Employer members, the Government had not confused the direct contacts mission with any technical cooperation mission. The Government was perfectly aware of what was being referred to and knew what the mission's mandate was, particularly as regards respect for the plurality of social partners, in order to have a balanced view of the situation in the country. The previous year's discussions referred to a direct contacts mission that would provide broad technical support to promote a needed legislative reform. He reiterated that his Government did not encourage or promote violence and, even less, the setting up of paramilitary groups outside the law. But he did regret that unfounded complaints had been made, which were part of an irresponsible political strategy lacking true commitment to democracy. Last year his Government observed with repugnance the murder of a person during a trade union demonstration, a reproachable yet not politically motivated act. The individual responsible for that reprehensible murder was soon arrested and the judicial decision ordering his imprisonment was recently pronounced. Likewise, he elaborated on the existence of paramilitary groups, made up of foreign mercenaries and financed by sectors from the extreme right, which had been destabilizing democracy since 2002 and which had direct and immediate links with that year's coup.

He recalled that the members of the Government of Venezuela in many cases came from the human rights movement, and that they did not support situations of human rights violations nor did they endorse impunity. He confirmed the wish of the Government of Venezuela to carry out a reform of the Organic Labour Act. Since the advent of the human rights movement, and for a number of years, his Government had been adhering to the suggestions of the Committee of Experts to make it easier for workers to organize and to ensure that there was no economic sector where they were not able to organize. His Government advocated labour legislation that protected workers and ensured respect for human rights. Today there were sanctions that, far from criticizing and discouraging failure to comply with legislation, encouraged and protected certain employers who failed in their social responsibilities. The new law should provide the Ministry of Labour with tools to ensure that standards were respected by all the social partners. He trusted that the direct contacts mission would provide an opportunity and a suitable occasion to evaluate the ways of bringing the Constitution of the Republic into line with the Convention, including issues relating to articles 95 and 293 of the Constitution. With regard to social dialogue, it should reach all the social partners, all the workers' and employers' organizations, and all the various bodies. Democracy in Venezuela was widespread and participative, inclusive and not exclusive. The social partners, who had been relegated and excluded for decades, now played a fundamental role in the building of a new country and a new society.

In Venezuela there was room for such monopolies, democracies in the hands of a few that kept the vast majority out of the decision-making process; that was a thing of the past – participative democ-

racy was now in place. Neither could there be a return to practices such as those used in the past by FEDECAMARAS that led to private foreign debt being settled as part of public foreign debt. For that reason there was no problem in recognizing the capacity or the representatives of a trade union confederation, such as CTV. However, nobody, including the CTV, could pretend not to respect the law and comply with legal obligations, however simple these might be. He stated that, in that framework of a plurality of social partners, agreements were not signed solely and exclusively between friends, or between those attached to the Government, as the Employer Vice-Chairperson wrongly claimed when he referred to the instrument of 29 May 2003 signed by the Government and the political opposition (including the CTV and FEDECAMARAS). That agreement was signed following the involvement of the OAS, the UNDP and the Carter Center. Based on this important agreement, the opposition groups that previously supported the coup, economic sabotage and political destabilization, learnt that they had to move within the constitutional framework that those majorities had established. Lastly, he invited the social partners to collaborate in a climate of mutual respect, democratic coexistence and participation because all were called on to contribute to the building of a new country and a new society, while counting on the technical assistance and cooperation of the ILO.

In reply to a request by the Employer members, **a representative of the secretariat** confirmed that the Government had addressed a letter to the Director-General of the Organization, dated 27 April 2004, in which it stated that it accepted a direct contacts mission and suggested that the said mission visited Venezuela from 10 to 14 May 2004.

The Employer members, after having taken note of the Office's response, noted that the dates proposed by the Government had already passed, and that the direct contacts mission had not taken place. Therefore, new negotiations were required with regard to a mission at another time. They stressed that a direct contacts mission had to be carried out before the next session of the Committee of Experts in order to enable the latter to consider the results. Turning to the final statements of the Government representative, the Employer members observed that most of the declarations were a sort of election campaign with regard to the probably forthcoming referendum in the country. Beyond these political declarations, the Government representative had not provided any new information related to the facts examined by this Committee. This was particularly deplorable, since the majority of speakers had confirmed the serious violations of freedom of association in the country, and one Worker member had indicated murders of trade union leaders. Nevertheless, the Government merely made promises for the future and referred to bills which were not laws in force. In conclusion, they said that the Committee's conclusions should reflect in an appropriate manner the ongoing serious violations of freedom of association. The Government should be urged to proceed with legislative changes, and accept a direct contacts mission in the near future under the usual conditions set forth by the ILO for such missions. They finally considered it justified to present the conclusions in a special paragraph.

The Worker members stated that the Government undertook certain commitments and should be invited to provide concrete information on those commitments. The Government confirmed that it had accepted a direct contacts mission and indicated that it would take the necessary measures for the recognition of the Executive Committee of the CTV, in law and in practice. It was requested that the direct contacts mission take place before the next meeting of the Committee of Experts to enable it to evaluate the situation. It was hoped that the direct contacts mission would confirm that the draft laws announced were effectively adopted and that the workers' and employers' organizations were duly recognized in law and in practice and that there was no hindrance to the free organization of the employers and workers and no government interference in this regard. Concrete improvements were expected to materialize the following year. It was for this reason, that the Worker members did not consider this session to be the opportune moment to devote a special paragraph in the Committee's report to the conclusions relating to Venezuela.

The Committee noted the oral information provided by the Government representative and the discussion that followed. The Committee noted with concern that the problems raised by the Committee of Experts referred to questions relating to the right of workers and employers to form organizations of their own choosing, the right of these organizations to elect their representatives in full freedom, to draw up their rules without interference by the authorities, and to organize their activities. The Committee noted that, according to the declaration of the Government representative, the Bill to reform the Organic Labour Act covered questions raised by the Committee of Experts and would be the subject of a final discussion in the National Assembly in the second semester of 2004. The Committee also noted that the Government's position on the requirement of alternation in trade union elections was that this did not prohibit the re-election of trade union leaders, and that the Organic Act on the Electoral Authority provided that the participation of the National Election Council in trade union elections was voluntary. Finally, the Government had indicated that the Bills on the protection of trade union guarantees and freedoms and the democratic rights of workers and their trade unions had been withdrawn from the legislative agenda of the National Assembly.

The Committee noted with concern that a number of urgent and serious cases against the Government of Venezuela had been submitted to the Committee on Freedom of Association. The Committee underlined that the draft law submitted to the National Assembly to which the Government had referred last year had not been approved. The Committee expressed the hope that this law would be approved before the end of the year and that it would be fully compliant with the Convention. The Committee noted that the Government had accepted a direct contacts mission but regretted that this decision had been delayed until after the meeting of the Committee of Experts and announced just before the Conference. The Committee expressed its great concern at the growing number of acts of violence against the social partners and once again brought to the attention of the Government that respect for civil liberties was essential to the exercise of trade union rights, and it urged the Government to take the necessary measures without further delay so that workers' and employers' organizations could fully exercise the rights recognized by the Convention in a climate of complete security. In view of the fact that the problems raised by the Committee of Experts constituted serious violations of freedom of association, the Committee urged the Government to renew dialogue with the social partners.

Therefore, the Committee urged the Government immediately to take the necessary legal and practical measures, in consultation with the most representative workers' and employers' organizations, to guarantee the full application of the Convention in a process in which due notice was taken of the main views of these organizations. The Committee requested the Government to recognize the Executive Committee of the CTV so that a real social dialogue could develop in the country. Moreover, the Committee expressed its firm hope that the direct contacts mission would examine all outstanding questions and would enjoy full freedom to interview all social actors, that this mission would be undertaken in a manner allowing the Committee of Experts to examine the report of the mission at its next session, and that the Government would send a detailed report on the particular outstanding problems before the Committee of Experts.

The Government representative reiterated, in relation to the conclusions, that his Government wished to clarify that, since November 2003, meetings had been held in good faith with ILO officials, both in Caracas and in Geneva, concerning possible dates and the conducting of the new direct contacts mission. Similarly, it followed from the conclusions that there was an evident point of order related to the existence of the allegedly urgent and serious cases before the Committee on Freedom of Association, which were not discussed and could not be a subject of discussion in this Committee, which was exclusively based on the Experts' comments. This point of order was even more evident with regard to cases which were still under examination, when the Government had not yet provided full information and when fundamental decisions of the Supreme Court of Justice were under preparation. For these reasons, a reference to these cases should be deleted from the text, since it was not relevant to the discussion and did not correspond to the Committee's mandate. Lastly, as regards the recognition of the Executive Committee of the CTV, the Government was not against it. As soon as the CTV members complied with the provisions of the law, like members of other organizations, the labour administration officials would immediately recognize their representatives. In the speaker's opinion, the above points affected the balance of the conclusions.

Convention No. 95: Protection of Wages, 1949

Poland (ratification: 1959). **A Government representative** recalled that in January 2003, the All-Poland's Trade Union of Nurses and Midwives notified the Office of the fact that employees in health-care had not been paid their wages or that their wages had been cut, and that the statutory increases in salaries had been denied. In its reply to these allegations, the Government had referred to legislation regarding the protection of remuneration for work, the extent of the problem and had indicated measures proposed to resolve it. She indicated that the information presented to the

Committee would also be provided in the Government's next report due in 2004. It would include other detailed information, including statistical data. The speaker stated that according to the Polish Labour Code, timely payment of wages was one of the basic duties of the employer. Failure to fulfil such a duty constituted an infringement of the employee's rights. Claims connected with non-payment of wages were pursued in free-of-charge, non-formal proceedings before the labour courts. An employee who suffered damages due to the employer's failure to pay his salary could also claim compensation. According to the provisions of the Penal Code, malicious or notorious infringement of the employee's right to remuneration constituted an offence subject to punishment. The Penal Proceedings Code applied in such a case. Infringements of legal provisions on payment of wages and other employees' benefits had been examined during recent years. The reasons for these infringements had not been legal ones. They had resulted from financial difficulties of enterprises facing economic crisis and the challenge of increased competition on both domestic and international markets. In 75 per cent of cases the lack of sufficient funds had been the reason for failing to pay remuneration in due time.

Over the past two years, different bodies had duly studied the problem. The causes for as well as feasibility and usefulness of adopting new legal provisions had been considered. The speaker recalled that the Council of Ministers had dealt with this issue twice, in September 2002 and in July 2003. Upon detailed consideration of the causes of non-payment of remuneration, it had come to the conclusion that the legal provisions in force sufficiently secured employees' interests. However, the Council of Ministers had stated that it was necessary to undertake decisive steps to improve law enforcement and application of sanctions for violation of substantial provisions. In addition, the Council of Ministers had charged its members to undertake appropriate measures. The Minister of Justice, who also discharged the function of Attorney-General, had adopted a rule according to which each notified case of an employer's failure to pay remuneration should be considered in detail by the prosecutors. New obligations had been assigned to ministers who were founding bodies of state enterprises, as well as to the Minister of the State Treasury. They now had to terminate employment relationships with persons serving managerial functions in state enterprises or companies with the participation of the State Treasury, in each case of non-payment of wages, if a given establishment had sufficient funds. Finally, the Labour Code had been amended on 14 November 2003. The amount of a fine imposed for infringement of employees' rights had been doubled; this applied in any proceedings in which the labour inspector served as the public prosecutor. The speaker also reported that upon the initiative of the Minister of Economy, Labour and Social Policy in December 2003, the Chief Labour Inspector and the Minister of Justice had concluded an agreement regarding cooperation in fighting infringements of the employees' right to remuneration. On that basis a number of immediate measures had been taken allowing more detailed consideration of cases of workers' rights infringements.

Detailed documentation of each case of offence against an employee's rights was established by the State Labour Inspection and submitted to the prosecutor at his request. Prosecutors' offices ensured participation of labour inspectors in any proceedings concerning an offence against an employee's rights. They notified the regional labour inspector of closing of the preliminary proceedings in such cases. Cooperation and better exchange of information was also facilitated through the nomination, in each Provincial Prosecutor's Office, of a prosecutor responsible for the supervision of proceedings in matters related to the rights of workers. In respect of the activities of the Tripartite Commission for Social and Economic Affairs, it was stated that the Tripartite Commission had expressed an opinion according to which it was necessary for all parties to undertake immediate steps aiming at giving effective protection to the employee's right to remuneration. The violation of this right had given rise to serious social conflicts and social dialogue was necessary to solve the problem. Detailed information on the dialogue on these issues had been submitted to the Committee of Experts in October 2003. As regards the situation in the health-care sector, the Government was well aware of the fact that the non-payment of remuneration constitutes a very serious problem. According to figures of 31 March 2003 (Ministry of Health research), 70 per cent of the public health-care establishments were in debt for different reasons. As a consequence, they could not fulfil their obligations regarding wage increases. The indebtedness of the health-care sector enterprises resulted from the long and difficult process of restructuring of the sector.

The speaker informed the Committee that between 2001 and 2003 the State Labour Inspection had carried out regular inspections in the health-care sector. A number of additional inspections had been conducted on the basis of a special request by the Minister of Economy, Labour and Social Policy. In addition, special inspections had been conducted on the basis of requests made by health-care personnel, especially in 2002. These inspections concerning payment of wages and other employee's benefits had well identified the phenomenon of the non-enforcement of the relevant legislation. The inspections had indicated violations of the rights of employees in the health-care sector including failure to pay remuneration, delayed payment, pay cuts, reduction or non-payment of overtime pay, and failure to pay additional annual bonuses. The violations resulted from the employers' failure to implement the Act amending the Act regarding the system of determining by negotiation the growth of average remuneration payable by certain employers (known as the "203 Act"). This Act guaranteed an increase in wages of nursing personnel. In particular, it stated that the increase in wages in the health-care sector would not be lower than 203 zlotys per month in 2001 and that it would further increase in 2002. As a result of the State Labour Inspection activities, it had been found that, in 2001, 65 per cent of the controlled health-care establishments had not introduced the envisaged pay increase. In 2002, this figure was 49 per cent and, in 2003, 29 per cent. However, on the basis of the numbers given, it was not possible to assess the extent of the problem. Available data concerned only a part of the health-care establishments. In addition, a number of inspections had been conducted in the establishments which had already been known to demonstrate such inequalities. Therefore, the results of the inspections were not representative for the whole sector. In 2003, the State Labour Inspection had conducted a second set of inspections. It had been found that 69 per cent of the employers had complied with notices issued by the labour inspectors concerning the calculation and payment of wages. As a result thereof, the amount of over 27 million zlotys (approximately US$6 million) had been paid to over 41,000 employees. Due to the inspections conducted between 2001 and 2003, the enforcement of legislation concerning payment of wages had significantly improved. In most cases, employers recognized employees' claims and undertook to pay the amounts due. A certain degree of reluctance was caused by the lack of financial resources.

The speaker pointed out that a solution to the problem of the non-payment of wages in the health-care sector was not possible without social dialogue. Therefore the Public Services Team of the Tripartite Commission had dealt with the issue in detail in 2003. On 29 September 2003, a plenary session of the Tripartite Commission had been devoted to a comprehensive regulation of the health-care sector. As a result, trade unions had submitted a motion for the establishment of an ad hoc team of the Tripartite Commission to deal with health-care problems, including the issue of payments resulting from the "203 Act". That team completed its work on 14 November 2003. It had focused on questions concerning employees' wages and transformation of public health-care establishments into public utility companies. Representatives of the employers had accepted proposals submitted. Due to the complex nature of those issues, a decision had been taken to appoint a permanent team for health-care. On the basis of the agreement that had been reached by the ad hoc team and extended consultation, a draft act regarding public aid and restructuring of public health-care establishments had been adopted by the Council of Ministers on 28 November 2003 and submitted to Parliament. The draft aimed at the organizational and financial restructuring of public health-care establishments. It would allow for a comprehensive solution to the problems of the health-care sector. Discussions in Parliament were presently at their final stage and the Act was expected to come into force on 1 October 2004. She stated that the premise for the opening of the restructuring process was the change in the legal basis on which the health care establishments operated. The health-care establishments would be transformed into commercial law companies with the status of public utility companies. Therefore they would have the possibility of taking advantage of regulations regarding limited liability or joint-stock companies particularly in respect of financial operations. The transformation would also provide for the implementation of an effective system of supervision of their financial management. The draft clearly specified the sources of financing the restructuring process, including paying back debts. In order to raise funds, the health-care establishments would be allowed to issue bonds and to contract bank loans. Both of these would be guaranteed by the territorial self-government and by the National Economy Bank. The draft act also introduced special measures for alleviating the repayment of the health-care debt. Representatives of all professional bodies would participate in the development of restructuring programmes. The financial restructuring process would allow satisfying employees' claims under the "203 Act". It was also pointed out that the Act provided a guarantee according to which employees' claims would be treated as privileged. In addition, there would be a provision providing that employees' claims were to be satisfied within two years of the Act's entry into force.

All the measures presented would provide for a proper functioning of public health-care establishments in the medical services market, allowing them to continue to offer jobs. The danger of getting further into debt would be significantly reduced. In addition, the Government had recently taken further steps to solve the problems. On 1 June 2004, the Council of Ministers had adopted an act amending the act regarding public aid and restructuring of public health-care establishments. Taking into account the fact that implementation of the restructuring process would take time, that act introduced additional measures aiming at satisfying the employees' claims originating in the "203 Act" through "bridging loans" guaranteed by the National Economy Bank. The loans would be paid in instalments within one year from the signing of an agreement with the bank. Employees of entities contracting the bridging loans would be repaid their wages within the same period. In conclusion, the speaker stated that the Government was well aware of the seriousness of the situation regarding the non-payment of remuneration in the health-care sector. The Government and the Parliament were taking firm steps to solve the problem including through tripartite dialogue. She expressed her conviction that the ILO would soon be informed of the positive results achieved. By making the issue of the payment of wages a part of the whole restructuring process of the sector, the Government strived to achieve a structural change, thus avoiding the emergence of the same financial problems in the future.

The Employer members thanked the Government representative for the detailed information which would have to be examined by the Committee of Experts. They underlined the significance of this case, as no sector was more important in terms of the well-being of the people than the health sector. They expressed great concern at the fact that an essential group of workers in this sector, i.e. the nurses, were not paid. They expressed the view that, beyond the issue of enforcement of the right of workers to be paid regularly as provided for in Convention No. 95, a fundamental problem in this case might be that the economic structure of the industry was not viable. The Employer members noted that the Government had discussed the restructuring of the health-care industry. They urged the Government to take all necessary actions to pay these important health-care providers their wages.

The Worker members thanked the Government representative for the new elements presented to the Committee, which could not be adequately evaluated in the discussion. They expressed the hope that the new measures would be helpful in overcoming the serious problem at hand. They recalled that, according to the Committee of Experts, the financial straits of a private enterprise or a public administration might be addressed in many ways, but that was not an excuse for deferred payment or non-payment of the outstanding wages due to workers. The responsibility for implementation of the Convention rested with the Government and should be carried out through legislation and the implementation of the law so that the full wage could be paid in a full and timely manner. They took note of the list of mainly legislative and administrative measures taken by the Government but they did not note any concrete measures to eliminate the problem in practice. For instance, they had not heard anything about a special action plan with fixed deadlines for payment to workers who suffered from the delay. They urged the Committee to call for actions and not only legislative measures. They also called on the Government to take such measures urgently so as to protect workers, and eliminate this tragic problem which was affecting their lives. They also noted that it was important to address the economic side of health-care policy and fiscal administration. In their view, the problem required more than just bank credits. A reform of the fiscal and economic policy on health care was necessary on the part of the Government with the participation of the social partners. They emphasized that, while they appreciated the Government's efforts, they urged it to take real and effective action for the elimination of the problem and to set up fiscal and economic policies which would prevent such financial problems in the future. The Government's statement had focused on short-term solutions while the biggest problem in this area was the accumulation of arrears which risked spilling over into other sectors of the economy. They concluded by emphasizing the two aspects of this case which needed urgent answers, i.e. the issue of remedies to the workers and the need to address the Government's fiscal policy.

The Worker member of Poland stated that, during the last two years the non-payment of salaries rapidly gained importance as it affected the construction sector, enterprises producing for export and health-care establishments. In the majority of cases, this violation was being justified by the shrinking market, payment jams and – in the case of health care – the absence of financial means in the health insurance system. The Tripartite Commission, which was supposed to lead to the increase of salaries had reached a compromise as a result. However, over 60 per cent of employees of the health-care system had still not received the promised increase in salary, although their claims had been recognized by the Constitutional Court. He urged the Government to find a quick legal solution to the problem so as to allow for the increase of wages in the health sector.

Another Worker member of Poland stated that the practice of non-payment of wages was widespread, systematic and persistent. The lack of reaction to the growing problem of court delays in cases of non-payment of wages, the poor functioning of the judicial system, the inadequate administration of individual cases and the lack of preferential treatment of wage claims in case of bankruptcy, were indications of serious malfunctioning on the part of the Government. Proceedings that lasted for two years were a daily practice as regards workers' complaints for non-payment of wages. During this time, the workers concerned were usually deprived of both work and remuneration. The enforcement of the judicial decision concerning full payment of the amounts due was usually made impossible in cases of bankruptcy as bank claims took precedence over workers' wage claims. She concluded by saying that putting an end to the accumulation of wage arrears, which made workers net creditors to the employers but also to the Government (as in the case of the Polish nurses), as well as providing effective sanctions for workers in cases of non-payment of wages, called for sustained efforts, an open dialogue with social partners and measures not only at the legislative level but also in practice.

The Government representative reiterated that the Government had undertaken decisive steps towards solving the problems in the health-care sector. The measures proposed were of a comprehensive nature as they covered all issues regarding the functioning of the sector, thus allowing for durable change. Restructuring the health-care system would give a solid basis for its proper functioning in the near future. She indicated that the proposed solutions were realistic and that the health-care establishments were given the means to discharge their obligations. The solutions did not include new obligations without providing for the necessary resources. She underlined that the proposed measures satisfied the claims relating to the non-payment of wages and the denial of statutory salary increases introduced by the "203 Act". The process was to be concluded in two years from the entry into force of the Act regarding public support and restructuring of public health care establishments (expected on 1 October 2004). There would be measures to conclude the process even in one year. The Government requested to be given time to introduce the new provisions and to start the restructuring process which would not be an easy task. The goal was clear and was agreed to by all parties. She hoped that all partners would work hand in hand towards success, without further delay. She stated that her Government would cooperate with the Office in discharging its obligations under the Convention as it highly appreciated technical assistance that had been provided to Poland earlier.

The Employer members stated that the problem with the payment of wages was not limited to the health services sector and was more systemic. The Government should come up with a broader appreciation of the problem and should provide the best data available to the Committee of Experts on the general situation prevailing in the country in this respect. If the Government had difficulties in collecting the data, the ILO should provide assistance so as to clarify the factual situation and come up with viable solutions.

The Worker members considered that the Committee of Experts should study the new information given by the Government representative so as to evaluate its conformity with the requirements of the Convention. They also noted the importance of involving the social partners in the solution to the problem and called for concrete Government measures to end the problem. Finally, they asked the Government to provide information on the non-payment of wages in other sectors in the economy.

The Committee noted the oral explanations provided by the Government representative, and the discussion that followed. The Committee noted the essential importance of the health sector for the national economy and the well-being of the population. The Committee was conscious of the difficult financial situation of the majority of public health-care institutions and the painful structural changes which they went through but reminded the Government that delays in the payment of wages or the accumulation of wage arrears constituted a clear violation of the letter and spirit of the Convention and rendered inapplicable most of its provisions. The Committee expressed the hope that the Government would spare no effort to resolve the wage crisis faced by the professional community of nurses and midwives in a manner compatible with the obligations arising from the Convention. In this respect, the Committee noted with interest that the Government was in the process of adopting new legislation for the restructuring of public health services and that it undertook to eliminate the problem of payment of outstanding wages within two years. The

Committee expected the Government to communicate detailed information on the concrete measures which had been adopted to resolve this issue to the Committee of Experts for examination at its next session.

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

Bangladesh (ratification: 1972).**A Government representative** stressed his Government's total commitment to the protection of labour rights in the country. Bangladesh had ratified 33 ILO Conventions, including seven of the eight core Conventions. He pointed out that the right to organize and collective bargaining of workers and employers in Bangladesh was safeguarded under the Industrial Relations Ordinance (IRO), 1969. The rights accorded to the workers and employers under this Ordinance related to protection against unfair labour practices on the part of employers and workers (sections 15 and 16), and conditions of service to remain unchanged while an application for registration was pending. The IRO also prohibited the transfer of the president and general secretary of a trade union. At the same time, a worker refusing to participate in any illegal strike was accorded protection under the provisions of the IRO. Any contravention of these provisions of the IRO was punishable under the Ordinance.

Secondly, the IRO required that, for the registration of a trade union in any establishment, it should have the support and membership of at least 30 per cent of the workers employed in that particular establishment. This requirement for registration of a trade union did not contravene the intent of the provisions of Convention No. 98, nor did it infringe upon the rights of workers to form trade unions. The objective of this position was to ensure broader and more representative workers' bodies and to maintain the unity of the workers in the establishment. He underscored that none of the social partners in the country opposed these provisions in the IRO. Similarly, with regard to recognition of a trade union as the collective bargaining agent (CBA), the present IRO required the trade union to have the support of 30 per cent of the total workforce in that establishment. In order to develop sound industrial relations, the CBA was determined in the most democratic manner – through elections. This promoted effective representation of the workers and protected the rights of workers in the establishment. Neither the workers nor the employers within the country had raised any issue regarding this provision.

Regarding the question of trade union rights of workers in the export processing zones (EPZs), some recent developments were worth mentioning. The EPZs had been an astounding success story in Bangladesh. They had contributed significantly towards the country's economic development in terms of foreign direct investment, exports and employment generation. The EPZs alone contributed to 19 per cent of the country's total exports and employed about 130,000 workers. Clearly the EPZs made a significant contribution to reducing poverty in Bangladesh. Moreover, studies undertaken by international firms such as the Société Générale de Surveillance (SGS), Gherzi and others showed that workers in these EPZs enjoyed better working conditions, in terms of health and hygiene, and safety and security as well as financial benefits, compared to those working in the comparable industries outside the EPZs. Recently the Bangladesh Export Processing Zones Authority (BEPZA) had taken a number of reform measures. These reforms provided for representation in the Workers' Welfare Committee (WWC) in the EPZ through elections. The WWC was the workers' representative body in the EPZ. Earlier, representation to the WWC was based on selection. The instructions also provided legal protection to the members of the WWCs in the event of any disciplinary action taken by employers in EPZs. With the reform of the instructions, workers' representatives in the EPZ could now discuss with the management matters related to job security, wages and other financial packages.

Additionally, the renowned firm SGS had concluded its auditing of the employment conditions, wage structure of EPZ workers and grievance-handling mechanisms followed in EPZs. The firm also reviewed the BEPZA instructions and performance of workers' welfare committees. The findings of SGS, the independent audit firm, suggested that BEPZA instructions were much more effective in addressing workers' benefits, employment conditions and wages issues. The report also concluded that 65 per cent of the surveyed workers did not consider traditional trade unions of Bangladesh to be an effective means of addressing workers' issues in the EPZs. The overall assessment of the training programme was favourable and the report also stressed the need for additional training in order to strengthen WWCs for a sound industrial relations environment within the EPZs. The Government representative concluded by emphasizing that the ILO was a unique international organization due to its tripartite structure. This was the strength and spirit of the ILO and should be fully respected in all its activities.

The Worker members thanked the Government representative for the information that he had provided. The last time that the case of Bangladesh had been discussed was in 1994. In its observation, the Committee of Experts noted violations of Convention No. 98 in the four following respects: (1) the protection of workers' and employers' organizations against acts of interference by each other; (2) trade union rights in EPZs; (3) obstacles to free and voluntary collective bargaining in the private sector; and (4) the restriction on free and voluntary collective bargaining in the public sector, particularly in view of the practice of determining wage rates and other conditions of employment by means of government-appointed tripartite wages commissions.

With regard to acts of interference, the Committee of Experts indicated in its observation that this practice violated Article 2 of the Convention, which prohibited acts of interference by organizations of workers and employers in each other's affairs. The Worker members supported the comments of the Committee of Experts when it requested the Government to adopt specific measures, combined with effective and sufficiently dissuasive sanctions to prevent acts of interference. With respect to union rights in the EPZs, the Government indicated that it had adopted a declaration allowing workers in these zones the right of association and other facilities as of 1 January 2004. The Government should immediately provide this declaration so that the Committee of Experts could examine it. It would also be desirable to know whether the declaration was applied in practice and, if it was not, an explanation as to the reasons why. The interference in free and voluntary collective bargaining in the private sector and the restriction on free and voluntary collective bargaining in the public sector were problems which the Conference Committee had been discussing for several years. In the past, the Committee of Experts had requested the Government to lower the required threshold for union registration and to modify section 22 of its 1969 Ordinance so that it conformed with the provisions of the Convention. With respect to free and voluntary collective bargaining in the public sector, the Government interfered in the negotiation of wages, in particular through the tripartite wages commissions which it appointed. This situation was unacceptable. Moreover, the Committee of Experts noted that the Government had not submitted information on its current revision of the Labour Code.

In 1994, the Conference Committee had discussed a number of points raised by the Committee of Experts, with the exception of those relating to EPZs. The Government representative at that time had concluded the discussion by saying that he hoped that the following year he would be in a position to inform the Committee that all the problems mentioned in the observations of the Committee of Experts had been resolved. Yet, ten years later, the only progress that could be noted was the adoption of the declaration on the right of association in EPZs. Furthermore, it had to be verified whether it was in conformity with Articles 1, 2 and 4 of the Convention. Moreover, since 1994, acts of interference and obstruction to free and voluntary collective bargaining in the private and public sectors had not been addressed. For more than ten years, the problems had been the same. The Committee of Experts had been making the same comments and the Government the same remarks. In this regard, it was difficult to believe in the good faith of the Government or its ability to put into practice the requirements of the Convention.

The Employer members indicated that the present case concerned a number of critical points in law and practice and had previously been discussed by the Committee in 1994, and before then in 1987. Perhaps the Committee had let too much time pass before returning to the case. With regard to the first point raised by the Committee of Experts, namely the insufficient protection for workers' and employers' organizations against acts of interference by each other, they noted that there had been no new information and that the Committee of Experts had therefore requested the Government to adopt the necessary measures. They added that the rules in this respect were very clear.

On the subject of trade union rights in EPZs, the Employer members noted that the Government had referred to a declaration adopted in 2001, but had failed to provide the text of the declaration, which meant that the Committee could have no notion of its significance. The Government was therefore urged to provide a copy of the declaration. The Government representative had emphasized the importance of EPZs in the development of Bangladesh and other countries. In this respect, the Employer members noted that the situation was no longer the same as when EPZs had first emerged. The Government representative had acknowledged

that workers in EPZs had had little social protection, but that changes were now occurring. The Employer members indicated that it made sense to achieve progress in this respect and that the Government's commitments needed to be fulfilled. However, more detailed information was required on the situation. Turning to the issue of the 30 per cent requirement for the registration of a trade union, which was necessary for its participation in negotiations at the enterprise level, they recalled that, although the Committee of Experts considered this requirement to be too high, no specific threshold was set in this regard in the Convention. They indicated that the Convention was mute as to whether trade unions representing a lower number of workers could play an effective role, and it was therefore necessary to make a distinction between legal requirements and practice.

They observed that the Committee of Experts had also raised the issue of the practice of determining wage rates and other conditions of employment in the public sector by means of government-appointed tripartite wages commissions. The Committee of Experts had indicated that free and voluntary collective bargaining should be conducted between the directly interested workers' organization and an employer or an employers' organization, which should be able to appoint freely their negotiating representatives. The Government representative had been silent on this point, although he had provided some information on the working methods of the tripartite wages commissions. A number of speakers had also indicated that the provisions of international labour standards might not be so directly applicable in developing countries. In the view of the Employer members, these were issues which needed to be taken into account at the stages of the preparation and ratification of standards. The drafting process for international instruments should ensure that they were universally applicable, although this would only be achieved if developing countries played a more prominent role in the drafting process. In conclusion, the Employer members indicated that the Conference Committee had perhaps neglected this case for too long. They called upon the Government to review in full the current situation, paying particular attention to all the points raised by the Committee of Experts, which should be covered in depth in a report, to which copies of all the relevant legal provisions should be attached.

The Worker member of Bangladesh indicated that, concerning point 1 of the observation of the Committee of Experts regarding protection of workers' and employers' organizations against acts of interference by each other, on point 4 regarding the wage determination mechanism and on point 5 regarding the updating of the draft Labour Code, he supported the observations and action already taken by this Committee. On point 2 regarding the right to organize and bargain collectively in EPZs, the situation was not very clear. He had heard that draft legislation had been approved by the Cabinet for immediate enactment by Parliament thereby providing a solution to the problem. He emphasized that, if possible, consultations should take place prior to the adoption of such legislation. The workers' organizations had not been consulted about the proposed provisions. In addition, there already existed appropriate legislation – the IRO – in this regard. In order to restore collective bargaining rights to EPZ workers, all that was required was the repeal of the ban arbitrarily imposed to restrict application of the IRO to EPZs. Even if the enactment of new legislation complied with the provisions of Convention No. 98, the question of freedom of association and the right to organize in trade unions remained unresolved. He suggested that the Committee examine the text of the proposed law and recommend to the Government to proceed in a tripartite manner. On point 3 regarding the 30 per cent requirement for registration of a trade union and the requirement to have one-third of the workers as members in order to be able to negotiate at enterprise level, he requested that the Committee review its previous decision of asking the Government to lower the percentage. He pointed out that, in view of the national socio-economic context, maintaining the status quo in this regard would better serve the interests of all parties, including the workers.

The Government member of Sri Lanka welcomed the efforts taken by the Government of Bangladesh to cooperate with the ILO in the preservation and protection of labour rights in that country. He was confident of Bangladesh's commitment to its obligations under the various ILO Conventions which it had ratified. Moreover, the Government of Bangladesh had initiated the process to formulate a new legal framework to accord trade union rights to workers in the EPZs. He encouraged the Government of Bangladesh and the ILO to continue to work together to resolve all outstanding issues.

The Worker member of India expressed concern that, although the Government had ratified Convention No. 98 in 1972, it had not been implemented in law or practice. There was in fact general non-implementation of this Convention, particularly in the EPZs. In Bangladesh, whenever workers tried to form or join a union, they were dismissed for a variety of reasons or were treated in a manner that compelled them to quit. Moreover, the workers were not entitled to any social security benefits since there was no such social security in Bangladesh. Workers often received less than US$1 per day for 12 hours of work. Contractors and subcontractors employed these workers and treated them inhumanely taking advantage of their poverty and job insecurity. There were also instances where women workers were burnt to death when fires broke out in their EPZ garment factories that were locked from the outside. No inquiries, however, were conducted nor was compensation paid to the survivors. While there should be a climate for encouraging trade unions, in order to be registered, a union must have a membership of at least 30 per cent of the total number of workers in the establishment or group of establishments in which it was formed. This discouraged unionization to the satisfaction of both national and multinational enterprises. In contrast, in India, the Trade Union Act required 10 per cent of the workforce or 100 workers for union registration. However, in Bangladesh, foreign-funded NGOs had overpowered the trade unions. In conclusion, the Worker member requested that the ILO ensure that the workers of Bangladesh enjoyed the rights enshrined in Convention No. 98.

The Government member of Indonesia welcomed the sincere efforts being made by the Government of Bangladesh to establish a legal framework which accorded trade union rights to workers in EPZs. He also felt that the IRO, 1969, which did not meet with the approval of workers and employers in the country, did not contravene the Convention. Finally, he said that the commitment of the Government of Bangladesh to cooperate with the ILO and its mechanisms, as reflected in its ratification of a number of ILO Conventions, provided sufficient assurance of its seriousness in reinforcing the fundamental rights of workers in the country.

The Worker member of the United States explained that for some years the Government of his country had made available to developing countries certain trade preferences under the generalized system of preference programme (GSP). For a developing country to be able to take advantage of these trade preferences, it had to agree to meet certain conditions, including the fact of taking steps to respect internationally recognized worker rights as defined in the ILO's core labour standards. In accordance with the GSP statute, the AFL-CIO had filed a petition in 1991 requesting that Bangladesh lose its trade preferences under the GSP because freedom of association and the right to organize and collective bargaining were explicitly prohibited in EPZs in the country. Thirteen years later, after repeated promises by successive governments, these fundamental rights remained explicitly prohibited by law for workers in EPZs. In order to avoid loss of the GSP preferences, an understanding had been negotiated with the United States Government in January 2001 to recognize these rights in EPZs as of 1 January 2004, as recorded in an officially gazetted commitment. In the meantime, workers' welfare committees would be established in EPZs. However, the Government had once again decided to abandon its commitment and he understood that further negotiations had been taking place recently for another interim period of three years or more, during which time workers' welfare committees would be further developed. However, there was little evidence of any real discussions between labour and management on these committees. As the legislation drafted by the Government to meet its latest commitment for the new transition period failed to incorporate many of the understandings negotiated with the interested parties, he indicated that the AFL-CIO would renew its petition for the withdrawal of GSP benefits. As an explanation as to why the Government had bargained in bad faith for so many years, he indicated that the largest multinational company investing in EPZs in the country was from the Republic of Korea and was known to oppose freedom of association in EPZs, under threat of the withdrawal of its investment. He added that many brand-name companies purchased products made by the factories of the company concerned, even though some of them had adopted codes of conduct, thereby illustrating the difficulties of respecting workers' rights in today's globalized economy. He regretted that the workers' welfare committees, for which the ILO had provided support, appeared to be doing little to advance the right of workers in EPZs to organize and bargain collectively. He therefore called upon the Government of Bangladesh to respect its international obligations under the Convention and for the ILO to take a more aggressive role in ensuring that acceptable labour laws were adopted for EPZs which protected the rights set out in the Convention and ensured their enforcement.

The Government member of Cuba recalled Article 4 of Convention No. 98 which specified "Measures appropriate to national con-

ditions shall be taken, where necessary, to encourage and promote the 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 agreements." She considered that it was necessary to strike a balance between adequate means and the national conditions for the application of the Convention, on the one hand, and the provisions of the legislation, on the other. She noted the declaration made by the Government of the positive measures in EPZs, and reiterated her conviction that the Government would provide in its future reports on the application of the Convention updated and more comprehensive information on the measures taken to bring its legislation into conformity with the Convention.

The Government member of Pakistan said that it was a matter of satisfaction that the Government of Bangladesh was taking active steps to address the grievances of the parties concerned, as highlighted in the comments by the Committee of Experts, and was in the process of drafting a Labour Code. He expressed the firm belief that the Government would not only consider the recommendations of the social partners on the draft labour legislation, but would also remove bottlenecks and adopt laws that were in accordance with ILO Conventions. While elected workers' welfare committees were currently operating in EPZs, he expressed the strong hope that the new Labour Code would allow the establishment of trade unions in these zones and give full guarantees for the rights provided for in the Convention. He called upon the Government to enact legislation as soon as possible so that it could fulfil its obligations to the ILO.

The Government representative thanked the members of the Committee for the support expressed for the measures adopted in his country and for their other observations. He informed the Committee that wages and other conditions of employment in the public sector were determined through the recommendations of tripartite wages commissions, and therefore involved the participation of the parties concerned. Issues not covered by these recommendations were determined through collective bargaining. He also maintained that the rights of workers and employers were adequately safeguarded by the IRO, 1969. The protection provided by the Ordinance covered acts of interference by workers' and employers' organizations with each other. He added that the Labour Code that was being prepared updated existing labour legislation and had been drafted through a tripartite consultative committee. The draft legislation would guarantee many of the rights and freedoms set out in Convention No. 87. When information was available on the outcome of the negotiations on the Labour Code, it would be provided to the Committee of Experts. In response to some of the comments made during the discussion, he said that he was unable to comment on the claim that workers received wages below US$1 a day as he did not have the statistics available. He also indicated that the various rules and regulations applicable in India might not be fully adapted to the social and economic conditions in Bangladesh. In conclusion, he expressed his commitment and desire to improve the implementation of the provisions of the Convention.

The Worker members said that the Government's argument that the economic, social and cultural realities of a country and its level of economic development should be taken into account when examining the universal application of Conventions which had been discussed on numerous occasions. As the Employer members had highlighted, these discussions demonstrated that governments could never set aside the commitments they assumed when ratifying a Convention. As the Government had not shown that any progress had been made and had not expressed any interest in calling upon the technical assistance of the ILO, which had been offered in 1994, the conclusions should once again take up the conclusions reached in 1994 by the Conference Committee, which read as follows: "The Committee believed that the next report from the Government would make it possible to note real progress in the application of the Convention and, in particular, that the Government would be able to report next year on specific measures to guarantee the explicit protection of workers' organizations against measures of interference by employers in order to truly promote the voluntary application of collective bargaining agreements, in particular in small enterprises and in the public sector, and to amend the Bangladesh Export Processing Zones Authority Act, 1980, to explicitly state that workers in those zones should benefit from the rights guaranteed by Articles 1, 2 and 4 of the Convention. The Committee reminded the Government that technical assistance of the ILO could, to a great extent, contribute to helping the Government bring its legislation into conformity with the requirements of the Convention in these areas." The Worker members asked that their regrets concerning the failure to apply the Convention should be mentioned in the conclusions and that the Government should be requested to take the necessary measures as soon as possible.

The Employer members, with regard to the 30 per cent requirement for the registration of a trade union, noted the claim by the Government representative that this provision had not been contested by either of the social partners. While the Employer members believed that this might indeed reflect the actual situation, as it was a comfortable position for the organizations concerned not to have any competitors, it was not in compliance with the Convention. Competition between rival organizations needed to be tolerated and permitted. Although some interesting information had been provided during the discussion, this did not change the serious shortcomings with regard to the knowledge available on the situation in the country in relation to the application of the Convention. They emphasized the urgency of the case and requested the Government to provide a written reply containing full information on all the points raised by the Committee of Experts.

The Committee noted the statement by the Government representative and the discussion which followed. The Committee noted that the comments of the Committee of Experts related to the lack of legislative protection against acts of interference, restrictions on voluntary bargaining in the public and private sectors and the situation of workers in EPZs. The Committee noted the measures adopted to secure the representation of workers in welfare committees in EPZs. The Committee regretted to note that the Government had not provided information on its previous statement according to which these workers would enjoy the right of association as from 1 January 2004. Recalling with concern that for more than 20 years workers in EPZs had not enjoyed the rights set out in the Convention, the Committee urged the Government, in consultation with the social partners, to take the necessary measures to ensure that workers benefited in full from the rights laid down in the Convention. The Committee also expressed the firm hope that the necessary measures would be adopted in the very near future to ensure full compliance with the Convention in relation to the remaining issues raised by the Committee of Experts. The Committee requested the Government to provide detailed information in this respect on an urgent basis in its next report to the Committee of Experts so that it could be examined at its next session. The Committee recalled that the technical assistance of the Office was at the disposal of the Government.

China (Hong Kong Special Administrative Region) (notification: 1997). **A Government representative of China** asked her colleague from the Hong Kong Special Administrative Region (HKSAR) to introduce the case to the Committee. **The HKSAR Government representative** stated that note had been taken of the requests and observations of the Committee of Experts which would be kept informed of developments regarding, on the one hand, the proposed legislative amendments to the reinstatement provisions of the Employment Ordinance and, on the other hand, the promotion of voluntary and direct negotiation between employers and employees and their respective organizations. With regard to the first point raised by the Committee of Experts on protection against anti-union discrimination, she explained that the existing provisions of the Employment Ordinance already afforded adequate protection against anti-union discrimination. Section 21B of the Ordinance provided for the right of employees to trade union membership and to participate in union activities and protected employees against acts of anti-union discrimination in respect of their employment. Part VI(A) of the Ordinance accorded further protection by entitling employees to claim civil remedies, including compensation and reinstatement/re-engagement subject to mutual consent, against their employers for unreasonable and unlawful dismissals, including dismissals on the ground of anti-union discrimination.

Notwithstanding the existing legislative protection against anti-union discrimination, the HKSAR Government had undertaken a review of the reinstatement provisions. The review recommended that the reinstatement provisions should be amended to the effect that where an employee who had been found to be unreasonably and unlawfully dismissed made a claim for reinstatement/re-engagement, the Labour Tribunal might make an order of reinstatement/re-engagement without securing the consent of the employer, if the Tribunal considered such an order appropriate and reasonably practicable. Pending the resolution of a legal drafting point and further consultation with the Labour Advisory Board, things would move forward and the Committee would be kept informed of progress. As to the second issue raised by the Committee of Experts, that of collective bargaining, she reiterated the commitment of her Government to promoting voluntary and direct negotiation. As for the question of legislation, she reckoned that while legislation brought the concerned parties together for collective

bargaining, there was no guarantee whatsoever that the bargaining would lead to a mutually acceptable agreement. In the face of strong opposition from employers, compulsory collective bargaining might even result in more confrontations and rigidities in the labour relations system which might weaken Hong Kong's attractiveness to overseas investors. This would not be in the interest of the employees as their employment opportunities would be jeopardized at a time of persistently high unemployment.

In addition to this, the views of the community on compulsory collective bargaining were sharply divided and there was no consensus within the Legislative Council on the introduction of compulsory collective bargaining by legislation. This was borne out by the fact that the Council had voted down motions calling for the enactment of legislation on collective bargaining on three occasions (in December 1998, April 1999 and December 2002). She emphasized that measures appropriate to local conditions had all along been taken to promote voluntary negotiation between employers and employees and their respective organizations. In particular, the HKSAR Government had strengthened its efforts to promote partnerships between employers and employees at the enterprise level, as well as tripartite cooperation among employers, employees and the Government at the industry level. Finally, with regard to the right of public employees to engage in collective bargaining, she stated that the HKSAR Government had taken note of the request by the Committee of Experts for the implementation of necessary measures to protect the right of public employees to negotiate collectively their conditions and terms of employment. She emphasized, however, that well-established and effective machinery for consultation concerning the conditions and terms of employment of civil servants, as well as the settlement of disputes between the government and the staff side, was already in place. She added that public employees who were not directly employed by the Government, enjoyed the same right to negotiate their conditions and terms of employment as other employees in the private sector.

The Worker members recalled that the Committee of Experts had noted that Hong Kong workers were not properly protected against sanctions, including dismissal, because of their trade union activity and also that 1 per cent only of workers were covered by collective agreements. The marginal nature of collective bargaining in Hong Kong was explained by the absence of an institutional framework in this respect, the absence of an objective procedure to determine the representativeness of trade union organizations, the non-compulsory nature of negotiated conventions and, finally, the exclusion of the public sector from collective bargaining. The Worker members declared that they were not surprised that, in such circumstances, the Government had not presented any statistics on the collective agreements.

The Employer members noted that the Committee was examining this case for the first time. It was based on comments provided by the International Confederation of Free Trade Unions (ICFTU) and the Hong Kong Confederation of Trade Unions (HKCTU), alleging widespread acts of anti-union discrimination due to deficiencies in the legal regime of protection against such acts and other obstacles to collective bargaining.

With regard to anti-union discrimination, the Government had reported that a draft amendment Bill was under preparation that would empower the Labour Tribunal to make an order of reinstatement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent. The Labour Advisory Board had endorsed this approach. Hence, it seemed that all parties concerned were satisfied. Therefore, the Employer members could only endorse the Committee of Expert's request that the Government provide information on developments in this respect.

According to the ICFTU, less than 1 per cent of the workforce was covered by collective agreements, which, moreover, were not legally binding; the ICFTU had also commented on the absence of an institutional framework for union recognition and collective bargaining, including in the public sector, where unions mainly served as pressure groups and advisers. In this respect, the Employer members noted that the Committee of Experts and the Committee on Freedom of Association had recommended the adoption of laws. However, the Legislative Council had voted down a motion calling for the enactment of legislation on collective bargaining. A few collective agreements had nevertheless been concluded in certain sectors and the Labour Department had taken measures to encourage and promote voluntary and direct negotiation between employers and employees or their respective organizations at the enterprise level. In addition, the objective of the Government's policy was to promote tripartite dialogue. The Employer members stated that there might be a number of reasons why only a small part of the workforce was covered by collective agreements, one of which might be insufficient promotion of collective bargaining by the Government. As regards the legal nature of collective agreements, the Employer members noted that, while in some countries collective agreements were contracts, they merely constituted gentlemen's agreements in others. They emphasized that this was not regulated by the Convention. The Committee should therefore request the Government to provide in its next report information on the measures taken to promote collective bargaining. With regard to the public sector, it was indisputable that this sector could not be excluded from collective bargaining as a whole. Restrictions were possible where workers were directly concerned with the administration of the State. Since the Convention provided leeway for different national solutions, the question was where to draw the line. The Government should therefore be requested to establish appropriate criteria to establish such restrictions in the exercise of collective bargaining. The Government should indicate the manner in which the conditions and terms of employment of public servants who were excluded from collective bargaining because they were engaged in the administration of the State were determined.

The Worker member of Italy stated that as far as Article 1 of Convention No. 98 was concerned, the Government had indicated that it would draft an amendment Bill on unfair dismissal that would empower the Labour Tribunal to reinstate an employee without the consent of an employer. The Government had informed the HKCTU that the Bill was still in preparation, but had failed to provide a specific date for its completion. Regarding Article 4, the reality of the Special Administrative Region was that there was less than 1 per cent of the workforce covered by collective bargaining rights, including the public sector workers, who should be given the ability to negotiate an improvement in working conditions. It was not up to the Government to determine if there was a need for collective bargaining.

The Government had taken none of the steps recommended by the Committee of Experts to encourage voluntary collective bargaining, nor had it set up machinery to regulate such bargaining. The Government had still not published statistics on CBAs and therefore it was assumed that the percentage of the workforce covered by CBAs remained at less than 1 per cent. She asked the Government to take all steps, both practical and legal, to implement the provisions of Convention No. 98 and to promote such action both in the public and private sectors.

She declared that the HKCTU regarded the tripartite committees that the Government had established in some sectors to be ineffective and sometimes harmful. They did not constitute a genuine bargaining process and had done damage to employment conditions of individual workers. In 2001, a senior representative of the Hong Kong Container Truck Drivers' Trade Union had represented his union on one such committee. His employer had also been on the committee and sacked the official after the meeting as punishment for his membership in the union. The Government had not contemplated establishing bipartite bargaining committees. She said that the Government's policy of encouraging outsourcing and early retirement schemes in the Civil Service had had the opposite effect of that recommended by the Committee of Experts, namely to guarantee the right of civil service employees not engaged in the administration of the State to negotiate collectively their terms and conditions of employment.

The HKSAR Government representative stated that, as already explained during her initial statement, legislative and administrative measures appropriate to local conditions, as required by Article 4 of Convention No. 98, had been taken in Hong Kong. Employers and employees were free to bargain and enter into collective agreements on the terms and conditions of employment. The Government had made sustained efforts to promote voluntary negotiation between employers and employees and their respective organizations. At the enterprise level, the Labour Department provided a comprehensive range of services to encourage employers to enter into direct and ongoing negotiations with their employees and employees' unions on employment issues. At the industry level, the Labour Department promoted tripartite dialogue through the setting up of industry-based tripartite committees to discuss industry-specific issues. She added that, in 2004, the Labour Department would continue to strengthen its activities for the promotion of tripartite cooperation between employers, employees and the Government at the industry level.

While noting that the Committee of Experts considered that tripartite committees did not constitute negotiating bodies within the meaning of Article 4 of the Convention, she stressed that such committees aimed to foster an environment conducive to collective bargaining. Efforts undertaken in this framework included, for instance, the recent expansion of the Tripartite Committee on Warehouse and Cargo Transport Industry into the new Tripartite

Committee on Logistics Industry so as to follow the latest economic developments. She emphasized that the Labour Department would continue to facilitate employer and employee representatives of the tripartite committees to develop industry-specific good human resources management practices, and prepare guidebooks of special interest to individual industries. In 2004, efforts would target at promoting "Partnership between employers and employees at work", as this spirit of partnership was crucial to the success of effective communication and cooperation between employers and employees. To inculcate this partnership spirit in the community, a new television announcement of public interest (API) on "Success through partnership" had been recently launched, seeking to drive home the message that mutual cooperation and unity would enable employers and employees to join hands in overcoming adversities and exploring new horizons. In the latter part of 2004, the fourth Good People Management Award would be organized to recognize the achievements of employers in good people management and promote the importance of workplace partnership.

She finally stated that there was no mandatory requirement to report collective agreements to the authorities as employers and employees were free to negotiate and enter into such agreements voluntarily. Thus, her Government was unable to provide statistics on the number of collective agreements in force as well as the number of workers and industries covered by such agreements.

The Worker members were of the opinion that the explanations and other points raised by the Government only confirmed the Committee of Experts' well-founded comments. If protection of workers' trade union activities was adequate there would be no need to revise the legislation so that a court could order the reintegration of workers who had been unjustly dismissed. The Worker members believed that the Government was demonstrating its bad faith when it claimed that it favoured genuine negotiations and that the Labour Department would facilitate negotiations with certain enterprises. The workers considered that the Government revealed the real situation when it spoke of "tripartite consultative committees" instead of a normal bilateral negotiation framework and of an independent commission of inquiry in the public sector, which would formulate "compulsory recommendations". The Government had also revealed that the Hong Kong Legislative Council had once again voted at the end of 2002 against a motion requesting legislation on collective bargaining and that the Government had shown no willingness to introduce such legislation. The Worker members, therefore, requested a direct contacts mission to promote the adoption of legislation on four points: an institutional framework for collective bargaining; an objective procedure to determine union representativeness; a legal framework for the application of negotiated collective agreements; and the introduction of collective bargaining in the public sector.

The Employer members stated that the ongoing work on draft legislation, which aimed to improve protection from unlawful dismissal, had not been considered by the Committee of Experts as an indication that problems existed in the area of protection against anti-union discrimination.

The Committee took note of the statement made by the Government representative and the discussion that followed. The Committee noted that the comments of the Committee of Experts referred to deficiencies in the legal regime of protection against anti-union discrimination and the absence of an institutional framework for trade union recognition and collective bargaining. The Committee took note of the Government's statement that it was in the process of examining measures to guarantee a better application of the Convention, in particular with regard to the promotion of collective bargaining. The Committee expressed the firm hope that measures would be taken without delay to guarantee the full implementation of the Convention and requested the Government to communicate detailed information in this respect in its next report to the Committee of Experts, in particular, on the measures adopted to promote collective bargaining.

The Worker members expressed regret at the fact that the Employer members had not accepted their proposal for a direct contacts mission. They stated that if no changes were observed next year, they would have to make the same proposal more insistently, noting that in their view, this case constituted a particularly flagrant violation of the Convention.

Costa Rica (ratification: 1960). **A Government representative** (Minister of Labour and Social Security) expressed concern at the process that had been followed for the selection of the countries included in the list of individual cases to be examined by the Conference Committee. In his view, this process disregarded the efforts that had been made by his Government to resolve the situation that was currently under examination, as well as the work of the ILO's Subregional Office for Central America, which had provided technical and financial assistance, and the cooperation of the United States and Canada. He referred to an agreement concluded with Canada in 2002 which focused on compliance with and improvement of the ILO's fundamental principles and rights at work. Within this framework, programmes were being carried out to strengthen the labour administration and he said that efforts should be united to banish any trace of precariousness in labour relations. He expressed the entire disposition and willingness of the Government to resolve the problems raised by the Committee of Experts, which had noted the efforts made by the Government, many of them based on tripartite collaboration and the assistance of the ILO. He stated that all the specific situations referred to by the Committee of Experts relating to the slowness of recourse procedures, the judicial practices for the submission of collective bargaining in the public sector to criteria of proportionality and rationality, and also the collective bargaining in the private sector, had been carefully noted by the government authorities. With regard to the slowness of recourse procedures, he indicated that the executive authorities had submitted a series of legislative reform proposals to Parliament, which had been noted by the Committee of Experts, including in particular Bill No. 14676, which was intended to extend the legal protection of unionized workers and workers' representatives and to establish a procedure to be observed by all employers prior to justified dismissals, as well as a rapid judicial procedure to which trade union members and leaders could have recourse in the event of dismissal for trade union reasons. He added that the Ministry of Labour and Social Security had established alternative means of dispute resolution through an administrative procedure, in addition to the judicial procedures that already existed, through the incorporation into its structure of the Alternative Labour Dispute Settlement Centre (RAC). This form of dispute settlement constituted a regional model and in 2003 RELACENTRO had undertaken a campaign to disseminate the methodology used by the RAC. A significant group of the Centre's collaborators had been trained in conciliation methods and techniques, as had labour inspectors and officials responsible for administrative labour conciliation machinery. In this way, it had been possible to achieve a positive outcome in 79 per cent of the cases submitted to this procedure, which had relieved the judicial bodies of their workload.

The speaker further noted the draft reform of the Labour Code, the judicial policies for conciliation and the organization of a seminar for judges on international standards and their impact on national law, held in 2003 in collaboration with the ILO. Various circumstances, including the slowness in the approval of the draft legislation, which was of an innovative nature, had prevented more rapid progress than the Government had wished to achieve. With reference to the issue raised by the Committee of Experts concerning the restrictions on collective bargaining in the public sector as a result of various court rulings and the subjection of collective bargaining in the public sector to criteria of proportionality and rationality, he observed that it was necessary to bear in mind that his country was a democratic State with a division between the three branches. For example, the fact that the draft legislation had not been adopted was not indicative of a lack of willingness, but of the failure to achieve unanimity in the plenary Legislative Assembly, which was the competent authority for the adoption of legislation, and he emphasized that this formed part of democratic rules. The executive authorities had submitted various pieces of draft legislation to the Legislative Assembly which responded to the comments of the Committee of Experts, including those which related to the approval of Conventions Nos. 151 and 154, the amendment of article 192 of the Constitution, the legislation concerning collective bargaining in the public sector, and the amendment of section 112 of the General Public Administration Act. He indicated that awareness-raising efforts had been undertaken, directed among others at the legislative authorities, with the assistance in March 2003 of an ILO specialist, and that even the employers no longer raised objections to the ratification of Conventions Nos. 151 and 154. Awareness-raising efforts had also been undertaken in relation to the judicial authorities through the presentation of a study defending collective bargaining in the public sector, which had been prepared with the assistance of various workers' organizations, although the executive authorities had not been able to exert pressure on the legislative and judicial branches. He recalled that, under the protection afforded by Decree No. 29576-MTSS of 31 May 2000 on collective bargaining in the public sector, which had been revised by ILO specialists, collective bargaining was being undertaken throughout the public sector. He emphasized that there were no longer obstacles to collective bargaining in the public sector, as indicated by the Office of the Attorney-General of the Republic, and that the institution of collective agreements was not endangered in Costa Rica. At the present time, the topic of discussion in his country was whether a number of clauses should be declared void which the

People's Ombudsman and an opposition political party considered to be abusive.

Turning to collective bargaining in the private sector, the speaker hoped that a response would be given to the request for technical assistance made to the ILO's Subregional Office for Central America. He indicated that direct negotiation and collective agreements could be freely chosen by the parties concerned, but that collective bargaining benefited from privileged protection. He referred in this respect to the Administrative Instruction of 4 May 1991 on the treatment to be reserved for direct accords submitted when collective bargaining had previously been requested, which had to be complied with by the National Inspectorate when accords were submitted to it for registration. He expressed the hope that the Conference Committee would appreciate the efforts made and said that his Government undertook to continue working along the same lines and to achieve the adoption of the draft legislation referred to above.

The Employer members referred, in the first place, to the slowness and ineffectiveness of the recourse procedures available for anti-union acts. They noted the most recent measures outlined by the Government representative and recalled the importance of such measures being adopted in agreement with the social partners. The Government representative had also provided detailed information concerning further measures relating to the settlement of disputes and cooperation with the ILO, which should be welcomed as a positive indication that the case was moving along the right lines. The second issue concerned the restriction of collective bargaining in the public sector. However, the comments of the Committee of Experts in this respect were very cautious, merely indicating that there was good reason to believe that workers in the public sector were excluded from collective bargaining. These comments indicated that the legal situation was not clear. The Employer members further noted the reference by the Committee of Experts to a recent decree which granted public servants the right to collective bargaining, and which appeared to constitute substantial progress, as well as the uncertainty regarding the legal situation of a large number of agreements in the public sector and their recognition under the terms of the Constitution. While it was difficult at the present time to take into consideration all of the additional information provided by the Government representative, greater clarity should be provided by legal rulings that were currently expected, including one that was before Parliament. The fact that there was broad support within Parliament for the rapid adoption of legislative measures showed that there was serious intention to introduce changes in the law.

Turning to the individual case referred to by the Committee of Experts in which the Constitutional Chamber had declared unconstitutional certain clauses of a collective agreement on grounds, in particular, of lack of proportionality and rationality, the Employer members expressed a certain surprise at the insistence by the Committee of Experts that clauses of agreements could only be struck down on grounds of procedural flaws or non-compliance with minimum legal standards. They pointed out that the views expressed by the Committee of Experts on this matter were based on the text of the Convention and it was therefore for the Government to decide the extent to which it would follow the advice of the Committee of Experts. Moreover, they indicated that principles of proportionality and equality, which were enshrined in the Constitution of Costa Rica as in many other countries, were binding upon the parties to collective agreements. On the issue raised by the Committee of Experts concerning the high number of direct accords concluded by non-unionized workers in the private sector, in comparison to the number of collective agreements concluded by trade union organizations, the Employer members could understand that the trade unions were not pleased with the situation. However, this did not mean that the situation was in violation of the Convention, which required the promotion of voluntary collective bargaining, and did not require the Government to either limit or prohibit direct negotiations in any way. The Convention did not limit the ability to contract freely. In this case, as in all other areas in democratic societies, competition was at work and there were undoubtedly good reasons for employers to wish to conclude accords with workers. The Employer members suggested that the trade unions could, following a suggestion made by the Committee of Experts, by examining the reasons for the rise in the number of direct accords, identify ways in which workers' organizations could become more attractive to employers. It was nevertheless to be hoped that the situation would change in Costa Rica and that tripartite collective bargaining would take on greater importance. In conclusion, in view of the readiness that had been shown for dialogue, and the positive measures noted by the Committee of Experts, the Employer members believed that the information supplied during the discussion provided sufficient material for further examination of the case by the Committee of Experts.

The Worker members thanked the Minister of Labour and Social Security for the information that he had provided. It was not the first time that the Conference Committee had examined this case of the violation of the Convention by Costa Rica. In fact, the Committee had examined this case in 1999, 2001 and 2002. Since 1999, the Committee of Experts had made four observations in which the main questions related to the following points: (1) the recourse procedures in the event of anti-union acts; (2) restrictions on the right to collective bargaining in the public sector; (3) subjecting collective bargaining in the public sector to criteria of proportionality and rationality, and (4) the difficulties relating to collective bargaining in the private sector. With regard to the recourse procedures for anti-union acts, the Committee of Experts had reiterated its question from 2002 and expressed the firm hope that the Bill in question would be adopted in the near future. Needless to say, promises were renewed each year but there was no action. As emphasized by the Committee of Experts, this case was therefore more serious bearing in mind the importance of the problem of the slowness of judicial procedures in cases of acts of anti-union discrimination. With regard to the restrictions on the right to collective bargaining in the public sector, the Government had indicated in 2002 that, following the technical assistance mission, a Bill would be introduced. Nevertheless, in its observation, the Committee of Experts recalled that the Convention only allowed for the exclusion from its scope of application of public servants engaged in the administration of the State (Article 6 of the Convention), expressed the firm hope that the draft texts referred to by the Government would be adopted in the very near future, and requested the Government to keep it informed in this respect. Yet, in 1999, the Committee of Experts had regretted that, despite being a fundamental right, there had been no significant developments for many years with regard to the right of public servants who were not engaged in the administration of the State to bargain collectively to determine their terms and conditions of work through collective contracts or agreements. Under these conditions, the Committee of Experts had expressed the firm hope that the legislation on this matter would be adopted in the near future. The Government was hiding behind the inertia of the Legislative Assembly. This manoeuvre could be justified for one year, perhaps two, but this situation had gone on for over five years.

With respect to subjecting collective bargaining in the public sector to criteria of proportionality and rationality, this constituted a serious violation of the Convention with regard to a principle that was easy to understand and even easier to implement, namely non-interference in collective bargaining. The Government should not interfere with the negotiations either directly or by a decision of the Constitutional Chamber, as was presently the case with the agreements concluded with the public oil refinery RECOPE. In 2002, the Worker members had shared the opinion of the Committee of Experts when it emphasized that the ruling in question could have had very prejudicial effects on the autonomy of the parties and could devalue collective bargaining itself. The Committee of Experts had reiterated its conclusions. Finally, with respect to the difficulties relating to collective bargaining in the private sector, the Committee of Experts had once again emphasized that the ILO's instruments envisaged direct negotiation between employers' and workers' representatives only in the absence of trade union organizations. The Committee of Experts had also pointed out that the Convention advocated encouraging and promoting negotiation with workers' organizations by means of collective agreements. How should the examination of the case of violations of the Convention by Costa Rica be summarized? On the four points raised, the Committee of Experts had reiterated questions to the Government. How were the Government's efforts to be judged? If it was not a case of political bad faith, it was an instance of institutional negligence, the consequences of which were extremely grave for workers and the general climate between the social partners in Costa Rica. It was a case of a flagrant violation of the Convention, which was as fundamental as Convention No. 87. In 2001, a technical assistance mission had visited the country, although without real success. Now a direct contacts mission would be necessary. The question was nevertheless whether the Minister of Labour and Social Security would accept such a mission.

The Worker member of Costa Rica stated that the Conference Committee had been examining this case for many years and that there were recurrent aspects, such as the confusion, uncertainty and legal insecurity existing in the country on this matter. The limitations in the private sector, and particularly the absence of the freedom to establish trade unions, had already been discussed. There was total confrontation in the public sector, where the Convention was violated. The numbers of those in the country benefiting from collective agreements amounted to a mere 3 per cent of the workforce. While recognizing the efforts made by the Ministry of

Labour, he emphasized that they were insufficient because the problem was structural. He added that the right of organization and of collective bargaining were the subject of ferocious attacks by the authorities and other political and social actors. Both the legislative branch and the Office of the Attorney-General of the Republic, the executive and judicial authorities had developed their strategies to combat these rights. He noted, for example, that none of the undertakings made by the Government to the Conference Committee had been fulfilled. None of the draft legislation referred to by the Government had been adopted by the plenary Legislative Assembly despite the power of the executive authorities to include them on the legislative agenda. The Office of the Attorney-General refused to approve resources for institutions which enjoyed the benefits achieved through negotiation and the financial authorities had issued a Decree to prevent the payment of legal benefits in excess of those set forth in the Labour Code. All of the collective agreements in the public sector, which were few in number, had been found to be flawed by the Constitutional Court. There were enterprises, such as JAPDEVA, which denied leave for trade union purposes, even though the agreements in question had not been found to be unconstitutional. He said that the workers were very fearful because the Constitutional Chamber had not rejected any of these measures and the trend was to call into question anything which went beyond the statutory minimum and was the product of negotiation.

The Employer member of Costa Rica emphasized that many efforts had been made in relation to the Legislative Assembly and the judicial authorities to resolve the problems raised previously. He recalled that article 19(3) of the ILO Constitution provided for the need to take into account different or special circumstances of member States, which he considered to be fundamental for a representative and complex democracy, such as Costa Rica. He was of the view that trade unionists often complained that there was insufficient space for collective bargaining in both the public and private sectors, but were unable to recognize their own errors. He added that the country had abused collective bargaining in the public sector, which had sent negative signals to employers. He gave the example of a trade unionist in the public sector, who had written an article in the newspaper La Extra at the end of 2002 on collective agreements and who had noted that the collective agreements had a negative image among citizens. When abuses were made public, trade union leaders failed to address the situation and refused to give explanations. When such situations arose, the trade union movement as a whole was called into question. This issue had generated much debate in the various political streams that were represented in the Congress of the Republic.

He considered that the main point at issue was to develop better sectoral relations, and that the social partners should not distance themselves from each other. He was of the view that trade unionism, like democracy, achieved its value through action and should be subjected to a far-reaching revision of its principles so that it could be converted into an alliance of productive sectors which would also be concerned with poverty reduction and job creation. He added that many of the issues raised by the Committee of Experts were the subject of extensive debate, which was slowing down the legislative process in Costa Rica. He indicated that employers had sent a note to the Legislative Assembly calling upon it to approve the ratification of Conventions Nos. 151 and 154. Finally, he emphasized that it was fundamental to safeguard international institutions such as the ILO, which were so valuable to the international community. He expressed his concern at the number of times the word "transparency" had been used in the debate on the report of the Committee of Experts. He concluded by stating that it was necessary to seek firm criteria and achieve a good balance before adding a country to the list of individual cases so that the ILO could provide the necessary assistance to those countries which really needed it. He considered that the case of Costa Rica should not have been discussed in this context.

The Worker member of Norway recalled that violations of labour rights had been continuing in Costa Rica for a long time. The country was well known as the birth place of "solidarism", the system by which trade unions were replaced by associations of workers which did not have the right to collective bargaining. In the beginning, these associations were established by employers who provided their members with extra benefits, such as insurance, subsidized goods and, in some cases, higher wages than unionized workers. At the same time, union activists were harassed and, once the union had been destroyed, the employers were free to deal with the workers as they wished. She said that this was a very effective method of avoiding social dialogue. There were currently only 13 collective agreements in the private sector in Costa Rica and there was even a proposal before the Supreme Court to cancel all collective agreements. She explained that some business interests in Costa Rica viewed collective agreements as being preferential, as they accorded workers better benefits than those in enterprises which were not organized. The preferential clauses included wages and time off work to carry out union activities. In a flagrant violation of the Convention, the Office of the Attorney-General had even proposed that negotiated agreements in the petroleum sector be declared illegal. In conclusion, she said that the good intentions of the Government and the desire to retain a clear division between the judicial, legislative and executive branches could not be used as an excuse for accepting violations of fundamental labour rights. The judicial authorities needed to be made aware of the country's obligation to comply with the Convention.

The Worker member of the United States recalled that the Conference Committee had for many years been calling upon Costa Rica to bring its law and practice for both the public and private sectors into conformity with the Convention, but on each occasion the promises had not been fulfilled. While welcoming the legislative proposals and amendments pending before the Legislative Assembly and the petitions made by the Ministry of Labour to the Constitutional Chamber of the Supreme Court of Justice to resolve the country's failure to comply with the Convention, he recalled that the necessary action depended upon the cooperation and good faith of all three branches, which had been lacking for the past 15 years. The division of powers between the three branches was no excuse for failure to comply with the country's international obligations. Despite a decree adopted in 2001, which supposedly excluded only the highest ranking public servants from the scope of collective bargaining and, despite the claims by the Minister concerning the existence of de facto collective bargaining in the public service, the highest judicial authority had ruled that all public employees with statutory employment status were denied the guarantees of the Convention under the terms of article 192 of the Constitution. Although, as it had also promised to do in 1992, the Executive Branch had submitted proposals to the National Assembly for the ratification of Conventions Nos. 151 and 154, the Constitutional Chamber had declared it practically impossible to approve these Conventions in view of the restrictions imposed upon collective bargaining in the public sector under the terms of articles 191 and 192 of the Constitution. The Constitutional Chamber had also committed a flagrant violation of the Convention by invalidating various benefits agreed to through collective bargaining with public enterprises, while the appeals for reconsideration made by the Executive Branch had been found to be time barred.

With regard to the private sector, the delays and ineffectiveness of measures to remedy anti-union dismissals, combined with the legal recognition of direct accords between employers and groups of individual employees, had completely undermined the rights of workers in the country to organize and participate in collective bargaining. It was therefore no wonder that the organization rate in the private sector was extremely low. Although the Government was proposing yet another comprehensive Bill to remedy the crisis of anti-union reprisals, this was likely to be undermined by its failure to make a true concerted effort to press the matter in the Legislative Assembly. The continued and very serious failure to comply with the Convention was of grave concern to the trade unions of the countries covered by the proposed United States-Central American Free Trade Agreement, which did not call for compliance with ILO standards, but only with existing national labour legislation. In view of the failure to give effect to the good intentions that were signalled, the Committee should make a strong call for the most effective measures possible.

The Government member of the Dominican Republic was satisfied with the efforts made and by the progress achieved in application of the Convention. He stressed that the Government of Costa Rica maintained permanent dialogue through collective bargaining and had drafted laws to amend and improve trade union rights in the country and to strengthen the Labour Inspectorate. He emphasized the part played by Costa Rica in the implementation of the Social Dialogue Agenda for the subregion, held in the Dominican Republic. The speaker trusted that progress would be made regarding the judiciary and remained convinced of the Government's willingness to negotiate collective agreements within the legal framework.

The Government member of Nicaragua declared that the Government of Costa Rica had clearly indicated that many of the comments made by the Committee of Experts had been implemented, resulting in better protection and security for the exercise of the fundamental rights of association and collective bargaining. She added that there were sufficient precedents to demonstrate the Government's good will, as was noted by the Employer members, to respond to the requests from the ILO supervisory bodies. She stressed the Government's willingness to ensure full collective bargaining rights in accordance with the spirit of the Convention. The

Committee of Experts had noted with interest on previous occasions progress as to the number of workers required to establish a trade union being reduced to 12. She recalled that between 1991 and 2001, there had also been progress made, not only with respect to this Convention, but also with respect to Conventions Nos. 87 and 135. The speaker expressed the hope that the progress made would be taken into account. The Government of Costa Rica was moving in the right direction and was making all possible efforts to find its place in a globalized world.

The Government member of Mexico was grateful for the statement made by the Minister of Labour of Costa Rica and praised the efforts made by the Government to comply with Conventions Nos. 151 and 154, as requested by the Committee of Experts. She expressed the hope that the conclusions would adequately reflect the political will of the Government of Costa Rica to adapt and improve workers' protection, to apply the laws that guaranteed full enjoyment of the right to collective bargaining and to address the issues arising from the slowness of judicial procedures.

The Government member of Honduras emphasized the progress made by the Government of Costa Rica as regards ensuring the application of rights at work and the core Conventions as well as respect for the promotion of good industrial relations having regard to the social situation of the country. She also recognized the information and awareness-raising activities carried out on collective bargaining and conflict resolution. In this respect, she commended the progress made by the labour administration thanks to the creation of the Labour Dispute Settlement Centre, which was a model for the region and which would reduce legal delays.

The Government member of El Salvador recognized the efforts made by the Government of Costa Rica at the legislative level with the aim of improving freedom of association and collective bargaining.

The Government representative noted that collective bargaining and the conclusion of collective agreements in the pubic sector were allowed by decree while the draft Bill had not yet been approved. The high ranking civil servants were the only ones excluded because their inclusion in the past had given rise to a vote in the Constitutional Chamber which had considered void certain clauses of a collective agreement for abuse of rights. The Constitutional Chamber had not cancelled agreements but only certain provisions which it had considered abusive. In these conditions, the Government indicated that it joined the trade unions in opposing this interference of the judicial power in trade union matters. The speaker added that the effective presentation of Conventions Nos. 151 and 154 to the Legislature for ratification had just taken place in 2002 since the presentation made by a Member of Parliament in 1983 had been considered void.

The speaker recognized the existing problems in his country and expressed the Government's will to solve them in agreement with the trade unions. To this end, the relevant legal initiatives had been brought before the Legislature in conformity with the ILO's recommendations. He also noted that many meetings were carried out with the judicial and legislative branch so that they abstained in the future from cancelling collective agreement clauses. He emphasized that the validity of freedom of association and collective bargaining was not questioned in Costa Rica and that the parliamentary procedures like those of all democratic systems were slow but functioned. Freedom of association and collective bargaining were fundamental rights, acquired and consolidated for all workers in Costa Rica. The speaker acknowledged the existence of two pending matters. First, the lack of willingness of a group of opposition members in Parliament to approve Conventions Nos. 151 and 154 as well as the draft bills which would allow a consolidation of workers' rights. Second, the need to avoid in the future that the Constitutional Chamber cancelled collective agreement clauses that it considered abusive. This required a wide and serious discussion and, to this end, he proposed that a dialogue process be initiated within the ILO with the participation of the legislative and judicial authorities as well as the Ombudsperson, with the objective of finding a solution to the problems raised in accordance with the Costa Rican realities and in conformity with the fundamental ILO principles.

The Employer members recalled that the issue of restrictions on the right to collective bargaining in the public sector was of particular importance. However, the Committee of Experts had noted substantial improvements through the adoption of a Government Decree on regulations for the negotiation of collective agreements in the public sector under which only public servants of the highest level were excluded from the right to collective bargaining. The Government should take measures in respect of those public servants, who were still excluded. With regard to the legal status of collective agreements, the Convention did not prohibit supremacy of the Constitution or legislation over such agreements. As far as the private sector was concerned, the Employer members recalled that the Convention did not prohibit direct accords concluded between employers and non-unionized workers. However, they recognized that the Convention promoted measures to encourage negotiations with workers' organizations, rather than direct negotiations between employers and workers. In conclusion, the Employer members noted from the statement of the Minister that the Government was prepared to continue the dialogue. However, this dialogue had to be held in the country and not in the Conference Committee. They expressed the hope that the Committee of Experts would soon be able to note progress in this matter.

The Worker members stated that, if the issues raised by the different speakers were really constitutional problems, the solution would not be found, as in 2001, in a technical mission, but rather in a direct contacts mission, as it was important to promote genuine dialogue in the country itself. Finally, they reiterated that, as far as they were concerned, the case still constituted a continued failure to apply the Convention.

The Committee took note of the oral information provided by the Minister of Labour and Social Security and the discussion that followed. The Committee noted with concern that the problems pending for many years related to the ineffectiveness of the protection against anti-union acts, restrictions on the right to collective bargaining in the public sector and questions relative to collective bargaining in the private sector (the proportion between collective agreements and direct accords with the workers). The Committee noted that these questions had been submitted to the national tripartite commission and that the Government had requested technical assistance from the ILO Subregional Office for Central America. The Committee noted that the Government agreed on the changes requested by the Committee of Experts. The Committee noted the information provided by the Government in relation to various draft substantive and procedural laws and other measures and steps on all the pending problems, as well as the alternative system for the resolution of conflicts which had been recently implemented. The Committee requested the Government to take concrete measures urgently both in law and in practice to guarantee the full application of the Convention and firmly hoped that progress could be observed in the very near future with regard to all the important problems raised. The Committee noted that the Government representative had requested the establishment of a dialogue process at the ILO headquarters with the participation of the legislative and judicial authorities as well as the Ombudsman, in order to find a solution to the problems through dialogue with the ILO experts and civil servants. The Committee requested the Government to send a complete report to the Committee of Experts. The Committee expressed the hope that this process of social dialogue would facilitate the solution to the questions raised by the Committee of Experts.

The Worker members believed that the conclusions adopted were too weak, given the situation. During the discussion, promises had been made, while the facts – which were complex – had not been sufficiently clarified. The Worker members regretted that a direct contacts mission had not been accepted and remained sceptical about the idea of a dialogue process in Geneva to attempt to resolve the issues outlined.

Iceland (ratification: 1952). **A Government representative** indicated that the labour market system in his country had been developed in cooperation with the social partners over many decades. The present legislation and collective bargaining system had also been built on agreements between the social partners and the Government. Indeed, his Government had always emphasized the need for close consultations with the social partners when amending or adopting legislation relating to the labour market. The social partners benefited from good access to the Government and the Minister of Social Affairs had commenced regular consultation meetings with them. It was the Government's position that it was solely for the social partners to negotiate wages and terms of collective agreements in a free system of collective bargaining, without the interference of the State. The system of collective bargaining was based on the Trade Unions and Industrial Disputes Act, which had been amended on numerous occasions in close consultation with the social partners. The 1996 amendments to the Act had taken duly into account the criticisms made at that time by the Committee of Experts. The social partners could also refer collective disputes to a Mediation and Conciliation Officer who, under certain conditions, could propose a compromise solution when all attempts at reconciliation had been exhausted. In 2000, and again this year, when many of the collective agreements in the private sector expired, the social partners had referred many of the cases to the Mediation and Conciliation Officer.

His Government did not therefore agree with the Committee on Freedom of Association or the Committee of Experts that the

collective bargaining machinery in Iceland was unsatisfactory and needed to be changed. Although not perfect, there was general consensus that it had served the labour market very well. It was unfortunate that the social partners in a specific sector had been unable to conclude a collective agreement through the system, but he considered it unlikely that amending the system as a whole would make a significant difference. Instead, he encouraged the social partners in the vital fishing sector to consider the special characteristics of their disputes which made it more difficult for them to conclude collective agreements than in other sectors. The Ministries of Social Affairs and of Fisheries would welcome consultations on this subject.

With reference to the industrial dispute in 2001, he pointed out that the negotiations between the parties had begun in December 1999. Following long and exhausting negotiations, including numerous meetings with the Mediation and Conciliation Officer, a strike had been called on 15 March. The strike was then postponed by legislation until 1 April. The strike then resumed and went on for many weeks. Unlike the case in 1998, in which the wages of fishermen had been determined by legislation based on a compromise proposal by the Mediation and Conciliation Officer, the gulf between the parties had been so great in 2001 that no compromise proposal seemed possible. Following a strike of six weeks, accompanied by a lockout, the Government had come to the conclusion that it was an urgent necessity to bring both the strike and the lockout to an end through the provision for a reasonable and fair solution. In the Government's view, if no measures had been taken, the damage resulting to the country's economy would have created a huge and lasting burden.

The speaker provided the Conference Committee with extensive information on the importance of fisheries for the Icelandic economy. The fishing industry accounted for over 60 per cent of exports of merchandise and 40 per cent of exports of goods and services combined. The fishing industry, which consisted of both fishing and fish processing, was located throughout the island, but particularly in sparsely populated areas, where many small towns and villages depended largely on the industry. The sector also accounted for a broad range of indirect employment, with the result that most people in the villages concerned depended on the sector in one way or another. Exports of fish, and particularly cod, were also important for employment in many other countries and Icelandic exporters had earned a reputation for high quality and reliability in the sophisticated and delicate process of providing cod from the rich but difficult fishing grounds around the country. The failure to honour commitments would harm business relationships. Moreover, while cod could basically be caught all year round, a number of species could only be caught at certain times of the year. For these species, the loss of a fishing season would be a very serious setback to hard-won markets, and would also have serious implications for the remuneration of fishermen and the economy as a whole. When the strike resumed on 1 April 2001, its effects became increasingly painful and markets were severely damaged. As the strike progressed into May, important seasonal fisheries were jeopardized, with the prospect of the loss of important catches for a full year. This meant that, not only was the Icelandic share of these stocks left for other nations, but the failure of Icelandic vessels to catch their negotiated share of migratory stocks increased the risk of claims by other nations, which could have had consequences, in terms of reduced quotas, for years to come. After six weeks, the strike was therefore beginning to have a significant detrimental macroeconomic impact, and severely affecting sensitive regions, particularly villages.

Although aware of the importance of the principle of the freedom of collective bargaining without interference by the State, such a long strike was greater than the Icelandic economy could bear. The Government had therefore reached the view that the dispute had become deadlocked and that there was no foreseeable end in sight. Further efforts were made to give the parties concerned opportunities to agree upon a new collective agreement, after which a court of arbitration established by legislation, following further mediation efforts, decided upon a collective agreement covering a period of 18 months. It should also be noted that a small number of trade unions were not on strike and some organizations of shipowners had not imposed a lockout. These parties were not bound by the Act and concluded a collective agreement, in which they agreed voluntarily to the terms laid down by the court of arbitration. The decision had now expired and the parties were free to negotiate a new collective agreement. It was therefore strongly hoped that the parties would fulfil their declared intention of negotiating a mutually acceptable agreement. In conclusion, he emphasized that his Government was willing to do its best to facilitate a settlement, as it had in the past. Actions such as those of 2001 were only taken by his Government in a situation of true national emergency.

The Employer members expressed appreciation for the information provided by the Government representative and indicated that it was sometimes necessary to explain the economic reasons for measures that were taken. They also appreciated that this case arose out of the complex nature of collective bargaining in Iceland. They recalled that the case concerned Article 4 of the Convention, which provided that "measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the 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 agreements." Moreover, the description of the facts by the Committee of Experts in the present case was somewhat summary. It was therefore necessary to refer to the decisions of the Committee on Freedom of Association and previous general surveys to shed more light on the situation. The circumstances relating to the collective bargaining situation in Iceland were not those commonly found in most other countries. Bargaining was not straightforward. Wages were determined on the basis of a sharing system based on the price of fish. Three different categories of workers were represented by three unions in a very comprehensive bargaining environment. Furthermore, fish products accounted for over 50 per cent of all exported goods and 40 per cent of foreign currency earnings. The negotiations that had taken place over a period of months had resulted in a six-week strike affecting the national currency and giving rise to inflation and a deterioration in the economic situation. The federal mediator had come to the view that the dispute could not be resolved by further negotiations. The Government had therefore adopted legislation requiring compulsory arbitration to resolve the dispute at an important time in the fishing season. It should be recalled in this respect that the legislation in question was ad hoc and applied only to this particular dispute. The Committee of Experts, in the same way as the Committee on Freedom of Association, had viewed this as an infringement of the principle of free and voluntary collective bargaining. However, in the view of the Employer members, the Committee of Experts had failed to see the difference between a relatively rigid principle and the language of the Convention, which took into account national conditions. Moreover, they recalled the 1994 General Survey, in which the Committee of Experts had stated that "there comes a time in bargaining where, after protracted and fruitless negotiations, the authorities might be justified to step in when it is obvious that the deadlock in bargaining will not be broken without some initiative on their part".

The Employer members recalled that it was the Government which exercised responsibility for the economy and for the health and welfare of its citizens. Clearly fishing was a very significant activity and the legislation in question applied only to this particular dispute. The Government had waited quite a long time before taking action. While the Government clearly needed to bear in mind the need to foster collective bargaining in accordance with national conditions, it should be recalled that not all collective bargaining succeeded and that there were times when governments had to take action.

The Worker members indicated that this was the first occasion on which the Conference Committee had discussed the case of Iceland. However, the Committee of Experts had made eight comments on the application of the Convention since 1992 and the case had also been examined by the Committee on Freedom of Association. Since 1978, the Government had intervened on 12 occasions by legislative means in collective bargaining in the various sectors. However, the interventions in the fishing sector had been the most frequent over the past ten years. It had not been possible to conclude any collective agreements between fishermen and fishing vessel owners since 1995. Act No. 80/1938 provided that wages and conditions of work had to be determined by collective bargaining. However, this rule did not appear to be applicable in the fishing sector. In practice, fishermen did not have the right to negotiate their wages and working conditions. The legislative interventions of the Government related, on the one hand, to the prohibition to strike and lock out and, on the other, the imposition of compulsory arbitration. The observation made by the Committee of Experts clearly showed that this was not arbitration strictly speaking. The members of the arbitration board were appointed by the Supreme Court of the country and the parties to the conflict were not involved in the arbitration process. In fact, the measures taken by the Government to resolve social problems in the fishing sector had, on the contrary, given rise to serious conflicts.

The problem in the case of Iceland was as follows. The price of fish determined the wages of fishermen. The fishing sector was structured according to a system of quotas. The quotas were attributed to individual vessels which were owned by companies. Some 85 per cent of the quotas were attributed to individual vessels which

were also owned by the enterprises which bought the fish. As a result, these companies both determined the price of the fish and set the wages of the fishermen. Although technical in nature, this was a serious case of violation of the right to organize and collective bargaining as set out in the Convention. Since the end of the 1980s, the quota system had been preventing any collective bargaining. The difficulties encountered had led the Government to adopt Act No. 34/2001, which had had the effect of determining the wages and conditions of work of fishermen through the imposition of a process of compulsory arbitration. In 1996, the Government had amended the Trade Unions and Industrial Relations Act to provide for the intervention of a conciliation and mediation officer from the beginning of the arbitration process, with the possibility for the officer to table a compromise proposal. This amendment to the Act had considerably extended the powers of conciliation and mediation officers. Despite the intervention of the conciliation and mediation officer in both 1998 and 2001, the parties had been unable to reach agreement. The Committee of Experts and the Committee on Freedom of Association considered that the imposition by law of a process of compulsory arbitration was in violation of Article 4 of the Convention, which set forth the principle of free and voluntary negotiation.

The Worker members expressed great concern at this violation of the right to collective bargaining in the fishing sector. The Government had resorted to the argument of the essential importance of the fishing sector for the national economy. This was false. The system of quotas did not make it possible for the whole fleet to fish every day. The quotas had to be respected. In case of work stoppage during a strike, it was possible to respect the quotas in the weeks or months that followed. The Committee of Experts did not consider that the stoppage of work during the above disputes endangered the life, personal safety or health of the population. The legislative intervention in the strikes was not therefore justified. The Worker members called upon the Government to undertake not to intervene in the current negotiations between fishermen and employers, and in general not to intervene in future negotiations and collective disputes in the fishing sector. They also called for a detailed report to be supplied to the Committee of Experts so that it could examine the progress achieved and, in particular, the current collective bargaining process.

The Worker member of Iceland regretted that the Government representative had put forward more or less the same arguments that had been rejected by the Committee on Freedom of Association. Although he had argued that fishing was one of the main sources of foreign currency in the Icelandic economy, it had been even more important in the previous century. Indeed, fishing had been declining and other heavy industries were taking over. It therefore needed to be borne in mind that, even when fishing had been much more important, legislative interventions in the process of free negotiations had not been as important as they appeared to be at the present time. If legislative interventions were justifiable in the case of fishermen, why was this not considered to be the case for other categories of workers relating to the fishing industry? Should the arguments put forward by the Government representative also apply in other countries in which a single industry was the main source of foreign currency revenues? If these arguments were accepted, the labour market situation would be radically changed in many small and developed countries, thereby emptying the Convention of its substance. He added that the social partners in the fishing industry as a whole and in its related sectors had managed to negotiate collective agreements without such interventions. He therefore believed that the repeated legislative interventions, in breach of the Convention, were in themselves the main cause of deadlock in the negotiations between fishermen and their employers. The Government had to understand that it was not appropriate in a democratic country which was a member of the ILO to deprive workers and employers of their fundamental rights as set forth in the Convention. The controversial legislation had now expired, negotiations between the social partners had begun and the dispute had been referred to the Mediation and Conciliation Officer, who had recently postponed negotiations without there being a solution in view. He therefore called upon the ILO and the Conference Committee to keep a close watch on the current situation and any related developments.

The Worker member of the United States associated himself with the statement made by the Worker member of Iceland, adding that the AFL-CIO took a special interest in this matter as the United States was currently one of the largest overseas markets for Icelandic fish. As United States workers were also consumers, they were particularly concerned with the production of imported goods truly respecting core labour standards. Since Iceland enjoyed a history and tradition of social democracy, constructive social dialogue and high trade union density, he hoped that the current non-compliance with the Convention, as reported by the Committee of Experts, would be corrected rapidly. The Government had argued that some legislative intrusion in the voluntary collective bargaining process had been necessary to protect the fundamental public interest, as the fishing industry was so vital to the Icelandic nation. But in Case No. 2170 the Committee on Freedom of Association had essentially rejected that assertion in finding that an impasse and subsequent work stoppage in the Icelandic fishing industry did not "endanger the life, personal safety or health of the whole or part of the population".

The speaker understood the complexity of the issue as the fish price was a variable factor. Act No. 34/2001 flew in the face of that very reality by having implied a fixed regime and a fixed duration. In his view, the problem was that the fishing quotas, the fishing vessels and the processing factories were owned by the same interests in a number of cases and in reality these interests had little incentive to resolve an impasse by conceding more in the share of catch value knowing that an arbitration regime would be imposed anyway. The Government of Iceland should give a little more credit to the good sense of the fishermen. The Icelandic fishermen could not and would not sacrifice their livelihoods by making demands that liquidated the company's profits. Nor could they afford to maintain and sustain a strike of absolutely indefinite duration. Unfortunately, the imposition by legislative fiat of compulsory arbitration was likely to exacerbate labour conflict because it created a disincentive to a voluntary outcome based on both negotiation and the use of powerful but legitimate economic pressure. The speaker concluded by saying that the integrity of the Convention and the cause of constructive labour relations would be better served by referring to the good sense of the parties and asked for the Committee's continued vigilance in this case.

The Worker member of Germany stated that all social development in the world was based on the respect for the principles enshrined in Conventions Nos. 87 and 98. The Government's position was not acceptable. The economic argument made by one of the richest countries in the world would encourage poorer countries to use any kind of pretext in order to justify non-compliance with ILO Conventions. He recalled that the alleged violations were not only of marginal or temporary nature. Workers in the fishing sector were completely deprived of the exercise of free and voluntary collective bargaining. That right had been violated for a very long period of time. Since 1995 no free collective bargaining concerning the terms and conditions of employment of fishermen had taken place. Despite having promised to the ILO to consult with social partners on measures envisaged with regard to the fishing sector, the Government had not taken up the issue with the employers' and workers' organizations until today. The speaker further recalled that the Government in the 1970s had already interfered in collective bargaining in other sectors. Hence, as long as the practice continued in the fishing sector, there was a risk of renewed recourse to such practice in other sectors. In conclusion, he stated that European workers would not appreciate fish products from Iceland, which would have been brought on the market under conditions violating the fundamental rights of their Icelandic colleagues. He urged the Government to finally take the appropriate measures to ensure free and voluntary collective bargaining.

The Employer member of Iceland stated that the employers of Iceland had not asked for the Government's intervention. The vessel owners had repeatedly stated that they should be free to conclude agreements without interference by the Government. The issue of determination of fishermen's wages was a special one as wages were based on a share system and depended on the price of fish. In this case, the dispute was about the foundations of the share system, that is, how the proceeds of the sale of the fish were divided between the crew and the vessel owner. She added that the vessel owners were dissatisfied with the system because it did not take account of the high investment costs incurred for the purchase of new boats and the introduction of technology in the sector. She noted that a mechanism had been established by law to settle prices between the parties outside the marketplace and had served to settle numerous disputes. The speaker added that one element raising difficulties in this case was that fishermen were members of three different trade unions with different collective agreements which were interlinked among them by identical rules on how to share the catch value between vessel owners and fishermen. The speaker emphasized that fishermen within the country had very good salaries and were among the highest paid workers in the country. In 2000, their salaries were 70 per cent higher than the average male worker's wage. She also emphasized that the intervention by the Government was not only directed against the workers but also against employers. She recalled that in 1998 a collective dispute had ended by an Act similar to the one adopted in 2001. The mediator's proposal which the Employers had rejected was then endorsed by

law. She observed that the collective agreements in the sector had now expired and negotiations had started between the parties. She trusted that the parties would be able to conclude collective agreements without interference. She concluded by saying that, given the situation in other sectors in Iceland where collective agreements had been negotiated without problems, the criticisms made by the Committee of Experts were unfounded.

The Government member of Argentina expressed the hope that the Government of Iceland would in the future guarantee the full exercise of freedom of association to a sector as important to international competition as fishing.

The Government representative of Iceland noted that his country took pride in the management system which applied in the fishing sector as it was the most efficient from an economic point of view and the most environmentally friendly. Although the system, which had been developed for the last 20 years, was not perfect, efforts were made to resolve existing problems. Fishing was the only sector in which Iceland, a small country of 300,000 inhabitants, counted on a global scale. This was because of the highly efficient nature of the system in place. Five thousand fishermen in Iceland produced 2 per cent of the total fish catch in the world. Elsewhere, 200,000 fishermen would be necessary to produce the same units. This demonstrated why fishermen in Iceland were so well paid, their average income ranging between 50,000 and 150,000 euros. The objective of the management system was to increase the value of the fish catch and consequently the income of the fishermen while protecting society. He urged the parties to negotiate and conclude an agreement during the forthcoming round of negotiations so that any discussion about governmental intervention would become purely academic.

The Worker members pointed out that there had been an almost complete negation of the right to collective bargaining in the fishing sector in Iceland for almost ten years. While that fundamental right appeared not to be applicable in the fishing sector, a legal tradition and well-defined structures in respect of bargaining existed in other economic sectors. The arguments of the Government continued to be the same, despite the fact that the Committee on Freedom of Association and the Committee of Experts had noted that public interference through legislation in collective disputes and collective bargaining was not permissible. The economic arguments brought by the Government were well known, but it had been shown that they had no bearing on the fundamental right to collective bargaining. The Worker members therefore requested the Government to undertake that it would not intervene in the ongoing negotiations between fishermen and their employers and, more generally, that it undertake to abstain from interfering in all ongoing and future collective negotiations. The Worker members also requested that the Government be asked to provide a detailed report to the next session of the Committee of Experts for an examination of the progress made and also to examine in the future whether collective bargaining in the fishing sector is taking place in conformity with the Convention.

The Employer members observed that the factual basis of this case, which concerned the effective recognition of the right to collective bargaining and not the right itself, was clear and there was agreement on the facts. They noted that the only consensus reached in this case was that the Government should foster national negotiations appropriate to national conditions. He recalled that the position of the Committee of Experts on compulsory arbitration in the context of Article 4 of the Convention was reflected in paragraph 259 of the 1994 General Survey on Freedom of Association and Collective Bargaining according to which "the parties should be given every opportunity to bargain collectively, during a sufficient period, with the help of independent facilitators (mediator, conciliator, etc.) and machinery and procedures designed with the foremost objective of facilitating collective bargaining". They concluded by suggesting that the Committee of Experts should take a fresh look at the issue in the context of Article 4 of the Convention.

The Committee took note of the information provided by the Government representative and the discussion that followed. The Committee noted that the comments of the Committee of Experts referred to the adoption of legislation which imposed compulsory arbitration in the fishing sector, thus interfering with the process of free and voluntary collective bargaining. The Committee observed that the question of the intervention of the public authorities in collective bargaining in this and other sectors was raised on various occasions. The Committee also noted the wish expressed by the social partners of Iceland that the Government abstain in the future from all forms of interference in the collective bargaining process. The Committee took due note of the Government's statement according to which it was open to consultations with the social partners in order to examine the problems which existed in the fishing sector – a branch of great importance for the country. The Committee expressed the hope that the Government would carry out, in full consultation with the social partners concerned, a review of the implementation in practice in the fishing sector of the mechanisms and procedures in the area of collective bargaining in order to improve the mechanisms of free and voluntary negotiation in conformity with Article 4 of the Convention with technical assistance of the ILO as necessary. The Committee requested the Government to send detailed information on the measures adopted in this respect in its next report to the Committee of Experts.

Zimbabwe (ratification: 1998). The Government communicated the following written information.

1. *Non-reply to the request concerning an ILO direct contacts mission.*When Zimbabwe appeared before the Conference Committee on the Application of Standards in June 2003 it unequivocally declined an ILO direct contacts mission. Zimbabwe's position is clearly captured in a summary of the Minister of Labour's speech during the hearing which read:

> The Government representative emphasized that cooperation at the political level with a view to addressing the problems faced by his country was under way with the participation of such eminent persons as the Presidents of Nigeria, South Africa and Malawi. He therefore expressed the view that those who were trying to participate in the political process in his country were failing to respect the fact that African countries were capable of resolving their problems on their own. Moreover, the ILO technical cooperation project funded by Switzerland constituted a sufficient basis for making progress, whereas a direct contacts mission would be more political in nature and its aims were already covered by the presidential cooperation to which he had already referred.

It was therefore clear that Zimbabwe was not accepting a direct contacts mission and at no time did Zimbabwe undertake to furnish any reply after the Conference. Instead Zimbabwe at the plenary session was joined by a host of countries, including the Non-Aligned Movement in questioning the working methods of the Conference Committee on the Application of Standards. Zimbabwe did not accept the direct contacts mission because the issues for which Zimbabwe appeared, being of a legal nature, were supposed to be considered by the Committee of Experts not the Conference Committee. This position was also supported by the majority of countries which made contributions during the hearing. As such there was no basis for accepting a direct contacts mission at that stage. Nor did Zimbabwe undertake to consider the possibility of accepting a direct contacts mission.

2. *Recent legislative reform.* Zimbabwe is most indebted to the Committee of Experts for recognizing the enactment of Statutory Instrument 131/2003 which prohibits acts of interference between employers' and workers' organizations and also for observing that section 93(5) of the Labour Act has done away with compulsory arbitration unless with the consent of the litigants. Further the Zimbabwe Government takes note of the Committee's acknowledgement of the full import of section 2A(3) which makes the Labour Act the supreme law in Zimbabwe with regard to labour issues.

3. *Collective bargaining agreements in the public service.* Zimbabwe is further indebted to the Committee of Experts for its recognition that there is indeed collective bargaining in the civil service.

4. *Perceived serious infringements of Convention No. 98.* The concerns of the Committee of Experts on outstanding issues are to be addressed during the review process which has since been initiated by the Government. Social parties have been consulted and some have since submitted their comments. In the meantime, the Government has examined the outstanding aspects with a view to revisiting the provisions in question.

4.1. *Sections 25(2), 79(2) and 81(1) of the Labour Act.* The concern of the Committee is that these sections make provision for the subjection of collective bargaining agreements to ministerial approval on three grounds, namely if the agreement has become: (a) inconsistent with this Act or any other enactment; or (b) inequitable to consumers or to members of the public generally or to any party to the collective bargaining agreement; or (c) unreasonable or unfair, having regard to the respective rights of the parties. It is the Committee's position that "the power of the authorities to approve the collective bargaining agreements is compatible with the Convention, provided that the approval may be refused only if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation ...".

Zimbabwe observes that paragraphs (a) and (c) of the cited sections are consistent with this position. Upon careful reflection paragraph (b) may be violating the grounds of approval as recognized by the Convention. Accordingly Zimbabwe is agreeable to repealing paragraphs 25(2)(b), 79(2)(b) and 81(1)(b) of the Labour Act, Chapter 28.01. Steps have already been taken to effect the necessary amendments, among others.

4.2. *Section 25(1) of the Labour Act.* The Committee is of the view that Article 4 of Convention No. 98 is not being given effect to in section 25(1) of the Labour Act as "negotiations through direct settlement or agreements signed between an employer and the representative of a group of non-unionized workers, when a union exists in the undertaking, do not promote collective bargaining as envisaged in Article 4 of the Convention".

Indeed, in June 2003 Zimbabwe made reference to amendments to section 23 which the Committee acknowledges goes some way towards addressing the concern. However, it could be pointed out that Amendment No. 17/2002 went further in recognizing and promoting collective bargaining agreements entered into by and between organized labour and business.

Contrary to the old Labour Relations Act, section 101 of the new Labour Act prescribes that employment council codes take precedence over works council codes. In other words, agreements negotiated by organizations of workers and employers are more supreme and binding than agreements made at shop-floor level, whether by workers' committees and the employer or by individual employees and the employer. Under the old law, section 101(1)(i) and (ii), works council codes prevailed over employment council codes.

Article 4 of Convention No. 98 exhorts members to take measures where necessary, "to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' organizations and workers' organizations ...". Zimbabwe is of the view that section 101 of its Labour Act engenders that recognition, hence Article 4 of the Convention is given effect to.

4.3. *Sections 17(2) and 22 of the Labour Act*

4.3.1. On further reflection it may not be desirable for the Minister to fix maximum wages and accordingly steps are being taken to repeal section 22 *in toto*.

4.3.2. With respect to section 17(2) of the Labour Act it may be highlighted that, in coming up with the regulations, the Minister is enjoined to consult an advisory council which is constituted of social partners. As such it may not be appropriate to say that these measures will have been taken "unilaterally". Zimbabwe is of the view that section 17(2) is quite consistent with Convention No. 98 as much as it recognizes the Convention on tripartite consultations viz. the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

5. *Prison staff.* The Committee of Experts is concerned that prison staff in Zimbabwe do not enjoy the benefits afforded by Convention No. 98. The Committee accordingly requests the Government to amend its legislation so as to ensure that prison workers enjoy the right to organize and to collectively bargain. In the context of Zimbabwe, prison staff, just like the army and the police, is part of the disciplined force. This is provided for in the Constitution of Zimbabwe. The Labour Act in Zimbabwe does not cover the disciplined forces. To the extent that the Constitution defines prison staff as a disciplined force it is improper and irregular to seek to amend the Constitution by an Act of Parliament. It needs constitutional amendment. The process is beyond the Ministry of Labour and the social partners alone. It will have to involve Government at large and indeed the legislature.

In addition, before the Committee, **a Government representative** stated that the object of the discussion of this case should focus on matters raised by the Committee of Experts and not about the political situation in Zimbabwe, which was not the mandate of this Committee or the ILO. He also stated that issues regarding freedom of association were the mandate of the Committee on Freedom of Association and not the Conference Committee.

Turning to the points raised by the Committee of Experts, he reported that his delegation had submitted a detailed response in writing. He appreciated that the Committee of Experts had noted with satisfaction that the Government had promulgated subsidiary legislation to provide adequate protection against interference in workers' and employers' organizations and new provisions regarding compulsory arbitration, and that it had expanded the scope of workers covered by the Labour Relations Act. He recalled that direct contacts missions had been declined both in 2002 and 2003 on the grounds that the comments of the Committee of Experts related to legislation which was under discussion by the Parliament, and that the mission could not deal with matters not raised by the Committee of Experts, including political issues raised by the Worker members that were not of any concern to the ILO. Turning to other points raised by the Committee of Experts, he reported that concerns regarding the requirement for collective agreements to be submitted for ministerial approval were being addressed through the amendment of sections 25(2), 79 and 81 of the Labour Relations Act. Similarly, section 25(1), regarding agreements between employers and non-unionized workers, was adequately addressed by section 101 of the Labour Act, as explained in the written information which had been provided by the Government. Section 22, regarding the fixing of maximum wages, would also be repealed. With respect to section 17(2) of the Labour Act, the Minister was obliged to consult a Tripartite Advisory Council established in terms of section 19 of the Act. With regard to the Committee of Experts' view that prison staff should be allowed to form trade unions and participate in collective bargaining, he recalled that the Constitution considered prison staff as a disciplined force which was not covered by the Labour Relations Act. Prison staff carried firearms and had the responsibility of guarding dangerous prisoners. Strikes by prison staff would therefore pose a serious security threat. Furthermore, a constitutional amendment would be required to change their status, which went beyond the powers of the Ministry and the social partners. He concluded by pointing out that a process of further reviewing the Labour Relations Act was under way. In March 2004, workers' and employers' organizations were requested to submit to the Ministry of Public Service, Labour and Social Welfare their views on issues which they felt needed to be reviewed. This process would take due account of the concerns of the Committee of Experts.

The Worker members thanked the Government for the information it provided in writing. They pointed out that, in the previous year, the case of Zimbabwe was included in a special paragraph due to the Government's refusal of a direct contacts mission, which it viewed as being contradictory to the ILO's objective. In the current year, the Committee of Experts noted with satisfaction that some progress had been made. It was hoped that the legislative and regulatory reforms would take place and bring improvements in practice. While noting the Government's information on the process of legislative changes, the Worker members regretted that the list of serious violations of the Convention remained lengthy and hoped that the Government would double its efforts to rectify the situation. The violations referred to were the following: the obligation to submit collective bargaining agreements to ministerial approval; non-respect of the promotion of collective bargaining negotiations; the unilateral decision to establish maximum wages and to decide on working decisions; and non-respect of the rights of those employed in the prison service, provided for by the Convention. In the preceding year, the Government refused a direct contacts mission on the grounds that the issues under consideration were of a legal nature and, as such, were to be examined by the Commission of Experts and not by the Conference Committee. This implied that the Conference Committee was a political body and the Worker members rejected such a contention. Under article 7 of the Standing Orders of the Conference, the Committee on the Application of Standards was mandated to analyse all the measures taken by governments to implement the Conventions to which they were parties. The analysis of the Committee on the Application of Standards was made on the basis of impartial, technical and legal reports prepared by the Committee of Experts. The Government was reminded of the necessity of respecting the Committee of Experts' tasks and the key role that Committee played in the efficient functioning of the supervisory mechanism. In this regard, the Worker members expressed their concern at the Government's view vis-à-vis the tasks of the Conference Committee.

The Employer members noted that the Conference Committee had examined the case in 2002 and 2003, and the recent legislative reforms which the Committee of Experts had noted with satisfaction. They also noted that workers employed in the public service, such as teachers, nurses and other civil servants not directly engaged in the state administration could negotiate collective agreements and that the number of collective agreements had increased in that sector. Turning to the requirement for collective agreements to be submitted for ministerial approval in order to ensure that their provisions were not inconsistent with national laws or inequitable to consumers, the Employer members believed that such government conduct would lead to a permanent control over collective bargaining activities. These measures were excessive. There existed other measures to prevent inequitable collective agreements, such as adopting regulations voiding collective agreements which violated certain laws. On the basis of such regulations, courts could check the content of collective agreements and determine if they were in conformity with the law. With regard to the requirement under the Labour Relations Act for collective agreements to be approved by the trade union and by more than 50 per cent of the employees, the Committee of Experts had noted certain progress, but had called for further measures. The Employer members wondered whether the promotion of collective bargaining, as set out in Article 4 of the Convention, could be determined by a figure established by law indicating the required percentage rate of approval of a collective agreement. Turning to the provisions of the Labour Relations Act

which empowered the Minister to fix a maximum wage and other conditions of employment by statutory instrument prevailing over any agreement or arrangement, they associated themselves with the Committee of Experts which had stated that this was a clear violation of the Convention. With regard to the exclusion of prison staff from the scope of the Public Service Act, they emphasized that the possibility to conduct collective bargaining was not the same as conducting a strike.

In conclusion, the Employer members stressed that more changes in legislation were required. They believed that the Government attempted to control the whole economy through certain measures which had been criticized by the Committee of Experts, and that the Government was not very much in favour of tripartite dialogue. They warned that such a conduct would have detrimental consequences for a market-oriented economy. Therefore, the Government was requested to change its present attitude and behaviour.

The Worker member of Zimbabwe recalled the report submitted by the Zimbabwe Congress of Trade Unions (ZCTU) to the 2003 International Labour Conference. As the report indicated, the Labour Relations Act empowered the Minister to register a duly concluded collective agreement. This was still the case. He also noted that collective agreements were required to be published as statutory instruments, which the Government had lately asked the negotiating parties to finance. As printing costs were high, some of these agreements were not published, and some employers therefore simply refused to implement them. The situation called for urgent repeal of sections 79 and 81 of the Labour Relations Act. He also called on the Government to ensure that public servants not engaged in state administration, such as prison services staff, enjoyed the right to collective bargaining. The speaker also reported that the ZCTU continued to suffer abuse, either by the Government directly or by third parties over which the Government had control. For example, the entire ZCTU leadership was arrested in September and November of 2003 while peacefully demonstrating against high taxation and the cost of living. These abuses were possible through the Public Order and Security Act. Finally, he also noted efforts under an ILO/Swiss project to facilitate the Tripartite Negotiation Forum (TNF). While some progress had been made in this regard, the TNF required an agreement on procedures, rules, guidelines and other issues to regulate the conduct of its meetings and allow it to move forward.

The Employer member of Zimbabwe noted with satisfaction the positive tenor of the observation of the Committee of Experts and expressed his surprise that this case had once again been included on the list of individual cases. He recalled that Zimbabwean employers had taken internal steps to ensure maximum participation in the process of law reform and compliance with international labour standards. This had been done through a special budget for outreach to stakeholders. He also reported that tripartite consultations on the revision of labour law, facilitated by an ILO/Swiss project, were making progress. He stated that the social partners were actively addressing possible reforms to the Labour Relations Act (Chapter 28:01) and that a number of issues raised by the Committee of Experts would therefore be laid to rest. Turning to the issue of the ministerial approval of collective agreements, he stated that he shared the concerns of the Committee of Experts and was pleased that the Government had indicated it would be agreeable to repealing the relevant provisions of the Labour Relations Act. Collective agreements should be left to the two parties concerned as provided for under the national employment framework. With regard to the possibility of non-unionized workers being able to negotiate directly with an employer, thereby bypassing trade unions, he noted that the Labour Relations Amendment Act (No. 17 of 2002) had sufficiently addressed the problem. Concerning ministerial powers to make regulations, he noted that section 17(2) of the Labour Relations Act required the Minister to consult a tripartite advisory council. These councils had not yet been constituted, but he was confident that the Government would do so soon. Turning to the question of ministerial powers to set maximum wages, the speaker stressed that the market should determine wages and salaries and that the Government should repeal the relevant provisions, as it appeared it had agreed to do. Finally, he noted that, in order to address the question of freedom of association among prison staff, a constitutional amendment would be needed. He concluded by encouraging the social partners to improve the relevant labour legislation and to once again take up social dialogue so as to comply with the Convention.

The Government member of Cuba stated that, after having analysed the contents of the Committee of Experts' report, a question arose why Zimbabwe had been included again on the list of cases this year, since it was clearly recognized that, in virtue of the new legislation, the questions that used to be the subject of concern in this country had been resolved. As regards other questions of concern that appeared, the Government of Zimbabwe was not only very much responsive to them, having adopted measures and undertaken actions with a view to seeking rapid solutions, but had also very clearly defined its position and made concrete steps in order to advance in finding solutions to the problems susceptible to being resolved. The country's achievements recognized in the report were clear proof of the political will of the Government, which reiterated its commitment, having invited the interested parties, including the ZCTU, to continue its work on the revision of the legislation, with a view to improving the provisions which were the subject of concern. The speaker pointed out that, on earlier occasions, many delegations, including also countries of the Non-Aligned Movement, had reiterated the need to avoid the involvement of the ILO supervisory mechanisms in political issues. In his view, the inclusion of Zimbabwe on the list of cases had a clear political motivation, which was why his Government opposed the use of the ILO supervisory mechanisms for questioning or debating an internal political situation in a given country, since it went beyond this Committee's mandate.

The Worker member of South Africa welcomed the positive aspects of the comments made by the Committee of Experts, as well as the information provided by the Government in writing. The recent reform of the labour legislation in 2002 and Statutory Instrument 131/2003 had addressed some of the problems which had been raised by the Committee of Experts. However, the ZCTU had requested certain other changes to bring the labour legislation into line with the Convention. The problematic areas included the subjection of collective bargaining agreements to ministerial approval, which made collective bargaining toothless, and the placing of the threshold for trade union membership at too high a level, which was a barrier to collective bargaining. He therefore appealed to the Government to reactivate the Tripartite Negotiation Forum (TNF) and to engage in consultations with the social partners without the interference of the state machinery. He further called for social dialogue at the enterprise, sectoral and national levels to be more visible so that it could achieve positive results. The ILO technical cooperation project funded by Switzerland and other forms of ILO assistance should be made use of to achieve results in this field. Turning to the issue of the prohibition of collective bargaining by prison staff, in accordance with the terms of the Constitution, he said that it was necessary to consider amending the Constitution so that prison staff could benefit from the rights set out in the Convention. He called upon the Government to accept the advice of the Committee of Experts with a view to improving the situation of workers' and employers' organizations and society in general.

The Government member of Mozambique emphasized that the Government of Zimbabwe had with tenacity and humility committed itself to respecting ILO standards. It was, therefore, essential that the Committee noted the huge progress made by the Government since 2003. Under the circumstances, his Government was convinced that the efforts undertaken by the Government of Zimbabwe led to the conclusion that the latter had fully addressed all the concerns raised and, hence, there was no further reason for the Committee to include Zimbabwe in the list of individual cases.

The Government member of Namibia took note of the information supplied by the Government representative and recognized the steps taken to amend national legislation and the subsequent adoption of the Labour Relations Amendment Act. She also noted the Government's willingness to amend certain provisions of their Labour Act to give effect to the Convention. Finally, she stressed that there was a need to review the working methods of this Committee, in particular, the method of establishing the list of individual cases and drafting, and adopting its conclusions.

The Worker member of Swaziland recalled, in the first place, that although ratification was voluntary, any member State which ratified a Convention automatically opened itself to scrutiny whenever a violation was reported to the ILO. Moreover, the effect of a Convention could only be enjoyed when it was applied in practice. Unfortunately, in the present situation, the workers of Zimbabwe were not enjoying the benefits of measures that looked good on paper because, in practice, the Government blatantly disregarded its own statutes. The fact that the Minister could set a maximum ceiling for issues under negotiation meant that collective bargaining could not in any way be free in the country. Moreover, the freedom of collective bargaining was further undermined by requiring the parties to submit their agreements to the Ministry for approval. For as long as workers, such as prison staff, were prohibited to exercise the right of collective bargaining, the Government would continue to be in violation of the Convention. He recalled that the rights conferred upon workers' and employers' organizations had to be based on the civil liberties set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The absence of these civil liberties in Zimbabwe

removed all meaning from the concept of trade union rights in the country. The Government continued to violate the Convention in both law and practice by requiring prior authorization for workers to meet and to proceed to a peaceful demonstration and by undermining worker rights through the use of other legislation, including the Public Order and Security Act and the Miscellaneous Offences Act, to subvert the rights set out in the labour legislation. It also continued to arrest and detain trade unionists and trade union leaders, including Mr. Matombo, the President of the ZCTU, who had been subjected to victimization of the highest order. It was vital that the Committee took full account of the issue of the acts of violence and the atrocities to which workers and trade unionists were subjected in the country. The Committee should urge the Government to stop using other draconian legislation, such as the Public Order and Security Act and the Miscellaneous Offences Act, to undermine the rights set out in labour law and guaranteed by the Convention, and to stop detaining, arresting and fining trade union leaders and workers.

The Government member of Ireland, also speaking on behalf of the Government members of the Member States of the European Union, the candidate countries Bulgaria, Romania and Turkey, the countries of the stabilization and association process (SAP), Albania, Bosnia and Herzegovina, Croatia, The Former Yugoslav Republic of Macedonia, Serbia and Montenegro and Switzerland, thanked the Government representative for the information provided. He recalled that the European Union had, in other forums, expressed deep concern at the continuing violations of human rights in Zimbabwe. The situation with regard to politically motivated violence and restrictions on freedom of opinion, expression, association and assembly all gave cause for concern. The European Union had also expressed concern at the inability of independent civil society in Zimbabwe to operate without fear of harassment or intimidation. He emphasized in this regard that independent trade unions were an important element of civil society. He further recalled that the present case had been the subject of comments by the Committee of Experts for many years and had been before the Conference Committee in recent years. He noted that the Government had introduced new legislation and that the Committee of Experts had considered that the legislation resolved some of the issues that it had raised previously, but it was disappointing to note that the Government had not further amended its Labour Relations Act to resolve a number of issues relating to serious and continuing infringements of the Convention. The European Union supported the Committee of Experts' view that the Government should amend the relevant sections of the legislation so as to ensure conformity with the Convention. In conclusion, he said that the European Union would comment on the working methods of the Conference Committee and the procedures for the selection of individual cases when the Committee's report was adopted by the Conference in plenary.

The Government member of Nigeria expressed encouragement that the worker members of Zimbabwe had acknowledged the progress made by the Government in addressing the issues raised by the Committee of Experts. The employer members of Zimbabwe had also recognized the progress made and the positive steps taken with regard to the reform of the labour legislation. Indeed, the Government representative had indicated that the review process was continuing, as shown by the written information which had been provided. He recalled that it was the aim of the Conference Committee to encourage member States to provide a peaceful and conducive environment within which employers and workers could operate without undue interference from the Government. However, he shared the belief that agreements signed between an employer and representatives of a group of non-unionized workers did not promote collective bargaining and could weaken the negotiating strength of the group. He therefore appreciated the fact that the Government had amended the parts of the law which appeared to be inconsistent with ILO standards. He also noted that the Government was committed to repealing section 22 of the Labour Relations Act, under the terms of which the Minister could fix maximum wages, which was an obstacle to free collective bargaining. In view of the progress that had already been made in resolving discrepancies between the national law and the Convention, the Government should be encouraged to view the comments of the Committee of Experts in a positive light as a means of providing a peaceful environment for the social partners. The Conference Committee should also appreciate the efforts made by the Government to bring its legislation into compliance with ILO standards.

The Worker member of Norway welcomed the fact that some of the issues raised previously by the Committee of Experts had been resolved, even though certain provisions of the Labour Relations Act, including sections 17 and 22, had still not been repealed. Nevertheless, it was disturbing that the Government was still refusing to receive a direct contacts mission, as had been proposed by the Conference Committee last year, to discuss and provide guidance on the reform of the labour legislation. Although the labour legislation was now in greater compliance with the Convention than before, it was still necessary to examine the very important question of whether labour legislation was being subverted by the use of legislation in other areas. On paper, the conditions for trade unionists might look better than they had for a long time, but she emphasized that there had not been any correspondence between law and practice since the case was last discussed. Instead, the Government had continued to arrest, intimidate and harass trade union members and leaders. In peaceful demonstrations the previous year against the high cost of living and high rates of taxation, over 200 trade unionists and officials had been arrested, followed by the arrest of over 60 ZCTU members, including the Secretary-General and President of the ZCTU. Their so-called "criminal" activity, according to the Government, was to participate in a legitimate trade union activity. Other acts of interference by the Government included the attempted participation by the intelligence services in a ZCTU collective bargaining workshop and the dismissal of the ZCTU President, Mr. Matombo, from a state-owned company for having attended a trade union congress outside the country, allegedly without following the normal procedures for requesting leave of absence, although she believed that in practice these procedures had been followed. She urged the Government to take the necessary steps for his reinstatement. Those present at the ILO Conference advocated social dialogue as a means of increasing productivity, achieving a more equal distribution of wealth and creating a healthy working environment. It was therefore extremely regrettable that the Government had the opposite point of view and saw trade unionists as opponents, rather than partners. Although the labour legislation was now fairly satisfactory, the Government would only show its credibility to the outside world if there was sufficient correspondence between law and practice.

The Worker member of India regretted that the Government had not accepted the proposal by the Conference Committee the previous year to send a direct contacts mission to the country on the grounds that effective amendments had already been made to the labour legislation. He also noted that the Government representative, in line with several other Government members, appeared to feel that the issues under discussion, being of a legal nature, were more properly within the competence of the Committee of Experts than the Conference Committee. While the issues could certainly be referred to the Committee of Experts, he urged the Government, as a member State, not to question the working of the Conference Committee and he hoped that the present discussions would go a long way in ascertaining the facts of the situation. He warned that, if pursued only out of self-interest without a focus on the broader social situation, collective bargaining would ultimately be reduced to a naked trial of strength in which the strong might gain victory over the weak, but this would also be the wrong prevailing over the right. Where the employers and workers in any industry so conspired, they could harm the broader interests of the people. He therefore called upon the Government to reconsider the amendment without delay of those sections of the Labour Relations Act which infringed the right of workers to organize and to collective bargaining.

The Government member of Switzerland, after supporting the statement made on behalf of the European Union, indicated that she hoped that in the context of the ILO technical cooperation project funded by her own Government, and to which reference had been made on numerous occasions, further progress could be made, especially with regard to the main objective of the project, namely the promotion of social dialogue including all the partners of the project.

The Worker member of Brazil indicated that the discussions held last year on this case had shown clearly that there were signs that the technical debate on Zimbabwe's legislation would turn into a partisan political discussion. She considered that the recent legislative amendments, concerning which the Committee of Experts had expressed its satisfaction, and the reports of the debates that were being held in Congress and with workers and employers, showed the efforts made by the Government to promote and stimulate an extensive social dialogue. She recalled that, in 2004, Zimbabwe had completed 24 years of independence, ending one of the harshest colonial regimes, which had exploited and subjected its people to apartheid. She added that, under the independence agreements, the United Kingdom had promised to compensate the victims of the war, which it had never done. When the Government of Zimbabwe had started to demand the implementation of the agreement for the return of the lands confiscated during the colonial period, sanctions had begun and, making use of the international mass media, a campaign had been launched to discredit and

demonize the country in the eyes of the world and distorting the situation. She concluded by stating that Zimbabwe was continuing to fight for genuine independence and that the ILO should stop letting itself be used by those who had promoted apartheid and who were now resisting the return of land to its true owners and who were endeavouring to manipulate the facts. Instead of including Zimbabwe on the list of cases, the ILO should support the decision by the Government to return the land to its legitimate owners.

The Government member of South Africa pointed out that the information provided by the Government addressed each observation of the Committee of Experts fully and the substantive content of the information provided was indicative of the Government's cooperation and its commitment to bringing its legislation into line with the Convention. With regard to recent legislative reform, the Committee of Experts had already noted the following: (i) the enactment of Statutory Instrument 131/2003 that prohibited acts of interference in employers' and workers' organizations; (ii) that in terms of section 93(5) of the Labour Relations Act, compulsory arbitration was now only possible with the consent of the parties; (iii) that section 2A(3) gave the Labour Relations Act supremacy over any other labour legislation; and (iv) that there was collective bargaining in the public sector. Where the Committee of Experts had drawn attention to the legislative provisions that appeared to be inconsistent with the Convention, the Government, on reflection, had informed that it was agreeable to repealing those sections, namely sections 22, 25(2)(b), 79(2)(b) and 81(1)(b) of the Labour Relations Act. It had also substantiated as to why sections 25(1) and 17(2) of the Labour Relations Act were not in contravention of the Convention.

The Government had informed this Committee that, in order for the Labour Relations Act to cover prison staff, an amendment to the Constitution, a process that involved the Government at large and the legislature, was first necessary. The speaker was of the view that the Government would address this concern through the necessary process. The information put forward to the Committee showed that the Government had been in a process of labour law reform and it had taken constructive measures to address what had been construed as infringements of the Convention. These measures had to be acknowledged and welcomed. It also evidenced that recently there had been no substantial infringement of the Convention by the Government making its listing unjustified. He welcomed the desire expressed by the ZCTU and the Zimbabwean Government about the importance of restarting the mechanism and process of social dialogue, and the invitation extended by the Minister of Labour from Zimbabwe to the ZCTU to submit to him a list of all the issues they were unhappy with for discussion and resolution. He believed that direct contact between the Government and its social partners should be paramount and should be enhanced and encouraged. He did not believe that a direct contacts mission of the ILO was necessary and the South African Government delegation was therefore opposed to it. He believed that there was a basis for the Zimbabwean workers and Government to take the process of social dialogue forward and both sides had expressed their commitment to do so. Conclusions in this Committee should therefore be supportive and encouraging of such a process.

The Government member of Malawi indicated that, in the same way as in 2003, it had not been necessary to include Zimbabwe in the list of individual cases, as the Government was clearly cooperating in its compliance with the requirements of the ILO in general and the Committee of Experts in particular. He said that the request by the Committee of Experts that Zimbabwe should amend its legislation so that prison staff would enjoy the right to organize and collective bargaining was not only unnecessary but contradicted the ILO's values of promoting peace and economic prosperity everywhere. Although the Committee of Experts had indicated that prison staff, who formed part of the disciplined and uniformed services in Zimbabwe, were excluded from the scope of the Public Service Act and the Labour Relations Act, the ILO had not received any complaints from the personnel concerned that they had no alternative mechanisms for negotiating their terms and conditions of employment. If no complaint had been received, why was it making a demand which would only endanger the lives of innocent people through increased insecurity? He added that there was no specific mention of prison staff in the Convention and that many of the countries which had ratified the Convention were unaware that it required the right to organize and collective bargaining for prison staff.

The Employer member of South Africa, also speaking on behalf of the Employer member of Swaziland, made a number of additional points of broader application based on her experience that the rights guaranteed by the core Conventions flourished best in a democratic environment in which conflict could be addressed and resolved through meaningful and results-oriented social dialogue. The transgression of human and fundamental labour rights was never conducive to economic stability or the creation of an environment in which employment could be created and poverty alleviated. She therefore called upon the Government to pursue dialogue with the social partners with a view to resolving the current areas of conflict in the country. Such dialogue should be directed at the re-establishment of fundamental rights and the means by which the Government could comply with its international obligations. It was necessary to do so in order to restore stability and cooperation in the southern African region and to create the preconditions for economic and social progress. She said that the employers in South Africa and Swaziland were willing to play any supportive role to achieve these ends.

The Government member of Canada welcomed the report of the Committee of Experts and noted with concern that, despite the introduction of legislative amendments which resolved several of the points raised in previous reports, the Government had given effect to the recommendations of the Committee of Experts to amend the Labour Relations Act which could resolve many problems related to serious and continued violations of the Convention. In Canada's view, the right of workers to negotiate collective agreements, as guaranteed by the Convention, should also include the right to choose their representatives and the right of these representatives to carry out the functions for which they had been elected, without legal or other forms of harassment by their employer or government. Even where they were fully recognized in law, the rights guaranteed by the Convention could not be exercised in full unless other national and international human rights instruments were respected in their entirety. The right to representation in collective bargaining was an important principle which had to be recognized in the same way as all other civil, political, economic and social rights, rights which Canada had urged the Government to respect on other occasions. Canada expressed its deep concern with respect to the continuous violations of human rights in Zimbabwe. The right to collective bargaining was limited by the lack of respect for freedom of expression, freedom of association, freedom of assembly and freedom of opinion. Canada urged the Government to ensure that workers' organizations and civil society organizations could organize and operate without fear of threats or harassment. Canada further expressed its concern with regard to the arbitrary arrests, restrictions on judicial independence, the obstacles to the freedom of the press and the limitations on the exercise of workers' fundamental rights in Zimbabwe.

The Government member of Finland, also speaking on behalf of the Government members of Denmark, Iceland, Norway and Sweden, recalled the request made the previous year for the Government to ensure that the Zimbabwean legislation be amended according to the Convention. She therefore welcomed the information, contained in the report of the Committee of Experts, on the amendments of the Labour Relations Act, as well as the written information provided by the Government relating to its intention to address the remaining inconsistencies of the Act. However, despite this good news, she expressed great concern about other legislative acts, for instance the Public Order and Security Act and the Miscellaneous Offences Act, which could be used to prevent the implementation of the Convention in practice. Recalling the news in November 2003 of trade union intimidation, which had resulted in hundreds of arrests across the country, she urged the Government to ensure that these acts were not used to restrict trade union activities, but to guarantee that the right to organize and collective bargaining could be freely exercised. She also reminded the Government of the fact that Zimbabwe, by virtue of its membership of the ILO, was bound by the ILO Declaration on Fundamental Principles and Rights at Work, which was based on the ILO's core Conventions. These included both Conventions Nos. 98 and 87, of which the latter had been ratified in 2003. The obligation to establish a climate in which the rights afforded by these Conventions could truly be observed rested on the Government. She therefore strongly recommended that the Government reconsiders the proposal made the previous year of an ILO direct contacts mission, which could help the Government to meet its obligations under the Convention.

The Government representative thanked all the speakers and urged the Committee to remain focused on the technical matters which were before it, rather than engaging in a wide range of political discussions. He recalled in this respect that political matters relating to his country were not covered by the Convention or by the Conference. He therefore greatly regretted that the European Union and many other countries had seized upon this opportunity to further their aims of promoting dislocation and disturbance in this country as part of a constant campaign to malign and denigrate his Government. The inclusion of his country on the list of individual cases for examination by the Conference Committee showed

that it was the victim of discrimination and political moves. His country was constantly being placed in the spotlight because of its differences with its former colonial power which, regrettably, made use of international labour bodies to champion political issues. It was for this reason that his and other developing countries were agitating for a change in the working methods of the Conference Committee so that the ILO's procedures could be based on social justice, rather than political allegations.

With reference to the case of Mr. Matombo, President of the ZCTU, he said that it was a clear illustration of the manner in which trade union leaders misled the international community to further their own agenda. Mr. Matombo, who had been an employee in a company in which the Government was the major shareholder, had left the country to attend a meeting without seeking permission to do so in accordance with the code of conduct to which he was a signatory and which he had been instrumental in negotiating. His case had, in the first place, followed the internal disciplinary procedures within the company, and had then been referred to the Ministry of Labour for conciliation. He reaffirmed that this was an impartial procedure in which he was unable to interfere. He called upon the Conference Committee to acknowledge that this case was undergoing due legal process and that commenting upon it therefore risked undermining the due process of law. The fact that Mr. Matombo was the President of the ZCTU was no reason for deviating from due process. This was an internal matter which should be settled entirely at the national level. He also bitterly refuted the claims that had been made that trade union leaders had been subject to arrests and torture and said that no trade union leader was currently in prison in his country. Nevertheless, he emphasized that trade union leaders, like normal citizens, had to respect the laws and, for example, if they wished to organize a public demonstration, as opposed to a labour meeting, they were under the obligation to give notice to the police. He therefore urged trade union leaders to ensure that they were in compliance with national legislation, rather than complaining to international bodies. He also objected to having to defend his country from false allegations, which were related to the attempts that were being made by outside powers to destroy his country, for example through the imposition of trade sanctions to harm its economy. He indicated that he had made many attempts to bring trade union leaders to the negotiating table, but that they had rejected his initiatives and pulled out of the proposed discussions. This was largely due to the fact that the ZCTU was connected to an opposition party which wished to remove his Government from power. He therefore called upon the Committee to make a clear distinction between legal and political issues. Furthermore, he saw no need for a direct contacts mission, since his country was well aware of the action that needed to be taken in order to pursue its firm objective of bringing its labour legislation more fully into harmony with the requirements of the Convention.

The Worker members expressed their profound regret with regard to the insults made by the Government representative and stated that they would not tolerate the insults against the trade unionists of Zimbabwe, who currently had brought a complaint before the Committee on Freedom of Association, or against the Worker member of Norway, representing LO-Norway.

The Worker member of Zimbabwe, exercising the right of reply, wished to put the record straight. The allegations made against the ZCTU were unfounded. In particular, he took great exception to the description of this organization as a "puppet" organization. The ZCTU was not influenced by anyone, nor was it a political party. With regard to the remarks made by the Government representative concerning social dialogue, he recalled that the Tripartite Negotiation Forum (TNF) had originally been initiated by the ZCTU, which certainly wished to promote social dialogue. Discussions had been held within the context of the ILO/Swiss-funded project to promote social dialogue and it had been agreed by all the parties concerned that a tripartite committee would be set up to investigate why previous attempts to activate the forum had collapsed. It was the position of the ZCTU that the tripartite committee needed to look into all the issues concerned so as to lay the ground for making progress in future. He added that, at the instigation of the Government of South Africa, a meeting had been held between the workers and the Government of Zimbabwe during the International Labour Conference with a view to resolving the current tensions. His organization fully accepted the need to discuss issues and to promote social dialogue. However, he and his colleagues had once again been subject to threats and intimidation. He warned the Government representative that social dialogue could not take place under such circumstances.

The Worker members said that this case was once again under examination by the Conference Committee because the Government had refused to accept the direct contacts mission proposed by the Committee last year. In the circumstances, the Committee had included the case in a special paragraph, which resulted in an automatic re-examination of the case. The Worker members said that they had expected a more positive attitude from the Government. They recognized that the Committee of Experts had expressed satisfaction at certain legislative amendments and that there were indeed some positive developments, but that much more progress was still required in practice. The Worker members said that it was therefore necessary to remain vigilant to ensure that these amendments were effectively implemented in practice. However, several obstacles to the application of the Convention persisted. The Worker members emphasized that the comments of the Committee of Experts had dealt with the application of the Convention in Zimbabwe for three years now and that this was the third time that the Conference Committee had discussed this case. While acknowledging the improvements, they hoped that the Government would amend its laws more quickly. In this regard, they stressed that legislative amendments were still required with respect to four outstanding issues: (1) the requirement of ministerial approval for collective agreements; (2) the failure to promote collective bargaining in accordance with Article 4 of the Convention; (3) the unilateral setting of maximum wages and working conditions; and (4) the exclusion of prison staff from the application of the Convention. The Worker members also expressed their great concern at the threatening climate which currently existed and which was liable to prevent the application in practice of the right to organize and to free and voluntary collective bargaining guaranteed by the Convention. They urged the Government to respect the ILO's supervisory machinery and, in particular, the unique role of the Conference Committee. This Committee was responsible for examining the measures taken by the Government to give effect to the provisions of Conventions. The Worker members regretted that the Government had once again refused an offer to cooperate with a direct contacts mission or any technical assistance from the ILO and, as a result, declared that they reserved the right to come back to the problems relating to freedom of association and collective bargaining in Zimbabwe at the next session of the Conference Committee.

The Employer members pointed out in the first place that the discussion of this case concerned Convention No. 98, even though some interventions had appeared to be dealing mainly with Convention No. 87. Although the two instruments were closely linked, there were good reasons for the Committee of Experts to examine their application separately. The comments made during the discussion had to a certain extent gone beyond issues related to the application of the Convention. This was also true of the comments made by the Government representative. It was the role of the present discussion to deal specifically with matters relating to the application of Convention No. 98 in law and practice. It was clear in this respect that the Government would have to adopt further measures to bring its law and practice fully in conformity with the Convention, which had been ratified fairly recently, in 1998. Although it might appear at first that the issues dealt with were of a technical nature, they had an important impact on the social life of the country. The Employer members had gained the impression that the Government was reluctant to allow sufficient liberty for a market economy and for the social partners to engage in social dialogue, both with the Government and in bilateral negotiations between the two parties directly. To ensure the success of social dialogue, the Government needed to give sufficient room to the social partners. In the initial stages, this required a sufficient level of trust to be accorded to the social partners. The problem was that the correct attitudes needed to be established in the first place. The Employer members also called for good relations to be developed between the Government and the ILO supervisory machinery. They indicated that there was nothing shameful in accepting the technical assistance of the ILO. Finally, they expressed the hope that the Conference Committee would express its concern at the issues raised with regard to the application of the Convention in an accurate manner.

The Committee noted the written information provided by the Government, the oral statement made by the Government representative and the debate that followed. The Committee recognized that various issues raised by the Committee of Experts in its previous observations had been resolved through the adoption of new legislative provisions and regulations. However, the Committee expressed concern at the persistence of serious problems of application of the Convention, especially the intervention of the public authorities in the collective bargaining process and the possibility of concluding direct accords with workers, even where trade unions existed. The Committee observed that the Government was prepared to amend a number of provisions mentioned by the Committee of Experts which were contrary to the Convention, and that it envisaged the adoption of measures with respect to the question of ministerial approval of collective agreements and the setting of

maximum wages. Although the Committee noted the Government's willingness to resolve a number of points, it regretted that the Government had not accepted the direct contacts mission which had been proposed the previous year. The Committee expressed its firm hope that the Government would continue to take measures in the very near future for the full application of the Convention in law and practice and that the rights set forth in the Convention would be respected in a climate of full freedom and security. The Committee requested the Government to provide all the necessary information so that the Committee of Experts could once again undertake an exhaustive examination of the situation at its forthcoming session. The Committee emphasized the importance of social dialogue and indicated to the Government that such dialogue required full respect of the independence of workers' and employers' organizations and of the principles and procedures of the International Labour Organization.

The Worker members expressed their regret at the incidents which had occurred during the discussion and hoped that the work of the Committee would take place in the greatest respect for everyone in the future.

The Government representative thanked the Committee for its valued and objective conclusions and undertook to take action to give effect to them.

Convention No. 103: Maternity Protection (Revised), 1952

Netherlands (ratification: 1981).**A Government representative** recalled that, according to Article 4, paragraph 1, of Convention No. 103, women who were absent from work on maternity leave in accordance with the provisions of the Convention, were entitled to receive cash and medical benefits. Paragraph 4 stipulated that these benefits would be provided either by means of compulsory insurance or by means of public funds. In either case, they would be provided as a matter of right to all women who complied with the prescribed conditions. Women who failed to qualify for benefits provided as a matter of right would be entitled, according to paragraph 5 of the same Article, to adequate benefits out of social assistance funds. The Dutch system of medical care was based on the principle that everybody who was living in the Netherlands was entitled to medical care. The insurance for medical benefits was a hybrid system. Workers who earned an annual income below a certain level (in 2004: 32,600 euros; a lower ceiling applied for pensioners and the self-employed) were obligatory covered by the Health Insurance Act (ZFW). Beneficiaries of the social security system and recipients of social assistance were also covered by this Act. This applied to approximately 65 per cent of the Dutch population. About 5 per cent were covered by compulsory schemes for public servants. Another 5 per cent were covered by the Medical Insurance Act, which was not compulsory but had the same coverage as the Health Insurance Act and the implementation was supervised by the Government. This meant that, about 25 per cent of the Dutch population, generally having a high income, had to take out private insurance. Since they were not obliged to do so, it could happen that they were not insured. This did not mean, however, that they were denied medical care. Every person living in the Netherlands was, in principle, entitled to medical care.

The speaker stated that her Government had taken note with interest of the comments of the Committee of Experts, in particular the comment on the relationship between paragraphs 4 and 5 of Article 4 of the Convention, and was currently examining the matter, in close cooperation with the ILO, on actions to be taken. In the meantime, the Dutch Government was preparing a fundamental reform of the medical insurance system. On 28 May 2004, a Bill to transform the compulsory insurance under the Health Insurance Act, the insurance schemes for civil servants as well as the other insurances, into one compulsory general health insurance scheme, had been sent to Her Majesty, the Queen, in order to be introduced before the Council of State for advice. This new compulsory general health insurance scheme would cover all residents in the Netherlands and might enter into force on 1 January 2006. In addition, the Government was considering ratifying the Maternity Protection Convention, 2000 (No. 183), which modernized and replaced Convention No. 103, and which appeared to contain more flexible provisions on this matter. She added that the Government would continue to act in close contact with the ILO and the social partners on this matter. With regard to the statistical data requested by the Committee of Experts in its observation, she indicated that the information would be provided with the next regular report.

The Employer members noted that the legislation provided for maternity benefits under a compulsory insurance scheme from which women with an annual income of more than 30,700 euros were excluded. The legal question before the Committee was whether this system was in accordance with Article 4, paragraph 4, of the Convention. This would be the case if the Government could show that women not covered by compulsory insurance received benefits out of public funds as a matter of right. However, they had doubts as to whether this test was met. The Government representative had referred generally to the social security system without indicating the provisions of the national legislation granting the right to receive maternity benefits of those excluded from compulsory insurance. The Employer members considered Article 4, paragraph 5, of the Convention to be a fallback provision as it applied to women not covered by paragraph 4 of the same Article. Contrary to the view of the Committee of Experts, they believed that Article 4, paragraph 5, did not necessarily apply to women who, in principle, were eligible to receive benefits as described in Article 4, paragraph 4, but did not meet all the prescribed conditions, e.g. a certain duration of employment. In any case, the provision of social benefits under Article 4, paragraph 5, was not sufficient to satisfy the requirements established by paragraph 4 which provided for two basic options and which bound the Netherlands. The Employer members suggested that the Government commissioned a legal expert opinion on the issues involved.

The Worker members pointed out that the main interest of the case related to the highlighting of certain juridical aspects of the Convention and in certain aspects of social protection systems in industrialized countries. In the Netherlands, health-care coverage through compulsory sickness insurance was reserved to workers whose remuneration did not exceed by more than one-and-a-half the average wage, and to women on social assistance. It therefore excluded workers earning more than one-and-a-half times the average wage, civil servants and most teachers. However, according to Article 1, paragraphs 1 and 3, and Article 4, paragraph 4, of Convention No. 103, the workers should benefit from the provisions foreseen, either in the framework of a compulsory insurance system or by using public funds. The Worker members considered that Article 4, paragraph 5, of the Convention concerned only cases of workers who were not meeting payment, work or residence conditions temporarily and not those excluded from compulsory insurance because of the amount of their remuneration. This latter exclusion was even less justifiable since in the Netherlands independent workers had obtained, at the end of 2001, access to maternity benefits irrespective of their income level. The Worker members observed that workers not having access to compulsory insurance could naturally subscribe to private insurance but such a trend did not correspond to what the Convention provided for. However, at the moment, there was a powerful movement in favour of privatization of certain areas of social security, mainly health care and maternity. The Worker members strongly rejected ideas which went against the principle of compulsory maternity protection enshrined in the Convention. Finally, they requested the Government to supply accurate statistics on women excluded from the protection foreseen by the Convention.

The Worker member of the Netherlands associated himself with the statement made by the Worker members and said that the problem was long standing, dating back to the ratification of the Convention in 1981. The workers' organizations in the Netherlands had made many efforts to solve it. This was the first Committee of Experts' observation following a series of direct requests over a period of 20 years. The speaker found the Government's answers minimalist. There were no facts and figures in the report. The Committee of Experts had requested data concerning the number of women receiving cash and medical benefits, but the Government's report simply mentioned the number of women receiving pregnancy or maternity allowance, providing no data on the number of women compensated for medical costs without making their own contribution. No insight was given on the number of women whose costs for pregnancy and maternity remained outside the scope of private medical insurance. Waiting periods of up to two years were no exception. The Committee of Experts had asked a specific question on this point, which should be answered. The Government had stated in its report that personal contributions for the costs of maternity had been abolished for those insured under the Sickness Benefits Act who had been obliged to make contributions until 1999. However, the Government had failed to state that this was a result of the decision of the Central Court of Appeal which had been based, inter alia, on earlier comments made by the Committee of Experts. The Committee of Experts had indicated following the Government's first report that the exclusion of women civil servants and most women teachers (15-20 per cent of all women workers) and of women workers earning an income over and above the ceiling established by the Sickness Benefits Act was a violation of the Convention. The Government had regularly argued against this, stating that it was in the process of constructing a single compulsory insurance system. The speaker added that the Committee of Experts had

rightly paid attention to the issue of medical costs. He wanted to see the Committee examine all other relevant aspects. He hoped that the Government would provide a clearer and fuller answer in its next report, regarding the implementation of Article 6 on dismissal during maternity leave, which raised serious problems.

The Government representative stated that her Government would take note of the discussion before the Committee and examine the conclusions in close cooperation with the ILO and the social partners.

The Employer members stated that public health-care systems were increasingly overburdened and their privatization was an option which was not contrary to the Convention. The question of entitlements was being examined in many countries in order to ensure that benefits could also be guaranteed in the future.

The Worker members hoped that the Committee would ask the Government to take all necessary measures to bring its legislation into conformity with the Convention, and to provide in its next report information on the measures taken in this respect, statistics on the number of women who did not benefit from the coverage provided by compulsory medical insurance for maternity as well as on the number of women receiving maternity benefit by compulsory insurance or social assistance. They concluded by recalling that the Government had expressed its intention to carry out an in-depth reform of its medical insurance system and requested the Government to submit draft amendments to the ILO for its comments so as to ensure that the new provisions were in conformity with the requirements of the Convention.

The Committee noted the information provided orally by the Government representative and the discussion that followed. It noted the comments of the Committee of Experts, which related to the exclusion of certain categories of women workers who were covered by the Convention from the compulsory insurance scheme, and therefore from medical maternity benefits, due to the level of their remuneration or occupational activity. The Committee noted in this respect the statement by the Government representative according to which draft legislation on the compulsory health insurance scheme was being examined and on which the Government would provide information. It also noted that the Government was examining the possibility of ratifying Convention No. 183. The Committee recalled the importance that it attached to maternity protection. It emphasized that the Convention did not permit the exclusion of women workers coming within its scope of application on the grounds of their level of remuneration or occupational activity. The Committee hoped that the Government would adopt the necessary measures to bring the legislation into conformity with the provisions of the Convention and that it would provide full information, and particularly statistics on the number of women workers who were covered and who were excluded from the compulsory insurance scheme.

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

Dominican Republic (ratification: 1964). **A Government representative** declared that the situation regarding discrimination on grounds of colour, race and sex had changed since the promulgation of the Labour Code of 1992. The Dominican Republic had a population of 8.2 million, of which 80 per cent were dark skinned and 20 per cent of mixed race. There were approximately 1 million Haitian citizens resident in the country carrying out different jobs (construction work, agriculture, guards, taxis, domestic service, teaching and the informal sector). All Haitians in the Dominican Republic enjoyed the same rights as Dominican nationals as far as access to health, education, maternity and integration into the labour market were concerned. Dominican laws were applied without distinction to all workers on Dominican territory. He stressed the significant progress made concerning discrimination, such as, for example, the signing of agreements with Haiti regarding discrimination on grounds of colour, a fact recognized by the Haitian authorities.

He noted that the Labour Code, promulgated in May 1992, had been the result not only of technical assistance from the ILO, but also of the consensus between employers, workers and the Government. It had paved the way for ratification of all fundamental Conventions as well as Conventions Nos. 122, 144, 150, 167, 171 and 172. Similarly, he pointed out that the outlawing of discrimination on grounds of race or colour was established in fundamental principle VII of the Labour Code, which forbade all types of discrimination, exclusion or preference based on grounds of sex, age, race, colour, ancestry, social origin, political opinion, trade unionism or religious belief. Regarding gender discrimination, he pointed out that, in the Ministry of Labour, a Gender Department had been set up, under the responsibility of an Under-Secretary of State for Labour, who handled all complaints related to gender discrimination. Section 47, paragraph 9, of the Labour Code outlawed all actions taken against male or female workers that could be considered as sexual harassment and also condemned failure to intervene in cases where the act was perpetrated by third parties.

He emphasized that in the Dominican Republic the culture of social dialogue was the cornerstone and catalyst of relations between workers, employers and the Government. He was puzzled that his country was included in the list of cases for examination before the Committee, given the activities carried out by the Consultative Labour Council, the advisory body of the Secretary of State for Labour, set up to apply Convention No. 144, which was ratified in 1999. The National Council of Trade Union Unity, which grouped the four biggest unions in the country, had not presented allegations regarding discrimination to the Consultative Labour Council.

Laws banning discrimination had been reinforced by decisions of the Supreme Court of Justice, which on different occasions had declared the inapplicability of section 16 of the Civil Code, which obliged non-resident foreigners without property in the country to deposit a financial guarantee when taking legal action as plaintiff, considering it discriminatory as it did not apply to nationals. In the same way, the Supreme Court of Justice laid down that a foreign worker without papers had the right to take legal action to make a claim for unpaid wages.

In addition, the Secretary of State for Labour set up, in November 2003, a special office at headquarters designed to assist workers affected by HIV/AIDS. These workers could call on a lawyer if they felt themselves victims of discrimination in the workplace on account of their state of health. Similarly, the labour inspection service and the recently created office had distributed numerous information sheets on the subject. It also planned to produce more brochures to create awareness of national and international laws on non-discrimination on grounds of race and colour. In the second half of 2004 workshops were scheduled on the subject.

Regarding maternity protection, in coordination with the Labour Inspectorate, a sensitization campaign had been carried out for workers and employers on the practice of pregnancy testing as a condition of admission to work for women. In addition, information sheets had been distributed and six workshops planned for employers, with the assistance of the Spanish technical assistance programme and in cooperation with the Association of Export Processing Zones' Enterprises. In 2003, more than 20 workshops were held on labour-related issues in which maternity protection was one of the subjects discussed.

He underscored the importance of methods of prevention and noted that, to date, all allegations had been investigated with satisfactory results. An awareness-raising campaign for employers was currently underway and information was disseminated to make workers aware of their rights and obligations, including information on the ban on pregnancy testing before admission to work. Different enterprises in the export processing zones (EPZs) were developing social projects on maternity protection that included childcare centres, personal medical supervision for pregnant workers and postnatal, pre-school education, etc. Such programmes were being developed in the Santiago, Itabo and La Romana EPZs.

The Worker members stated that neither the Committee of Experts nor the Office had received clear and detailed information on efforts undertaken on discrimination in the country. The information available was of a very general nature, despite the fact that the International Confederation of Free Trade Unions (ICFTU) had insisted on acts of discrimination against Haitians and Dominico-Haitians. The ICFTU's communication had noted that some 1 million Haitians lived in the country, some legally, some clandestinely. Such workers had been marginalized and deprived of basic services, resulting in a situation of legal precariousness. This situation made them attractive to certain employers who were aware of their vulnerability and knew that such workers would accept low wages without demanding more decent conditions. The fact that 80 per cent of the Dominican population were dark skinned did not necessarily imply that there was no discrimination, as discrimination could take different forms. Certain human rights organizations had referred in their latest reports to discrimination against Haitians and Dominico-Haitians.

The Worker members commended the efforts made by tripartite dialogue. Nevertheless, they deplored certain restrictions on freedom of association. In fact, of the 180 trade unions operating in EPZs only five had signed collective agreements whereas 165 had been dismantled. Union repression and absence of union organization were combined with discrimination and lack of protection of workers. There were numerous allegations regarding pregnancy tests as admission to employment in an EPZ. In this respect, the

most eloquent voice was that of the Human Rights Watch report on "Sexual discrimination of pregnancy testing in EPZs".

The Worker members considered that the efforts undertaken by the Government so far were insufficient. The Government had to supply more specific and detailed information to the Committee of Experts concerning its national policy aiming at the promotion of equality in accordance with the provisions of Convention No. 111. Information should also be provided concerning the judicial and extra-judicial investigations conducted following complaints for sexual discrimination. To conclude, the Worker members expressed the hope that measures would be taken immediately to eliminate discrimination and ensure respect for workers' dignity.

The Employer members noted that the Committee of Experts' observation was based only on comments supplied by the ICFTU in October 2002. Although recognizing the existence of laws prohibiting discrimination on grounds of colour and race, the ICFTU had indicated that discrimination nevertheless existed in practice. The Employer members observed that the Committee of Experts had not endorsed the allegations from the ICFTU, but had only requested the Government to provide information in relation to these allegations.

The Employer members observed that the Committee of Experts had noted in earlier comments the existence of discrimination against Haitians and members of the dark skinned Dominican population, and the joint declaration by the Dominican Republic and the Republic of Haiti on prevention of discrimination in the recruitment of migrant workers, both Dominican and Haitian. They noted the statement of the Government representative indicating that there had been no complaints of such discrimination and that 80 per cent of the Dominicans were dark skinned.

They also noted that the Committee of Experts had simply reminded the Government that the Convention required the formulation of a national policy to prevent discrimination on all grounds mentioned in Article 1 of the Convention. In that sense, the Committee of Experts had requested the Government to provide information and had not requested the adoption of new anti-discrimination legislative measures. The Employer members considered that the joint declaration by the Dominican Republic and the Republic of Haiti on prevention of discrimination in the recruitment of migrant workers, as well as the other measures mentioned by the Government representative were part of an anti-discrimination policy as required under the Convention. This information provided to the Conference Committee needed to be transmitted to the Committee of Experts in writing.

Turning to the allegations of the ICFTU, according to which, although gender discrimination, including pregnancy controls and sexual harassment, was prohibited by law, it existed in practice, the Employer members observed that the Committee of Experts simply had described the allegations of the ICFTU without making a statement on its own. Only with regard to the application of the Equal Remuneration Convention, 1951 (No. 100), the Committee of Experts had observed violations of the labour standards protecting maternity, and had requested the Government to indicate the machinery for prevention and investigation to combat practices that discriminate against women, such as pregnancy testing at the time of admission to employment. In this respect, the Employer members noted the statement of the Government representative on the measures taken to amplify the existing measures designed to guarantee maternity protection. The Employer members concluded that the Government should supply a report to the Committee of Experts containing detailed information on the issues raised.

The Employer member of the Dominican Republic expressed doubts about the motives which had led to the discussion of this case at the Conference Committee, taking into account that the Labour Minister of the Dominican Republic had been elected President of the current session of the Conference. He recalled that the spokesperson of the Workers' group had stated in the plenary session of the Conference that the Workers approved the Dominican Labour Minister because human rights and labour standards were being respected in the country. The speaker pointed out that the AFL-CIO had opposed the conclusion of a free trade agreement between Canada, the United States and the countries of Central America and the Caribbean (CAFTA), which explained the exclusively political purpose of this discussion. The opinions of an international confederation should not have more weight than those of the Dominican organizations. He emphasized that in the Dominican Republic there were more than enough laws and regulations prohibiting discrimination. In addition to the 80 per cent of Dominican dark-skinned population, the Vice-President of the Republic was a woman, as well as the vice-presidents of the two employers' federations of the country. Finally, the speaker stressed that the Dominican society did not tolerate sexual harassment.

The Worker member of the Dominican Republic stated that social dialogue had existed in the Dominican Republic for 15 years thanks to the ILO's assistance and the Catholic Church. He underlined the substantive progress made in order to advance democracy, especially with regard to the combat against discrimination on the basis of colour, race and sex. This was exemplified by the reform of the Labour Code, social security and vocational training as well as by the fight against the worst forms of child labour.

Discrimination was not a generalized practice in the Dominican Republic and, when a case of discrimination was detected, it was brought before the labour administration and the competent labour courts. Although discrimination used to exist at an earlier time, the promulgation of the Labour Code in 1992 had strengthened social dialogue through the Consultative Labour Council which was a tripartite body. Moreover, bilateral dialogue existed between the employers' organizations and the trade union movement, which had led to a reduction in discriminatory practices, thus taking a significant step. He mentioned as an example the recent signing of a protocol between the workers' federations and the Dominican Association of Export Processing Zones' Enterprises in order to guarantee productivity, put an end to labour conflicts and harmonize the relations between trade unions in this sector by promoting collective bargaining. Trade unions and collective agreements existed despite the actual problems in the EPZs' sector.

As to discrimination on the basis of gender, he stated that the Labour Department, through the Labour Inspectorate, gave a rigorous suit to the denunciations made to them. In conclusion, the speaker underlined the significant contribution of the ILO to improving the conditions of work in the country through its active participation in the modification of labour legislation and social security, the strengthening of tripartite social dialogue and the follow-up to fundamental rights at work.

The Government member of Costa Rica (Minister of Labour and Social Security) expressed his surprise at the allegations directed against the Dominican Republic. The denunciations were disconnected from reality and clearly had ideological intentions. They aimed at raising obstacles to the conclusion of free trade treaties between Canada, the United States and the Central American and Caribbean region. This could be observed by the fact that four of the seven countries which had concluded the CAFTA had been included in the list of cases to be examined by the Committee. This constituted geographical discrimination.

The speaker shared the opinions expressed by the delegation of the Dominican Republic. In the Dominican Republic, the Labour Code prohibited discrimination and whoever violated the Code was subject to legal prosecution. Moreover, the Dominican Republic had an undersecretariat on gender that many countries did not have. The RELACENTRO project (freedom of association, collective bargaining and labour relations in Central America, Panama, Belize and the Dominican Republic) had held a meeting in Santo Domingo in order to establish the agenda for social dialogue in the subregion.

The Worker member of France stated that under the Convention, it pertained to the Government of the Dominican Republic to prevent discrimination and order an investigation of the allegations which concerned in particular obligatory pregnancy tests and sexual harassment to which women were subjected in EPZs. According to the conclusions of a report by the International Labour Rights Fund Institute on sexual harassment in EPZs, the production of which was destined primarily to the United States market, the Government did not seem to face up to its responsibilities in this respect. The numbers contained in the report depicted a situation which did not coincide with the trivial assessments of sexual harassment made by the Government. The establishment of free trade zones was based on political decisions in the areas of taxes, customs and infrastructure, and the female workers in these zones were under particularly significant pressures as testified by various accounts. It was incumbent upon the Government to formulate policies and ensure the application of the existing laws in order to ensure the protection of female workers. A constructive influence was exerted by trade unions in this respect and, as a result of the initiatives of the ICFTU, the World Bank had ensured that the situation of female workers in EPZs was taken into consideration in the framework of the granting of a loan to a private enterprise.

The Worker member of Venezuela referred to a report produced by a human rights organization which claimed that the number of people affected by HIV/AIDS in the Dominican Republic was one of the highest in the region, spreading faster among women than men. HIV/AIDS-affected women suffered greater discrimination as demonstrated by the mandatory HIV/AIDS tests, the results of which were made available to future employers. Mandatory HIV/AIDS tests to retain or obtain employment had a negative impact on both men and women but mainly affected the latter who

preferred not to seek work if they suspected that they were infected. Public information campaigns and sex education in the Dominican Republic had not adequately addressed the issue of social preconceptions, which increased the risk of contagion. Most women would opt voluntarily for HIV/AIDS tests if they received adequate information and a guarantee of confidentiality of the results, while others would opt not to have recourse to essential health services if they knew that they would be subjected to HIV/AIDS tests against their will. A major opportunity to save lives and prevent the spread of disease was being lost by these methods.

The speaker was concerned by discrimination on grounds of pregnancy in EPZs where workers and applicants were being subjected to pregnancy testing as a condition of maintaining or obtaining a job. Dominican law outlawed sexual harassment at the workplace but it was important that the Government take energetic steps to eliminate such conduct and punish the guilty. In addition, she stressed the importance of obtaining more information on the treatment of Haitian workers. She finally stated that the opposition to CAFTA shown by the AFL-CIO was shared by the Venezuelan National Workers' Union (UNT).

The Government member of El Salvador associated herself with the statement made by the Government representative of the Dominican Republic on the significant progress made in order to eliminate discrimination on the basis of race, sex or colour. She underlined that, through the tripartite dialogue conducted by the Central American Council of Ministers, which included the Dominican Republic, workshops and seminars had taken place on the application of the Convention. She underlined the importance of the statement made by the Worker member of the Dominican Republic who had noted the existence of a culture of tripartite social dialogue as a means to seek solutions in this field.

The Government member of Nicaragua acknowledged the progress made in the Committee with regard to the list of individual cases, especially through the diversity of subjects and the detachment from cases on Conventions Nos. 87 and 98. However, she regretted that the case of the Dominican Republic had been included in the list with regard to a fundamental Convention since the Dominican Republic had taken initiatives which had led to progress in the implementation of Convention No. 111.

The speaker indicated that the combat against racism, racial discrimination, xenophobia and the related forms of intolerance had regained great importance after the holding of the World Conference against Racism in Durban, South Africa, in 2001. The Latin American countries had initiated a process for the implementation of national and international measures to fight against all forms of discrimination. No country could find itself at the margin of the international commitments in this area.

Since the Dominican Republic was a country with 80 per cent coloured population, the failure to implement the Convention would have involved an unawareness of the country's own multicultural and multi-ethnic identity. Finally, the speaker endorsed the statement of the Government representative of the Dominican Republic with regard to the examination of this case which demonstrated that the concentration of cases in the Central American region showed the deficiencies of the Committee's working methods.

The Government representative stated that in his country denunciations of discrimination on the basis of gender, colour and race were made before the competent bodies. He insisted that in 2004 only one denunciation had been registered. Since the country was afflicted by poverty, there was also social marginalization which affected not only the Haitians but also the Dominicans. The speaker emphasized the tripartite consensus which existed in his country on the application of the Convention.

The Worker members emphasized the importance of tripartite social dialogue in this area and acknowledged the Government's efforts to resolve the problems. One of the ways to arrive at a solution would have been to integrate the problem of discrimination in the social dialogue, in order to analyse Convention No. 111 in depth and introduce the necessary modifications in law and in practice. The Worker members insisted on the need for the Government to send detailed and practical information to the Committee of Experts on the national policies for the promotion of equality. They urged the Government to adopt administrative and educational policies in order to prevent all types of discrimination and to promote equality of opportunity and treatment in law and in practice. The Worker members finally stated that the Government should provide information on the judicial and extrajudicial investigations which had taken place on sexual discrimination.

The Employer members observed that this was a rare case in as far as the representatives of the Government, the Employers and the Workers of the Dominican Republic had expressed similar views. They recalled that this case was dealing with the issue of discrimination, and not with issues related to freedom of association. The Employer members also recalled that the majority of the interventions made had not invoked that the Convention had been violated. The allegations based on documents prepared by non-governmental organizations, which had not been considered by the Committee of Experts, were no basis for the conclusions of the Conference Committee. They recalled that this Organization had a tripartite structure and that non-governmental organizations were not included in the ILO.

The Committee took note of the detailed information provided in the Government's statement and the discussion which took place thereafter. It noted that there was no indication that the legislation was not in conformity with the Convention, but that the discussion at the Conference concerned the comments of the ICFTU on discrimination exercised in practice on the basis of colour, race and sex as well as the Government's response. The allegations had referred concretely to the discriminatory practices against the Haitian workers and dark-skinned Dominicans, pregnancy testing and sexual harassment. The Government had expressed its preoccupation concerning these issues. Laws had been adopted and in fact, an undersecretariat on gender had been created. The Dominican Republic had made a joint statement with the Government of Haiti in order to prevent discrimination in the course of hiring Haitian migrant workers. Moreover, the Committee took note of the Government's decision to investigate these allegations and improve the control of its anti-discrimination laws, and also took note of the measures taken in the *maquila* sector for the protection of pregnant women and mothers, including bilateral agreements in the *maquila* sector, and of the social dialogue on discrimination. The Committee was pleased by these constructive efforts and requested the Government to transmit detailed information in writing to the Committee of Experts on the application of the Convention in practice, including statistics, indications on the prevention of sexual harassment and of pregnancy tests in the *maquila* sector, on the result of the investigations of the complaints and on all the measures taken in order to deal with discrimination at work.

El Salvador (ratification: 1995). **A Government representative** stated that the Committee of Experts had noted in the direct request which was mentioned at the end of the observation in relation to Article 2 of the Convention, that "the Salvadoran Institute for the Development of Women (ISDEMU) has earmarked approximately 7 million dollars for the implementation of the Plan of Action for 2000-04, and that the ministries and institutions involved in the abovementioned Plan make their own financial contributions". The Committee of Experts had also taken note "of the actions carried out by the Skills for Work Programme (HABIL) which include training for women in areas traditionally reserved for men". Moreover, the Committee of Experts had taken note of tripartite seminars under the auspices of the ISDEMU to raise awareness about the safeguarding and observance of rights at work. The Government representative added that, just as required by Article 2 of the Convention, the Government had set out to promote a national policy of equality of opportunity and treatment in the area of employment and occupation, by methods appropriate to national conditions and practice, with the objective to eliminate all forms of discrimination. The speaker also referred to the direct request on Convention No. 156 in which the Committee of Experts had taken note of a communication by the Inter-Union Committee of El Salvador without finding it appropriate to make an observation. In any case, the Government had a well-established practice of regularly sending very detailed information so as to allow for dialogue with the supervisory bodies. However, in the observation on Convention No. 111, the Committee of Experts had reproduced in their entirety the comments of an international trade union confederation which had been prepared with the twofold objective to present them to the World Trade Organization (WTO) and to the ILO. At the WTO, the communication by the trade union organization should have been considered in the framework of the examination of commercial policies. The Government had made known to the ILO that the comments were very general and addressed very complex questions. The speaker recalled that the Committee of Experts had requested the trade union organizations to make efforts to collect and present precise elements of law and fact on the practical application of ratified Conventions. It was added in paragraph 78 of the report of the Committee of Experts that "it is important for organizations to give adequate details".

The speaker indicated that paragraph 2 of the observation did not mention any provision of the Convention, a fact for which the Government had formally expressed its reservations as to the manner in which the Committee of Experts appeared ready to consider, in the framework of Convention No. 111, certain very specific issues covered by international labour Conventions which had not been ratified by El Salvador, like specific matters relative to maternity

protection and dismissal. She stated that adequate provisions existed in the legislation of El Salvador on maternity protection and protection against dismissal and that they were well known to the Committee of Experts. In relation to the access of Salvadoran women to Government agencies and management positions, the speaker gave as examples the new Vice-President of the Republic and various ministers (Education, Economics, Public Administration and Executive President of the Central Bank). Regarding the questions concerning the EPZs and the *maquila* industry she recalled that her country had drawn assistance from an ILO decent work programme from which *maquila* workers benefited on a priority basis. El Salvador was considered in the reports published by the ILO as one of the seven countries which had registered in 2001 progress in the area of decent work, according to data published in the ILO review *Panorama Laboral*, 2001. The Director-General had also mentioned the progress observed in El Salvador in his report to the XV Regional Conference (Lima, December 2002). She stated that, on 11 February 2004, through Legislative Decree No. 275-2004, the Legislative Assembly had ratified an amendment to section 30 of the Labour Code and had introduced a new paragraph 13. The new provision expressly prohibited employers from demanding women seeking employment to take a pregnancy test as a prerequisite for recruitment. The legislative amendment had already been notified to the Office. She was pleased to note the close and permanent collaboration with the ILO Subregional Office in San José (Costa Rica), the Director of which made many efforts in regular visits to the country to strengthen social dialogue and promote fundamental workers' rights.

The Worker members recognized that progress had been made in El Salvador over the past decades since 1972, the Labour Code guaranteed equality of opportunity and treatment between men and women; since 1992, the new Constitution provided for the right to paid maternity leave before and after confinement and subsequently for the right of women to maintain their jobs. However, it was in the EPZs that new and specific problems were occurring. Working conditions were difficult, productivity levels very high, overtime was common and sometimes not remunerated, and working and hygiene conditions were especially hard. *Maquiladoras* mainly employed young women, who, subjected to these conditions, implicitly compromised their right to reproduction.. The length of the working day made it difficult for these women to combine family and professional responsibilities. But absenteeism exposed these women to tough disciplinary measures. In such a context, the genuine application of the Convention was a real challenge. The Worker members encouraged the Government to formulate a voluntary policy and it was on this point that they awaited the details requested by the Committee of Experts. The new information presented by the Government did not really constitute detailed and specific information on the manner in which anti-discriminatory provisions were applied in practice. The Worker members noted the adoption in February 2004 of a provision prohibiting mandatory pregnancy tests, a measure which implicitly confirmed that the problem existed. According to a Ministry of Labour report, unfortunately withdrawn from circulation, of the more than 100 factories concerned, the authorities noted that no objective analysis of working conditions had been carried out compared with the physical abilities of the female workers and that the situation remained unclear as far as overtime, breach of individual work contracts, social security coverage and treatment of absenteeism were concerned. The report noted certain shortcomings in the work of the public authorities themselves. As far as the Worker members were concerned, the discrimination against female workers could actually become worse through permanent blackmailing in employment. The Government had to ensure that all means at its disposal in the legislation were made available to these workers. To this end, it could not implement a policy that gave full application to Convention No. 111 without full dialogue with its partners.

The Employer members noted that this case related to allegations by the ICFTU concerning discrimination on the grounds of sex and race in practice. They agreed with the Government representative that the allegations were of a very general nature. This was regrettable since what was alleged was discrimination in practice. For instance, the statement that mainly men occupied management positions was valid for any country in the world. The Committee of Experts therefore simply reproduced the allegations and posed questions to the Government. With regard to the legislation prohibiting pregnancy testing mentioned by the Government representative, the Employer members did not share the Worker members' view that the existence of such legislation in itself was an indicator that such a practice existed. Otherwise one could draw such counter-conclusions from any kind of legislation. The Employer members associated themselves with the Committee of Experts and requested that the Government supply the relevant information in a comprehensive report.

The Employer member of El Salvador expressed surprise and uneasiness at the inclusion of El Salvador in the list of cases to be examined by the Conference Committee. With regard to discrimination against women in education, legal succession and employment, he considered that the allegations presented were unfounded and that they were nothing more than a form of opposition to the recent conclusion of a free trade agreement between the countries of Central America and the United States (CAFTA). With regard to education and employment in particular, he indicated that 70 per cent of employees in the judiciary were women, that the Vice-President of the Republic was a woman and that the latter, together with the President of the Republic, were profoundly involved in the defence of women's rights. He also objected to the reference of the Worker members to a non-official document. With regard to legal succession, he underlined that discrimination could not exist since this was a right of the person regulated by the Constitution and civil legislation which ensured equality of rights between men and women in this respect. With regard to the requirement that women take pregnancy tests to be recruited in *maquilas*, he reported that, on 17 March 2004, section 30 of the Labour Code had been modified by legislative decree which expressly prohibited such tests. The violation of this provision gave rise to economic penalties. Moreover, with regard to sexual harassment, penal provisions punished this crime with prison sentences ranging from six months to two years. The speaker stressed the importance of avoiding generalizations and considered that the Government did the necessary to comply with the observations of the Committee of Experts and that the presumed violations of Convention No. 111 were non-existent.

Another Employer member of El Salvador expressed his surprise at the fact that three of the five Central American countries which had recently concluded a trade agreement had been invited to appear before the Conference Committee. He stressed that this Conference discussion would be taken note of once again at the time of the ratification of the said agreement. As to discrimination, he emphasized that there had been progress in his country and that the ILO in its report "Time for equality at work", discussed in 2003 in the context of the follow-up to the Declaration, had described a technical cooperation project from which El Salvador benefited using the programme "Women's workers' rights: Modular training package", and concluded that the project had contributed to the institutionalization of gender equality and had increased the possibility of efforts being made at the national level to promote gender equality. The speaker observed that the comments of the Experts appeared to endorse the observations which had been received with regard to the application of the Convention, although these were very general and were not thoroughly supported with evidence. In this respect, with regard to the cases of alleged discrimination of women in the field of legal succession noted by the Experts, he indicated that article 3 of the Constitution and section 1007 of the Civil Code, ensured equality for women. Moreover, with regard to the comments relative to the preference shown by certain government agencies to male candidates for employment, he objected that these agencies had not been identified and, with regard to the "appalling" conditions of work which women should be subjected to in *maquilas*, he once again regretted that these allegations were not substantiated and he indicated that salaries in this export sector were higher and an important number of employers applied voluntary codes of conduct. He stated, with regard to pregnancy tests, that on 17 March 2004 the reform of the Labour Code had come into force and expressly prohibited such practices. The speaker indicated that independently of the said reform, such practices were inappropriate. He concluded by suggesting that the Worker members should consult with the employers of the countries which they intended to include on the list before the beginning of the Committee's work. He added that more rigour and equity were needed on the part of the Committee of Experts and that the latter should ask trade unions to comply with the obligation, as did governments, to present specific and detailed observations. This would facilitate the preparation of governments' replies which according to the Committee of Experts should be prompt and complete. Trade union organizations should be obliged, like governments, to present better information when they submitted comments.

The Government member of the Dominican Republic insisted that the efforts carried out by the Government of El Salvador to find appropriate solutions for Salvadoran workers with regard to discrimination be taken into account. He expressed his support for the Government's statement and considered that action taken by the new authorities and the new legal provisions would lead to the strengthening of social dialogue.

The Government member of Panama associated herself with the Government of El Salvador with regard to the significant progress made on application of Convention No. 111, as well as regarding the imbalanced selection of the cases to be included in the list for

examination by the Conference Committee. She believed that the number of cases from the Central American region constituted a clear indication of the deficiencies of the working methods of the Committee, which should take corrective action to achieve more balance when selecting cases.

The Government member of Costa Rica recalled that El Salvador had only recently emerged from a civil war and that in spite of it the country was standing upright thanks to its enormous efforts. He emphasized that "Labour Panorama"', published by ILO in 2003, ranked El Salvador as one of the four countries in Latin America which had made the most progress in the social field. He commended the efforts of the Government of El Salvador at the meeting of the Council of Ministers of Central America to gain economic support from other countries and in the search for new ideas. He expressed his satisfaction at the increase in the number of women's cooperatives in El Salvador and praised the Government for its investigations into discrimination that were handled without hiding the truth and were an example of good faith. He concluded by asking the ILO to support the Government in its work on women.

The Government member of Mexico profoundly regretted the fact that, in spite of all the measures taken and the efforts made by the Government of El Salvador to rectify the situation of discrimination on grounds of gender or race, these were not reflected in the Committee of Experts' comments. The fact that the allegations of ICFTU had been reproduced in their entirety gave a distorted view of the situation in the country. She also expressed surprise at the failure to include information on women in factories sent by the Government in the reports on Conventions Nos. 111, 122 and 156. Finally, she considered that the questions regarding the EPZs and *maquilas* should be analysed in the framework of technical cooperation.

The Government member of Honduras expressed her support for El Salvador's statement which provided evidence of the progress made in the labour administration as concerned discrimination on grounds of gender or race. She commended the programmes that the Government had implemented with a focus on formulating strategies which would develop women's capacity at work as well as its campaigns to raise awareness at the workplace.

The Government member of Nicaragua emphasized that the fundamental rights of women in El Salvador were part of a legal framework in a country where all were considered equal. She hoped that the true situation of women in EPZs would be taken into account. Indeed, if the Committee of Experts had done so, the country would not have appeared on the list. She concluded by hoping that such situations would not be repeated in the future and encouraged the Office to make headway in the process of improving the methods of work of the Committee.

The Government representative drew attention to the fact that the Labour Ministry had taken concrete measures to introduce gender perspectives in labour policies and to counteract the inequities created by gender discrimination. The Salvadoran Institute for the Development of Women (ISDEMU) had carried out very concrete activities. The gender perspective had been incorporated in the official system of statistics of the General Directorate of Statistics and Censuses. The Government had undertaken to keep the Committee of Experts informed in this respect in the next reports. The speaker recalled that the objective of the Convention was to declare and pursue a national policy designed to promote the elimination of all forms of discrimination. In her opinion, the application of a fundamental Convention should not be focused on one specific area given that, as a result of such an approach, the national policy could lose its comprehensive outlook. She drew attention to the fact that the authorities and the social partners of El Salvador were committed to eliminate all forms of discrimination against women workers in the labour market. She suggested that discussing individual cases was not the most appropriate manner to find solutions in relation to the EPZs. It should be recognized that the short-term capital which had flown out of El Salvador could easily be transferred to other platforms. Dismantling the *maquilas* in El Salvador would create more poverty without improving the situation of women in the country. This could also cause an increased migration from El Salvador to labour markets and societies in which the Salvadoran women would certainly be even more unfortunate victims of the practices denounced by the ICFTU.

The speaker agreed that the ILO should have the leading role in dealing with female employment and conditions of work, in particular the situation of female workers in the *maquila* industry. The ILO could continue to make studies and investigations on the EPZs. The intervention of the ILO facilitated tripartite dialogue and the search for practical solutions. The speaker emphasized that, in the context of the examination of the questions raised in the observation on the Convention, account should be taken of the positive comments made in the Committee of Experts' direct requests on the application of this Convention and Convention No. 156. The Committee of Experts should also collect other information at its disposal as reflected in certain paragraphs of this year's General Survey (paragraph 89 referred to the new alliance programme for searching better employment opportunities; paragraph 112 referred to the efforts made in relation to the access to vocational training – so did the observation on Convention No. 142; paragraph 122 referred to concrete measures in favour of women workers and took note of "efforts to raise awareness of the protection of the rights of women workers among employers, workers as well as the personnel of public institutions and the administration of justice"). The speaker also noted that, in relation to sexual harassment, section 246 of the Penal Code had provided for prison sentences of six months to two years for whoever committed serious discrimination at work on the basis of sex, pregnancy, origin, civil status, race, social or physical condition, religious or political ideas, membership or non-membership of trade unions, among other discrimination motives. Section 165 of the Penal Code completed the above by providing for a sentence ranging from six months to one year in cases of sexual harassment, aggravated in cases where the sexual harassment was carried out by taking advantage of a superior hierarchical position in the context of any relationship, such as employment relationship.

The speaker stated that, although no mention of any of the above elements had been made in the observation on the Convention, the information provided above was known sufficiently well to be examined in the framework of the negotiation of a trade agreement between Canada, the United States and the Central American countries. The ILO had carried out an objective and up-to-date study on labour legislation concerning the fundamental principles and rights at work in force in the five countries which participated in the negotiation process of CAFTA. This study had been published by the ILO's Social Dialogue Sector and had facilitated the conclusion of the trade negotiations of CAFTA. She maintained that all this information would be included in the regular report that the Government of El Salvador and the social partners would send to the Committee of Experts in 2005 so as to allow an assessment of the way in which the Convention was being implemented, including, as appropriate, indications on the measures implemented in application of the provisions of the Penal Code mentioned above. She invited the Office to continue its programmes to promote decent work and eradicate child labour. It was the willingness of the Vice-President of the Republic to ensure equality in the access of women to government agencies, in particular, to management positions. Her Government was willing to receive more assistance from the ILO for the small and medium enterprises so as to reduce unemployment and the informal economy and ensure decent work conditions for women in cities and rural areas.

The Worker members stated that, contrary to several statements, there was no agreement among worker organizations to prevent the ratification and application of the recent CAFTA agreement. They nevertheless noted an interesting point in this regard, i.e. once international trade agreements of this kind laid down that respect for fundamental labour standards would have to be controlled, the quality of working conditions would become an issue in maintaining the presence of enterprises on a country's soil. This trend, if it was confirmed, would be in line with what was evoked by the World Commission in its report on the Social Dimension of Globalization. In view of the united front of opinion expressed by Central American countries in the discussion on El Salvador, the Worker members emphasized that the substance of the discussion did not concern the most obvious evidence of women's progress in society, but the clearly non-specific information presented by the Government regarding EPZs. While an Employer member had mentioned certain codes of conduct that EPZs claimed to apply, the Government itself had nothing to say on its policy to combat discrimination in EPZs, and supplied no statistics. This was why the Worker members were obliged to request, like the Committee of Experts, that the Government give account of its policies concerning the situation of women in the *maquila* industry.

The Employer members observed that the discussion had shown that the selection of the case was not appropriate. The Government should only be requested to respond to the matters raised in the Committee of Experts' observation in a written report.

The Committee took note of the information provided by the Government representative and the discussion that followed. It observed that the debate had been based on the comments of the ICFTU concerning the persistence in practice of discrimination on the basis of sex and ethnic origin despite the prohibition of discrimination in law. The Committee took note of the information presented by the Government representative and was pleased to note the recent adoption of legislation prohibiting pregnancy testing. The Committee noted that the comments of the ICFTU were of a

general character. It also appreciated the information on a decent work programme conducted by the Office in collaboration with the tripartite representatives. However, the Worker members had reiterated their allegations on the difficult working conditions of women in the *maquila*. The Committee requested the Government to present in writing, for examination by the Committee of Experts, detailed information on the application in practice of this Convention and, in particular, on the situation of women in the *maquila* sector and on the conditions of work of indigenous workers.

Convention No. 122: Employment Policy, 1964

Slovakia (ratification: 1993). **A Government representative** provided a detailed summary of steps that her Government had taken with regard to all six points the Committee of Experts had raised in its observation. With regard to point 1 (employment and unemployment rates), she stated that in 2003 there had been a rising employment trend in the Slovak Republic accompanied by a decline in unemployment. The average rate of employment in the Slovak economy in comparison to 2002 grew by 1.8 per cent. In 2003 the employment rate of inhabitants between the ages of 15 and 64 grew by an average of 1.1 per cent. From the regional perspective the employment rate grew in the last two years in all the regions; the difference between regions with the highest and lowest employment rates declined by two percentage points. In 2003 the decline in the employment rate of young people (between 15 and 24 years of age) gradually came to a halt. The specific employment rate of inhabitants between the ages of 15 and 24 reached 27.2 per cent, which represented an increase of 0.4 percentage points in comparison with 2002. In 2003 there had been an overall decline of unemployment in the Slovak Republic. The average registered unemployment rate in 2003 reached 15.19 per cent which represented a decline of 2.6 percentage points in comparison with 2002. The registered unemployment rate declined in all the regions of the Slovak Republic.

With regard to point 2 (regional differences), she stated that the Slovak Government had adopted measures aimed at decreasing regional disparities in the field of employment. The Act on Employment Services which took effect on 1 February 2004 contained several means to support employment, which took the form of state aid. Such aid was provided based on systemic rules and could be claimed upon the fulfilment of conditions stipulated by law. The financial stimulation amounts were differentiated according to regions; the benefits were higher in economically weaker regions with high unemployment rate. The European Social Fund (ESF) resources were also used for decreasing regional disparities in the field of employment through two types of projects, the so-called national projects and demand-driven projects. The final beneficiaries/final users could use ESF assistance within the framework of calls for demand-driven projects, which were announced from 20 May 2004.

With regard to point 3 (youth employment), she noted that in 2003 the share of young persons from the total number of registered unemployed gradually declined and by the end of the year represented 34.4 per cent. This was 4.3 percentage points lower than in 2002. The support tools, programmes and projects within the active labour market policy had had a positive influence on the decrease in the unemployment of young persons between the ages of 15 and 29. Further measures for disadvantaged groups in the labour market, including young persons, consisted in graduate internship benefits, benefits for employment of disadvantaged jobseekers, and training or retraining benefits.

With regard to point 4 (employment among Roma), she noted that the Employment Services Act regulated the rights and duties of citizens in the field of employment services based on civic and not on ethnic, religious or other principles. Since the numbers of registered jobseekers from the Roma ethnic group were not monitored statistically, it was impossible to explicitly express their participation rates in assistance programmes implemented within the framework of active labour market measures. The active labour market measures were especially focused on disadvantaged jobseekers (i.e. citizens for whom finding employment was more difficult due to their age, family circumstances, period of unemployment, education, lack of experience and health status) and on regions with a persistently high unemployment rate. On 1 April 2004 the Social Development Fund (SDF) was established. It would implement the National Project VI co-financed by ESF. The Project aimed at increasing employability of socially excluded groups through social inclusion partnerships, which would be established on various territorial levels. Its goal was to identify, prepare and implement programmes of employment preparation and employment for the most socially disadvantaged citizens and members of separated and segregated communities.

Turning to point 5 (National Employment Plan), the speaker said that the structure of the 2003 National Action Plan on Employment (NAPE) corresponded to the four pillars of the European Employment Strategy. The regional aspects of the NAPE for 2003 were elaborated and aimed at specific regions, according to their needs. The Slovak Republic fully supported the Lisbon goals, amended by the Stockholm and Barcelona European Councils and would take them into consideration and further elaborate them in the NAPE for 2004. Simultaneously, there was full agreement with all four key messages endorsed by the Spring Council this year. Finally, with regard to point 6 (tripartite consultation), one of the general goals of the NAPE for 2003 was to involve in the solution of the labour market situation all ministries, other bodies of the state administration, autonomous bodies, social partners and other actors who implemented active labour market policy. The abovementioned actors were involved in the process not only in the implementation stage of the actual measures, but also directly in the process of the creation of this document, including the debate on the document in the stage prior to its submission for examination to the Cabinet and its advisory bodies. In addition to the fact that social partners directly participated in the preparation of other nationwide documents and bills, the Council of Economic and Social Consultation negotiated these documents or bills and also issued specific recommendations for the Cabinet. Any of the social partners could request an extraordinary session of this body. The NAPE for 2004 had equally been prepared in consultation with the social partners.

The Employer members thanked the Government representative for the information provided, which would have to be examined by the Committee of Experts. They noted that positive steps were being taken, including the adoption of the Employment Services Act, 2004. Therefore, while the policy directions that were being followed were correct, the problems remained substantial. In comparison with other countries, the unemployment rate was extremely high, even after taking into account the decline in unemployment indicated by the Government. A very large proportion of unemployment was long term, accompanied by very high rates of youth unemployment, at 37 per cent, and of persons with little or no education level. Moreover, unemployment was also particularly high among the Roma minority. It could therefore be concluded that there were structural problems related to employability and the overall participation rate was low at around 50 per cent, particularly in rural areas. Before the adoption of the Employment Services Act, the only apparent job creation programmes appeared to be through the development of existing cooperatives engaged in savings and credit activities, medical care and care for the elderly. The Employer members expected that the new legislation would address in some manner the need to promote entrepreneurship. The Committee of Experts had indicated that the Government had hitherto met with little success in placing young persons in jobs, despite initiatives for the provision of counselling and training services. The Employer members therefore understood that the Government's previous focus had been on prevention strategies rather than job creation. Fundamentally, the problem consisted in the lack of jobs and, where jobs were available, the lack of skills on the part of jobseekers. While the basis for reform appeared to be in place, the Employer members recalled that full employment could only be achieved in a stable political, economic and social environment, which had not been the case in the recent past, and required enabling factors, such as low inflation, low interest rates, coherent macroeconomic policies, secure property rights, enforceable contracts, open markets and an environment which fostered entrepreneurial activity and innovation. The Government therefore needed to set the clear policy priorities of creating and expanding employment, based on universal access to basic education, vocational training and skill development.

The Worker members indicated that since 1996 unemployment had continued to rise, according to information contained in the observation made by the Committee of Experts. A substantial part of unemployment was of a structural nature, and it was characterized by a high level of long-term unemployment, representing over half of total unemployment. One young person in three was unemployed. The rate of unemployment varied considerably from region to region, rural and urban areas, and was particularly high among the Roma minority. However, the information contained in the Committee of Experts' observation dated from 2002. The Government had supplied new information on the employment situation since that date. Unemployment was a concern for a majority of the countries that were members of the Conference Committee, and it was more serious in some countries than others. The case of Slovakia highlighted the problems that were prevalent in Central and Eastern Europe.

The Worker member of Slovakia indicated that the unemployment figures given by the Committee of Experts for the period

1997-2000 remained practically unchanged at the present time, which showed that the Government had not succeeded in resolving the issue of unemployment in the regions, particularly in rural areas. The slight decrease in the unemployment rate, from 17 to 15 per cent, had largely been achieved by administrative measures, such as penalties for failure by the unemployed to cooperate with employment offices. In particular, the Government had not been successful in resolving the issue of long-term unemployment, which was particularly high for women and older workers. Moreover, active labour market measures, such as work experience for school leavers and support for self-employment, had not achieved the expected results. Against a background of continued redundancies, structural changes in the economy were continuing and employers were being relieved of their obligation to communicate job vacancies to employment offices. The results of this measure included a lack of information on the current situation with regard to the unemployed. The situation was being compounded by institutional changes and a reduction in the resources available for labour market measures.

The Government did not appear to be prepared to rebuild the system of employment services and many of the measures set out in the amended Employment Act had not yet been implemented. Other policy measures, such as the intention to increase employment in the services sector, were more a question of imagination than reality, particularly in view of the low level of wages. The unemployed were caught between a very diminished social welfare network and the fact that it was very difficult to find a job. Yet, the Government was doing little to prevent the majority of the population becoming poorer, while the few became even richer. The recent reforms in the fields of taxation, pensions and the privatization of heath care were replacing solidarity and humanity by profit and were increasing the level of dissatisfaction with the Government. The significant weakening of social dialogue, through the exclusion of trade unions from direct participation at any level, was in contradiction with trends in the European Union and the provisions of the Convention. The only solution was a return to genuine social dialogue in the field of employment and the strengthening of the role and responsibilities of the Government and the social partners in this area.

She added that discrimination in employment against the Roma minority was a common feature of the countries of Central and Eastern Europe. As the Roma had little basic education, they were severely affected by long-term unemployment. It was clear that it was very important to provide them with assistance through active labour market policy measures and immediate education and training programmes.

The Worker member of the Czech Republic supported the position of the Slovak Confederation of Trade Unions concerning the application of Convention No. 122 by Slovakia. He understood the governance problems and obstacles of a State transforming its economy and society with the goal of becoming a strong and competitive member of the European Union in an era of globalization. The problems described in the report of the Committee of Experts with regard to Slovakia were similar to those in other Central and Eastern European countries, including the Czech Republic, although the concrete figures differed from one State to another. The average unemployment rate had rapidly increased since the beginning of the transition process at the end of the 1980s and currently stood at more than 10 per cent of the working population, not only in Slovakia but in most neighbouring countries as well. A significant part of unemployment in Slovakia and these other countries was of an often long-term structural nature and was well above average among youth, persons with lower levels of education and members of the Roma minority. The most effective way to reduce the still high rate of unemployment was through comprehensive and proactive state employment policies, and not through the deterioration of labour and social protection for workers and unemployed persons, or by relying on the invisible hand of the free market to create new jobs for everyone. He endorsed the system of social dialogue with broad participation of the social partners in the process of preparing new ideas for government decisions. He recommended the strengthening as opposed to the weakening of the Council for Economic and Social Consultation in Slovakia. Such an approach in government employment policy was in keeping with the principles and provisions of Convention No. 122 and its requirement of government responsibility.

The Government member of Argentina thanked the Government for the information provided. However, he expressed his hope that the Government would provide more precise information in future on the Roma minority.

The Worker member of the United Kingdom said that, although the Convention required policies to achieve full, freely chosen and productive employment, it was clear that the Roma were not being treated equally in Slovakia's active labour market policies. Although well aware that discrimination against the Roma in Central and Eastern Europe was not restricted to Slovakia, he expected that, as a new member of the European Union, Slovakia would make rapid progress against discrimination which hindered achieving the requirements of Convention No. 122. In some communities, Roma unemployment levels were close to 100 per cent. The welfare cuts imposed earlier this year had had a disproportionately discriminatory effect on the Roma and triggered violent reactions in some parts of Eastern Slovakia from both the Roma and non-Roma, to which the Government had responded with force. It was necessary for positive, supportive and non-coercive measures to be taken in active labour market policy for those already of legal working age who were excluded from equal access to employment. He welcomed the fact that the Committee of Experts indicated that the Government recognized the need for projects with a special focus on increasing the participation of the Roma in active labour market policy programmes. He welcomed an even greater commitment to increasing Roma participation in full, freely chosen and productive employment. In addition, the Government could not do without an effective statistical base. One could not measure progress in reducing discrimination unless its full extent was known. Nor was the labour market the same as an active labour market programme. An integrated and inclusive labour market required an end to social exclusion. Improved success in the employability of Roma children could not be expected while they were still subjected to segregated education in so-called "special schools" for children with special educational needs, segregation in Romani ghetto schools, segregation in all-Romani classes, and denial of enrolment of Romani children in mainstream schools. The speaker concluded by condemning the statement made by Ambassador van der Linden, former Head of the European Union delegation to Slovakia. The proposal that the so-called "Romani problem" could be solved by removing Roma children from their families and bringing them up in boarding schools so that they would be continually exposed "to the system of values which [were] dominant in our society" was an expression of crude racism against a community which had suffered enough attempts to destroy it in Europe, not least between 1939 and 1945. Ambassador van der Linden's comments went counter to the United Nations Convention on the Rights of the Child and were wholly incompatible with the fundamental principles of the ILO and with the development of active labour market policies as required under Convention No. 122.

The Government representative recalled that she had provided the Committee of Experts with additional information on developments in the employment situation between August 2002 and the present day. She noted that this information was complex and that the statistics on unemployment were official statistics of the Slovak Republic. She also emphasized that the labour legislation in her country was based on the principle of non-discrimination in relation to all persons on the Slovak territory. Her Government was currently preparing a new report on the Convention, which would include all the relevant information. In conclusion, she thanked the social partners for the interest shown in this question.

The Worker members indicated that they had taken note of the new information supplied by the Government regarding employment and unemployment, as well as employment policies. They added that the results achieved in the field of employment were weak and that there was a slowdown of social dialogue. Three points should be emphasized. First, the Government had to take more initiatives in support of youth in the fields of education and employment. Second, the Government also had to adopt a programme to combat the exclusion of the Roma minority from the education system and facilitate their access to employment. Third, the participation of the social partners was important for the adoption of an effective policy of employment promotion. The Government should therefore assume its responsibility in the field of employment and supply detailed information to the Committee of Experts on the employment policy and on discrimination practices against young persons and the Roma minority. Finally, the ILO should pay greater attention to the problems of the new countries of Central and Eastern Europe.

The Employer members recalled that the present case involved a country in transition and that the transformation to a free market economy was not an easy process. It appeared that a reform strategy was in place in the Slovak Republic, although a number of years would be needed to see whether the country was on the right path. Nevertheless, the initial indications were hopeful and it was important that the Government was engaged in ongoing dialogue with the Committee of Experts on these matters.

The Committee noted the detailed information provided by the Government representative on the most recent labour market trends, including the measures to promote employment creation.

The Committee also noted the ensuing discussion concerning the difficulties encountered in achieving full employment. In accordance with the Convention, the active employment policy had to be integrated as a priority in all economic and social policies in close relation to educational and vocational training policies. The Committee hoped that, in its next report on the application of the Convention, the Government would be in a position to show that the difficulties encountered in the labour market in Slovakia were being overcome, and that in particular a more balanced regional development was being achieved, employment created in rural areas and responses found to the specific needs of the most vulnerable workers, namely youth and the Roma population. The Committee noted the report on projects for the integration of the Roma population and hoped that the Government would provide information on the results achieved. In this respect, the Committee urged the Government to renew its efforts to strengthen social dialogue on employment policy, as the participation of the social partners in the formulation of employment policy and in securing support for the achievement of the objective of full employment was an essential requirement of this priority Convention.

Convention No. 138: Minimum Age, 1973

Ukraine (ratification: 1979). **A Government representative** (Minster of Labour and Social Policy) noted that the deep changes that Ukraine was undergoing had brought to the surface issues of child labour. The Government of Ukraine was endeavouring to take the necessary measures to eliminate the phenomenon. The national legislation protected children from dangerous and hard labour. Section 188 of the Labour Code provided that children below 16 years of age were not eligible for employment. On an exceptional basis, young persons of 15 years of age were allowed to work subject to the prior consent of their parents. Children of 14 years of age could perform light work, with the consent of their parents. Such labour was not to prejudice the children's health or in any way interrupt their schooling. The employment service accorded special attention for the placement of young persons, particularly orphans. In 2003, out of 33,300 young persons below the age of 18, 8,200 persons as well as 225 out of 361 orphans found employment thanks to the employment service. Following amendments in April 2003, which were introduced to the laws governing the organs and services of youth affairs, the protection of the rights and interests of young persons had become the responsibility of the State's Special Services. Section 190 of the Labour Code placed restrictions on arduous, dangerous and harmful labour for young persons under 18 years of age. Such restrictions were introduced particularly in the sector of heavy transport.

A list of dangerous and harmful professions contained restrictions as to the professional training for young persons under the age of 18. Work under dangerous and harmful conditions was not to exceed four hours per day. Concerning light work, the list was established by the Labour Minister. A shortened week was specified for the following age groups: for young persons between the ages of 16 and 18 – 36 hours per week; for young persons between 15 and 16 years – 24 hours per week; students were not allowed to work for more than half of the maximum hours of work specified above. According to section 192 of the Labour Code, young persons below 18 years of age were not allowed to work outside the normal working hours, during public holidays or during the night. The new draft Labour Code, which was based on the ILO Declaration on Fundamental Principles and Rights at Work, included a special provision on child labour in the area of arts performance. The duration of such work was limited to four hours per day and the State's Special Services were required to give their consent to the conditions of work and remuneration. Several ministries in Ukraine participated in the effort for the elimination of child labour. The result of such participation was the preparation, in December 2002, of such important documents as the Strategy Paper of the Ministry of Education which provided, inter alia, for the reform of secondary education. Compulsory schooling would end at the age of 15 years. However, schooling could continue up to the age of 18 and could include professional training for young persons in the last three years of the education process.

The elimination of the worst forms of child labour remained of paramount importance in the framework of the International Programme for the Elimination of Child Labour (IPEC), which commenced in Ukraine in July 2001. According to the terms of a Memorandum of Understanding between the ILO and the Government of Ukraine, a Supervisory Council had been established with the participation of the representatives of six Ministries, workers' and employers' unions as well as non-governmental organizations concerned with child protection. The Strategy Paper for the elimination of the worst forms of child labour as well as the related Plan of Action were adopted in June 2003. These documents focused on the following areas: the elimination of poverty; the realization of the decent work concept; the creation of mechanisms concerned with illicit child labour; the establishment of a social assistance system; the rehabilitation of children withdrawn from the worst forms of child labour; the improvement of the professional education system; the strengthening of family institutions; recreation for children; the establishment of institutions to organize recreational activities for children; the improvement of legislation governing child labour; and public information related to the issues of child labour. The new draft Labour Code, in its section 286, prohibited the worst forms of child labour, including physical, psychological or sexual violence against children, as well as work which adversely affected the health and morality of children. Labour inspection played an important role in increasing the efficiency of supervision in matters of child labour. It covered the working conditions of children, the level of wages, periods of rest and the respect of guarantees accorded to young persons. The control in the informal economy represented a major problem in Ukraine. The Government had submitted to Parliament a draft law for the ratification of the Labour Inspection Convention, 1947 (No. 81). The Government hoped to benefit from the technical assistance of the ILO for the implementation of the said Convention and for the carrying out of a statistical survey of child labour in the informal sector. This could be organized in the second phase of the IPEC programme scheduled for 2005.

The Worker members stated that Ukraine, like many other states of Central and Eastern Europe and, in particular, those former republics of the Soviet Union, faced major challenges in meeting obligations under a range of ratified Conventions due to economic, social and political problems stemming from the breakneck pace of deconstruction of previous social structures and infrastructures, including social security safety nets, the rapid introduction of an unregulated economy, and the extensive influence of organized crime. Both trade union federations in Ukraine were of the view that child labour was increasing in the informal economy, in which the Government had virtually no control. He asked the Government to indicate how it intended to extend the actual reach of labour inspection services so that all citizens were protected by the rule of law. Comprehensive application of labour inspection was essential if child labour was to be eliminated. All workplaces had to be open to labour inspection, otherwise hidden forms of child labour would not be discovered. The Workers would be interested to hear from the Government what measures it intended to take in order to strengthen the tripartite and broad social alliance in Ukraine to combat child labour, and the role that an innovative labour inspectorate was expected to play in such an alliance.

The Worker members noted that the Government had declared a minimum age of 16 when it had ratified Convention No. 138. The Convention stipulated that no one under that age could be admitted to employment in any occupation – with the sole exception of light work which did not interfere with education for children of 13 years or more – and that children should not work excessive hours or during school hours. Those prohibitions applied to all sectors of the economy and regardless of the nature of the employment relationship. Hazardous work and other worst forms of child labour should not be performed by anyone under the age of 18. The Worker members noted that Ukraine had made progress in the struggle against child labour. A Memorandum of Understanding had been signed with IPEC and a National Plan of Action had been formulated, which took into account the need to promote policy development; to prevent an increase in child labour; to build the capacity of the governmental and non-governmental agencies involved; to conduct quality research; to initiate monitoring activities; to implement direct action activities; and to raise public awareness. Emphasis was being placed on four areas, targeting the worst forms of child labour, including child prostitution, working street children and children employed in the rural economy. In many ways Ukraine was demonstrating a considerable degree of good practices. They hoped that members of the Committee would note that it was not a punishment to be on the list of cases for discussion in this Committee. It was possible to supervise and learn from good practices through dialogue, as well as to criticize failures to comply with obligations arising from ratified ILO Conventions. The Ukrainian case might have had elements of both, but that in no way diminished the Committee's duty to recognize progress when it occurred.

To combat the child labour problem, a first step was to stop and reverse the increase in child labour. Social dialogue needed to be further strengthened so that a macroeconomic and active labour market policy could be developed and implemented in order to tackle Ukraine's serious decent work deficit, in accordance with fundamental principles and rights at work, to ensure that all

children now at work returned to school, and that no children under the minimum working ages set out clearly in Conventions Nos. 138 and 182 entered the labour market. It was clear that the indivisibility and mutually reinforcing nature of the fundamental ILO Conventions applied equally to child labour as to the other three subjects. Freedom of Association and the effective right to collective bargaining, the end to discrimination and forced labour, and the provision of universal, free and accessible education were essential prerequisites for the elimination of child labour. The Worker members congratulated Ukraine on particular aspects of good practices in conformity with paragraph 2(e) of Recommendation No. 190. The children who attended the first All-Ukrainian National Children's Congress held two years ago declared that they wanted enough workplaces for their parents; that they wanted access to education; and that they no longer wanted to be forced to work. These sentiments were again reflected by the children attending the first World Congress of Children against Child Labour in Florence. The participants of the Global March supported the empowerment of children in the struggle against child labour. But they in no way removed the responsibilities of adult citizens in democracies to make and enforce laws in the best interest of children – at the national and international level. Those best interests were clearly defined in Conventions Nos. 138 and 182. In conclusion, the Worker members noted that many member States which were supported by IPEC looked for further funds for their programmes. But it was essential that governments fully understood that the National Plan of Action belonged to them and to the social partners, not to IPEC. IPEC supported governments and the social partners – not the other way round. In that context, they also reminded other ratifying member States of their obligations under Article 8 of Convention No. 182 regarding international cooperation and assistance.

The Employer members noted that this case concerned Convention No. 138, and not Convention No. 182. They recalled that the Committee of Experts had begun making comments on this case in 1997. It was not clear from the observation of the Committee of Experts what legislation or labour inspection system was in force to implement the obligations of the Convention in all sectors of the economy. It was also not clear from the Government's statement when sections 188 and 190 of the Labour Code had come into effect. This information should be supplied to the Committee of Experts in a written report for further examination. They also noted the Government representative's reference to employment services for young persons and to the fact that over 33,000 young persons were currently registered with these services. They noted that providing work to children on the basis of their economic need, such as in the case of orphans, might be contrary to certain principles in Convention No. 138. Moreover, the provisions of the draft Labour Code regarding light work should be equally submitted to the Committee of Experts for examination. The Employer members noted that ILO assistance had already been provided and that further assistance would be needed. They noted with interest that Convention No. 81 was before Parliament but recalled that labour inspection only concerned the formal sector and therefore further efforts would be needed to address the crucial problem of child labour in the informal economy. The ILO should provide assistance in carrying out a comprehensive survey of child labour in Ukraine. They concluded by noting that the Government was making real efforts in this regard and hoped that it would meet the challenge of applying the Convention fully in law and practice.

The Worker member of Ukraine stated that Ukraine had a balanced labour legislation in the area of employment of children, which included the Labour Code, the Law on occupational safety and health, the Law on health care, and the Law on education. More than 400,000 children worked regularly. The average age for starting work was 12 years. Children were used in the worst forms of labour including prostitution, pornography, street commerce and work in illegal mines. Children were also taken abroad to be exploited in construction works, agriculture and the sex industry. Thirty-five per cent of working children stated that the need to help their families drove them to work.

The labour of women and children even under 10 years of age was used in illegal mines, notwithstanding section 190 of the Labour Code, which prohibited employment of children below 18 years of age in underground works. This was the negative result of the restructuring of the mining sector undertaken by the World Bank, which had led to the closure of mines without creating any alternative employment. The number of illegal mines had reached 5,000. The Government did not have the will to solve the problem of child labour, which was concentrated in the informal sector, accounting for 60 per cent of the national economy. This led to unjust distribution of wealth and the spread of poverty. The speaker mentioned a rare case of a conviction by a tribunal of the persons who, having taken ten orphans into the family for upbringing, forced them to do night work in an illegal mine. Considering that the problem of child labour in Ukraine was still far from having been fully studied and understood, he requested the ILO to extend its activities in the country within the framework of the IPEC programme and to conduct a comprehensive survey on the use of child labour.

The Government member of Cuba thanked the Government representative for the information provided on the measures adopted to tackle the situation of child labour in Ukraine and endorsed his request for the ILO technical assistance which could contribute to the resolution of the problems raised by the Committee of Experts and to the strengthening of the Government's efforts to resolve this complex problem which required a multi-sector approach.

The Employer member of Ukraine expressed his appreciation for the interest in this case and stated that employers fully shared the view of the international community that child labour could not be accepted. It appeared that in the formal sector the Government was implementing its obligations under Convention No. 138 as the work of children was well regulated. The problem appeared to concern the informal sector. It was positive, however, to note that all social partners agreed on this issue and were working on relevant legislation. Furthermore, the GDP of Ukraine continued to grow at a rate of 10 per cent. As a result, the informal sector was shrinking and there would be a reduction in child labour as well. He stressed the importance of monitoring child labour and of the assistance of the European Union and other international bodies in addressing this problem. In closing, he noted that loans by the World Bank and the European Bank for Reconstruction and Development had resulted in the closing of all coalmines. This had left many workers without jobs and had contributed to child labour and children working in illegal mines. He reiterated that Ukrainian employers would never allow child labour to be used in their enterprises.

Another Worker member of Ukraine noted that the economic crisis in Ukraine in the previous decade had produced a new phenomenon – child labour. Working children tried to help their families to cope with material difficulties. Child labour was most often used in retail trade enterprises, market-places and in agricultural works. Various forms of assistance were provided to these children by government agencies, trade unions and other non-governmental organizations. Trade unions had taken the initiative to propose the ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182). In June 2003, the Government adopted, with the participation of trade unions, the Strategy Paper for the elimination of the worst forms of child labour, as well as the Plan of Action where non-governmental organizations were given a prominent place. Special provisions calling for comprehensive measures to implement Convention No. 182 were included in the General Agreement signed by the trade unions. In May 2002, a seminar was organized in cooperation with the ILO with a view to better engage the potential of trade unions in the realization of projects for the prevention and elimination of the worst forms of child labour in Ukraine. The speaker supported the additional measures for combating child labour mentioned by the Minister in his intervention and expressed the wish to conduct a survey on the use of child labour in Ukraine including the labour of street children. Finally, he proposed to include the training of public employees, as well as of employers' and workers' organizations, in the area of the rights of the child in the programme of cooperation between Ukraine and ILO.

The Government representative stressed that the issue of child labour was complex and noted the interest expressed by the participants in the Conference Committee's discussion to find solutions to the problem. He was convinced that the phenomenon of child labour was of deep concern in view of its adverse effects. There were moral, legal, medical, social and economic dimensions to the phenomenon of child labour which was the product of increasing criminality in the country. The debate indicated that all levels of Ukrainian society, particularly the trade unions, acknowledged the inadmissibility of child labour. In answering the queries raised by certain members of the Committee, in particular the Employer members, he provided assurances that all the necessary information, including that relating to the contents of the Ukrainian Labour Code, would be made available in the Government's report to the Committee of Experts before the next session. He expressed the hope that the proposals made by certain members of the Conference Committee would be reflected in the conclusion of its report.

The Worker members stated that the discussion of the case confirmed their view that there was good reason for congratulation. Nevertheless, they agreed with the Employer members that information on legislation should be provided to the Committee of Experts. They also shared the Employer members' concerns about employment services possibly channelling children into work, especially the most vulnerable who should receive enhanced protection. More information was needed on the serious problems of child labour in the sex industry, child trafficking, and the use of children in

mines. They reiterated that the strong demand for IPEC support should go hand in hand with the respect for obligations under Article 8 of Convention No. 182 which called for countries to provide international cooperation and/or assistance in combating child labour, including support for social and economic development, poverty eradication programmes and universal education. Finally, the Worker members stated that they had mentioned Convention No. 182 in the context of this case because, in their view, this instrument supplemented Convention No. 138. Only an integrated approach to child labour would succeed.

The Employer members stressed the importance of this case since children were the future of Ukraine. The Government had indicated good will and, like the Worker members, they had noted some progress in this case. Nonetheless, it was clear that more needed to be done to put an end to child labour in the country.

The Committee noted the information provided by the Government representative and the discussion that followed. The Committee noted the statement by the Government representative that the various matters raised by the Committee of Experts would be taken into consideration. The Committee noted in particular the indication by the Government representative that a technical cooperation programme with ILO/IPEC had recently been launched. The Committee took due note that this programme would focus, inter alia, on building the institutional and technical capacity of the Government and the social partners to apply Convention No. 138 as well as the Worst Forms of Child Labour Convention 1999, (No. 182). The Committee expressed the hope that this technical cooperation programme would address the situation of children below the age of 16 working in the informal sector including by enhancing the capacity of the labour inspectorate in the informal economy. The Committee requested the Government to provide, in its next report to the Committee of Experts, information on the implementation of this technical cooperation programme as well as on the results achieved in eliminating child labour in the informal sector. Furthermore, the Committee requested the Government to provide information in its next report containing statistics on the number and the age of children working in the informal sector.

Recalling the fundamental importance of Convention No. 138 for the abolition of child labour, and particularly the importance of establishing the minimum age of 16 years, as specified by the Government upon ratification, for admission to employment or work in all sectors, the Committee requested the Government to take the necessary steps, in practice, to ensure that no one under the age of 16 was admitted to employment or work in any occupation. In this regard, the Committee recalled that compulsory education was one of the most effective means of combating child labour, and that it was desirable for the age of completion of compulsory schooling to correspond to the minimum age for admission to employment or work. The Committee requested the Government to clarify the situation with regard to the age of completion of compulsory schooling and the minimum age for admission to employment or work and to indicate the relevant national provisions applicable in this regard. Finally, while noting that national legislation prohibited the employment of young persons under 18 years of age in any type of employment or work which, by its nature or the circumstances in which it was carried out, was likely to jeopardize their health, safety or morals, in conformity with Article 3 of the Convention, the Committee expressed its concern over the situation of many young persons under the age of 18 who increasingly worked in hazardous work in practice, in particular in the informal sector. The Committee noted with interest that the Labour Inspection Convention, 1947 (No. 81) was currently before Parliament for ratification. The Committee also invited the Government to provide detailed information on the manner in which Article 3 of the Convention was applied in practice, including for example statistical data on the employment of children and young persons in hazardous work, extracts from the reports of inspection services and information on the number and nature of contraventions reported. The Committee confirmed that the ILO would provide all necessary technical assistance to the Government in order to carry out a survey on the situation of child labour in the informal sector.

Convention No. 156: Workers with Family Responsibilities, 1981

Japan (ratification: 1995). **A Government representative** recalled that birth rates in his country were declining sharply, which would seriously affect the Japanese economy and society as a whole. The Government had therefore been promoting various measures to help workers harmonize their working and family lives. For instance, provisions for childcare leave for workers in the private sector had been set out in law in 1991, as had provisions for family care leave in 1995, the year in which the Convention had been ratified. The situation of declining birth rates also necessitated additional measures, including various programmes to help families raise their children. These measures should be adopted in close collaboration with the parties concerned, including central and local governments and employers. New draft legislation had been submitted to the current session of the Diet to revise the Childcare and Family Care Leave Act. The draft legislation reflected the outcome of discussions with employers' and workers' representatives and offered possible solutions to several of the problems raised by the Committee of Experts. With reference to the comments of the Committee of Experts, and particularly the fact that the Convention was intended to cover all workers, he emphasized that support plans for workers for the harmonization of their working and family lives were clearly significant for workers in general, although not all workers would necessarily benefit from all the measures. He agreed that such measures needed in general to serve as a basis for the harmonization of working and family lives and that they should be kept constantly under review. He recalled that there were many fixed-term workers in his country who continued to work for the same employer for several years through the repeated renewal of their contracts. With a view to taking this into consideration, the scope of statutory childcare leave and family care leave had been reviewed and, once the new draft legislation had been enacted, fixed-term workers would be entitled to both types of leave. With reference to the comments of the Committee of Experts concerning the issue of personnel transfers to remote workplaces, he indicated that the revision of the Childcare and Family Care Leave Act in 2001 had provided that employers had to give consideration to workers with family responsibilities in the event of the relocation of their jobs to remote workplaces. The Government expected employers and workers to make efforts to apply this system effectively and was providing guidance to employers in cases which gave rise to problems. Turning to the question of short-term childcare leave, he said that the revision of the Childcare and Family Care Leave Act in 2001 also provided that employers had to endeavour to take measures to provide leave to care for a sick child for employees with children who had not yet begun attending elementary school. Furthermore, the draft law revising the Childcare and Family Care Leave Act ensured the right to take leave to care for a sick child. In addition, the Government intended to adopt further measures to help workers harmonize their working and family lives.

The Worker members recalled that, although the Conference Committee had never considered the present case before, the Committee of Experts had made a series of comments and had received a substantial number of communications from Japanese trade unions concerning difficulties in the application of the Convention. According to the Japanese trade unions, the Childcare and Family Care Leave Act did not apply to fixed-term contract workers and the Government remained unwilling to institutionalize childcare and nursing leave for wage-based workers, nor had it taken any measures to ensure the application of the Convention to wage-based workers in state-run hospitals and sanatoriums, who were doing the same work as regular workers, but whose position was unstable. The Committee of Experts had noted the Government's indication that childcare and nursing leave systems were set up for continuous long-term employment and were not therefore applicable to part-time workers or wage-based contract workers. In this respect, the Worker members recalled that the Convention was intended to cover all workers, whether in full-time, part-time, temporary or other forms of employment, and whether in waged or unwaged employment.

With regard to the transfers of personnel to remote workplaces without consultation or an announcement from the employer prior to their transfer, the Worker members noted that workers were being forced to choose between accepting the transfer and being separated from their families, refusing the transfer and risking being dismissed, or simply leaving their job. Transfers to remote workplaces in any case tended to increase the cost of living and dramatically changed the living and working conditions of workers, as well as their family life. In this respect, the Government had stated in its report that decisions on personnel transfers, for example in hospitals and sanatoriums, were based on the needs of the service, the principle of the merit system, the qualifications, abilities and experience of the personnel, as well as the health and family responsibilities of the worker concerned. The Government had added that employees were not allowed to refuse a transfer without a rational reason, but that the system did not discriminate against employees, including those who were nearing retirement. The Worker members noted in this regard the finding by the Committee of Experts that, despite the provisions of the Childcare and Family Care Leave Act and the established guidelines, under which employers had to give consideration to workers with family responsibilities, it appeared that transfers continued to be imposed upon employees

unilaterally without prior consultation and without recognition of their objections due to family responsibilities. The Worker members agreed with the conclusions of the Committee of Experts on this point that employers should give the fullest possible consideration to the genuine need of workers to care for members of their families and that efforts to promote the balancing of work and family responsibilities should include the balancing of any advances that the workers might make in their professional lives with their family situation. In this respect, it was vital to emphasize the link between the balancing of work and family responsibilities and gender equality. The Worker members therefore urged the Government to take the necessary action to remove the practice of imposing transfers on workers so that national practice could be brought into greater conformity with the requirements of the Convention. With respect to the comments made by the Japanese trade unions concerning the lack of protection in Japanese legislation against termination of employment due to family responsibilities, the Worker members emphasized the obligation upon employers to provide moral working conditions. They supported the finding of the Committee of Experts that the protection provided under the Civil Code and the Childcare and Family Care Leave Act was both too general, as it did not specify workers with family responsibilities or protection from termination of employment, and narrower than the protection envisaged in Article 8 of the Convention, as it was not directed at family responsibilities in general. They therefore called upon the Government to provide specific protection in law against termination of employment due to family responsibilities. They also called upon the Government to develop new legislation, in consultation with workers' and employers' organizations, with a view to overcoming the shortcomings in national law and practice identified by the Committee of Experts, thereby offering Japanese workers a better quality of life.

The Employer members, following the order of the comments of the Committee of Experts, noted that the Childcare and Family Care Leave Act did not apply to workers on fixed-term contracts as well as to workers paid by the hour. While, according to the Government representative, a Bill to amend the legislation would extend the application of childcare leave to workers who were de facto employed on a permanent basis due to repeated renewals of their contracts, workers paid by the hour would remain excluded from the application of childcare leave. The Government representative had also indicated that the revision of the Act was intended to limit overtime work for workers with family responsibilities. In this respect, the Employer members noted the provisions of Article 2 of the Convention respecting its scope of application. In the view of the Committee of Experts, this meant that the Convention was intended to cover all workers, irrespective of their type of contract. However, the Employer members considered that the wording of Article 2 also allowed for a different interpretation. This belief was strengthened by the provisions of Articles 1 and 3, paragraph 2, of the Convention, referring to Articles 1 and 5 of Convention No. 111, which offered the possibility of differentiation with regard to the application of the Convention. The question therefore remained open as to whether or not the Government was under the obligation to extend the scope of application of the Act. Accordingly, they called upon the Government to indicate in a report the reasons for the exclusion of certain groups of workers from the scope of the above Act. With regard to the issue of company regulations, which often required full-time employees to work overtime and change workplaces, and which as a consequence forced workers with family responsibilities to work part time, the Employer members noted the belief expressed by the Japanese trade unions that both full- and part-time workers with family responsibilities should be exempted from overtime. In this respect, they noted that the Committee of Experts had merely requested the Government to try to ensure that agreements were reached in accordance with the intent and provisions of the Convention. It was the view of the Employer members that the Committee of Experts had adopted the appropriate approach on this issue, since not all the details related to employment relationships needed to be regulated by law. If such details were regulated by law, this would place in jeopardy flexibility and the principle of the freedom to conclude contracts. They could not comment on the draft Bill referred to by the Committee of Experts as they had no knowledge of its content.

With regard to the issue of the transfer of workers to another workplace without prior consultation or recognition of their objections due to family responsibilities, the Employer members considered that no employer would transfer an employee to another workplace without a good reason, as every transfer implied a loss of the experience gained in the former workplace. In most cases, employers transferred workers to avoid dismissals due to the lack of employment opportunities. With regard to a complaint alleging that the promotion of nurses implied a transfer to another workplace, they said that this was quite a normal outcome when promotion was obtained. As Article 4(a) of the Convention did not set out the right to a specific workplace, this matter was not regulated by the Convention and there could therefore be no violation on this point. The Employer members agreed with the Committee of Experts that the proposed legislative changes constituted considerable progress and also with the request for the Government to supply further information on the practical application of the new provisions. With regard to the transfer of hospitals and sanatoriums to a new independent administrative agency and the fact that it remained unclear what would happen to in-house nurseries and the employment of their personnel, the Employer members noted the decision of the Government on this subject, but could not comment further as they had no knowledge of the content of the decision. Nor could they give further comments on the issue of termination of employment on grounds of family responsibilities, as the Committee of Experts had not provided a definitive opinion on a difficult legal situation and the Government had referred to new provisions providing for protection against dismissal. In conclusion, the Employer members welcomed the fact that the legislative changes referred to by the Government had been adopted after consultation with the social partners. They called upon the Government to provide full information on the present case in a report to the Committee of Experts and recalled that the flexibility clauses contained in the Convention needed to be taken into consideration when further reviewing the case.

The Worker member of Japan said that the Japanese Trade Union Confederation (JTUC-RENGO) welcomed the revised Childcare and Family Care Leave Act proposed in the current Diet session. The new draft legislation would improve several problems described in the information submitted to the Committee of Experts in September 2003. The Government had drafted the revision of the Act in full consultation with RENGO and the employers. However, there were several issues that needed improvement in the revised Act. Article 2 of the Convention provided that all workers should be equally included. The revised Act would cover fixed-term workers who had been previously excluded, but it was going to be interpreted too narrowly. He called on the Government to apply the law broadly by eliminating the conditions of application. The law should apply to fixed-term workers who had worked for one year without interruption. The Committee of Experts clearly stated that the Convention applied to all branches of economic activity and all categories of workers. It stated that the Convention was intended to cover all workers "whether in full-time, part-time, temporary or other forms of employment, and whether in waged or unwaged employment". If the application of the law excluded a particular group of workers, it would be contradictory to the principles of the Convention. He asked the Government to revise the relevant laws for irregular workers in the public sector because they were not currently covered. According to statistics from 2003, Japan had a workforce of about 54 million people. About 20 per cent, or 11 million, were irregular workers, 8 million of whom, or 73 per cent, were women. Only once all these women workers, regardless of their employment, were covered by the full application of this legislation, would the law be practical and meaningful. With respect to male workers, he urged the Government to set up special measures to allow men easy access to childcare leave because the ratio of male workers who used it was remarkably low. Under the revised Childcare and Family Care Leave Act, employers were obliged to give consideration to workers with family responsibilities when relocating these workers to remote workplaces. JTUC-RENGO would closely monitor how the Act was being implemented. The speaker urged the employers to relocate workers only with their full consent so that worker relocations were not carried out unilaterally at the employers' convenience. The reduction of annual working time to fewer than 1,800 hours should also be carried out as soon as possible. It was important to realize that people, whether they had family responsibilities or not, should be able to enjoy a balance between their working and private lives. In conclusion, he requested the Government to introduce legislation to regulate overtime work.

The Worker member of Norway acknowledged that the present law had been revised and was in better compliance with the Convention than the previous law. However, there were still some unresolved issues. She supported the request by JTUC-RENGO that the new law should not be applied and interpreted in a narrow manner. To be in compliance with the Convention, all workers should be equally included and should enjoy the same rights to childcare leave and nursing leave. It was important to keep in mind that this Convention concerned the rights of children. Any child, whether he or she had parents who worked on a permanent basis or as wage earners, should have the right to good childcare. It was also important that this right to childcare leave not be restricted to full-time

workers. More and more workers, most of them women, were working part time. By way of example, she highlighted certain practices in her country as suggestions on how to secure better social rights for workers with family responsibilities under the Convention. In Norway, part-time workers enjoyed rights to childcare leave and nursing leave according to the hours they worked and there was no discrimination between men and women on this point. There was an attempt, either through collective agreements or legislation, to treat workers in irregular employment in the same way as those who were employed in more traditional work. As for personnel transfers, if a public workplace in Norway was moved to another part of the country, workers could refuse to be transferred. Workers were further given priority to jobs in other public workplaces where they and their families lived, or offered financial compensation. Moreover, the Working Environment Act of Norway established maternity protection and parental leave for families with newborns as well as provisions for paid rights to stay home to take care of sick children. The speaker said that trade unions from her country would do their best to share their views and experiences with the Government of Japan and she hoped that, in the spirit of tripartism, employers and workers would participate as well. Japan was a rich country with an extremely hard-working workforce. The workers and their families deserved their share of the profits earned through well-developed social reforms and the Government had no reason not to bring its legislation on the present issues into compliance with the Convention.

The Government representative thanked the members of the Committee for their comments and made a number of further remarks in order to avoid any misunderstanding. With regard to the coverage of the Childcare and Family Care Leave Act, he indicated that no difference was made between regular workers and part-time workers. Secondly, as indicated by the Worker member of Japan, he emphasized the importance of the new draft legislation before the Diet. Once this draft legislation had been enacted, fixed-term workers, who were not currently covered by the Act, would be entitled to childcare leave and family care leave. Thirdly, with regard to workers in the public sector in this respect, the Government had already started preparing to take appropriate measures so that the public sector would not be left behind. He also recalled that the revised Childcare and Family Care Leave Act called upon employers to give consideration to workers with family responsibilities in the case of job relocation to remote workplaces and that the Government was endeavouring to secure the effective application of this provision. Once the draft legislation had been enacted, the Government would ensure that the new measures were widely known and firmly established. In addition, the Government intended to work together with employers' and workers' representatives to promote further measures to support the harmonization of working and family lives and would keep the ILO informed of all appropriate developments.

The Worker members, after taking careful account of the information provided by the Government representative, called for a thorough assessment by the Committee of Experts of the conformity with the Convention of the new legislative measures, which had been adopted following consultation with the social partners. However, even after the explanations provided by the Government representative, they feared that many types of workers were still not adequately covered, including temporary workers. Moreover, it was still unsure whether action had been taken to prevent the imposition of overtime under threat of the loss of a worker's job. In view of the sharp decline in the birth rate, they believed that the Government should be encouraging workers to have bigger families. They recalled that the need to work long hours meant that workers were not available to fulfil their family responsibilities. In conclusion, the Worker members hoped that social dialogue would be continued with a view to developing measures to cover all the points raised by the Japanese trade unions and that the Government would take inspiration from other countries which were more advanced in this respect with a view to improving the situation of workers with family responsibilities.

The Employer members, referring to the intervention by the Worker member of Norway, called upon the members of the Committee to confine their comments to the individual cases under examination. They added that the definition of the scope of application of the Convention contained in the observation of the Committee of Experts was merely its own interpretation, rather than the textual meaning of the Convention. In view of the lengthy discussion of the case and the legislative changes announced by the Government representative, as well as the measures to be adopted, they called upon the Government to keep the ILO informed of all relevant developments.

The Committee noted the statement by the Government representative and the ensuing discussion. It noted the detailed information provided by the Government representative concerning the application of the Convention. It welcomed the efforts made in the public sector to extend childcare and nursing leave and the efforts to support employers in the private sector. It also noted the Government's willingness to harmonize work and family responsibilities and to engage in tripartite consultations on these matters. The Committee noted with concern that despite the legislation and guidelines that were in force, transfers appeared to continue to be imposed on workers without taking into consideration their family responsibilities. It therefore requested the Government to take the necessary measures to review such practices in order to bring them into conformity with the Convention. It should be ensured that appropriate weight was given to the family responsibilities of workers in transfer decisions. With regard to protection against termination of employment due to family responsibilities, the Government should examine whether the current legislation provided an appropriate basis for the prevention of and protection against such discrimination in practice in the light of the comments of the Committee of Experts. The Committee also called upon the Government to endeavour to identify means of ensuring the application of the Convention to all categories of workers, including fixed-term, wage-based and part-time workers. The Government was requested to provide information in its next report on these matters as well as those raised by the Committee of Experts. The Committee hoped that the Government would adopt the draft legislation that was currently under discussion and that it would cover the points raised, including the measures taken for childcare and the right to nursing leave. The Government should continue its dialogue with the social partners on these matters. Finally, the Committee was bound to emphasize the importance of addressing the situation of men and women workers with family responsibilities in order to make further progress in achieving equality of opportunity and treatment in employment.

The Worker members noted that the conclusions proposed by the Committee did not cover the aspect of workers with family responsibilities being forced to work overtime hours under threat of dismissal if they did not do so. They recalled that it was the primary responsibility of the State to regulate working conditions, including working time issues, and that if workers were forced to work overtime hours they would have less time available to fulfil their family responsibilities. It was an important aspect of decent work that workers should not be subject to unreasonable demands on their working time, particularly in the case of workers with family responsibilities.

The Employer members noted that such detailed prescriptions as those relating to overtime hours could not be inferred from the text of the Convention. These were issues that had to be regulated by national labour legislation. As the Conference Committee was not in possession of the necessary detailed information on the situation of Japanese labour legislation on this point, it was not appropriate to cover this matter in its conclusions.

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

A. Information concerning Certain Territories

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

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

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

France (New Caledonia). 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 all of the Committee's comments.

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

Appendix I. Table of reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

Reports received as of 17 June 2004

The table published in the Report of the Committee of Experts, page 396, should be brought up to date in the following manner:

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

Algeria — 18 reports requested

* 17 reports received: Conventions Nos. 3, 14, 17, 29, 32, 78, 87, 89, 96, 98, 100, 101, 111, 120, 122, 142, (182)
* 1 report not received: Convention No. 144

Angola — 20 reports requested

* 19 reports received: Conventions Nos. 1, 14, 19, 26, 29, 68, 69, 73, 74, (87), 89, 91, 92, 98, 100, 106, 111, (138), (182)
* 1 report not received: Convention No. 107

Barbados — 15 reports requested

* 14 reports received: Conventions Nos. 19, 26, 74, 87, 98, 100, 101, 111, 122, 135, (138), 144, 172, (182)
* 1 report not received: Convention No. 29

Botswana — 7 reports requested

(Paragraph 62)

* 6 reports received: Conventions Nos. 14, 29, 87, 98, 100, 144
* 1 report not received: Convention No. 111

Cambodia — 10 reports requested

(Paragraph 58)

* 4 reports received: Conventions Nos. (100), (105), (111), (150)
* 6 reports not received: Conventions Nos. 4, 13, 29, 87, 98, 122

Cameroon — 12 reports requested

(Paragraph 62)

* 10 reports received: Conventions Nos. 3, 14, 87, 89, 98, 100, 106, 111, 132, (138)
* 2 reports not received: Conventions Nos. 78, 122

Congo — 17 reports requested

(Paragraphs 58 and 62)

* All reports received: Conventions Nos. 13, 14, 26, 29, (81), 87, 89, 95, (98), (100), (105), (111), 119, (138), (144), 149, 152

Cyprus — 17 reports requested

(Paragraph 58)

* 16 reports received: Conventions Nos. 87, 92, 95, 98, 100, 106, 111, 114, 122, 138, 142, 144, 171, 172, 175, (182)
* 1 report not received: Convention No. 29

Denmark — 21 reports requested

(Paragraph 62)

* 15 reports received: Conventions Nos. 9, 14, 29, 87, 98, 100, 102, 106, 118, 119, 120, 129, 139, 149, (182)
* 6 reports not received: Conventions Nos. 52, 111, 122, 142, 144, 169

Faeroe Islands — 21 reports requested

(Paragraph 62)

* 12 reports received: Conventions Nos. 5, 6, 7, 8, 9, 12, 14, 16, 19, 53, 98, 105
* 9 reports not received: Conventions Nos. 11, 18, 27, 29, 52, 87, 92, 106, 126

Equatorial Guinea — 14 reports requested

(Paragraphs 51 and 62)

* 6 reports received: Conventions Nos. 1, 14, 30, (87), (98), 138
* 8 reports not received: Conventions Nos. (29), (68), (92), 100, 103, (105), (111), (182)

Fiji — 8 reports requested

* All reports received: Conventions Nos. 26, 29, 58, 84, 85, 98, (144), (169)

France — 20 reports requested

* All reports received: Conventions Nos. 3, 14, 29, 52, 82, 87, 98, 100, 101, 106, 111, 122, 134, 140, 142, 144, 145, 149, 152, (182)

French Guiana — 22 reports requested

* All reports received: Conventions Nos. 3, 14, 52, 58, 69, 74, 87, 89, 98, 100, 101, 106, 111, 112, 113, 120, 125, 135, 141, 142, 144, 149

French Polynesia — 15 reports requested

* All reports received: Conventions Nos. 3, 14, 52, 82, 87, 89, 98, 100, 101, 106, 111, 122, 142, 144, 149

French Southern and Antarctic Territories — 6 reports requested

(Paragraph 62)

* All reports received: Conventions Nos. 58, 69, 74, 87, 98, 111

Guadeloupe — 19 reports requested

* All reports received: Conventions Nos. 3, 14, 52, 58, 69, 74, 87, 89, 98, 100, 101, 106, 111, 112, 113, 125, 142, 144, 149

Martinique — 19 reports requested

* All reports received: Conventions Nos. 3, 14, 52, 58, 69, 74, 87, 89, 98, 100, 101, 106, 111, 112, 113, 125, 142, 144, 149

New Caledonia — 22 reports requested

(Paragraph 62)

* All reports received: Conventions Nos. 3, 14, 29, 52, 82, 87, 89, 95, 98, 100, 101, 106, 111, 120, 122, 127, 129, 131, 141, 142, 144, 149

Réunion — 19 reports requested

* All reports received: Conventions Nos. 3, 14, 52, 58, 69, 74, 87, 89, 98, 100, 101, 106, 111, 112, 113, 125, 142, 144, 149

St. Pierre and Miquelon — 19 reports requested

* All reports received: Conventions Nos. 3, 14, 52, 58, 69, 82, 87, 89, 98, 100, 101, 106, 111, 122, 125, 142, 144, 146, 149

Ghana — 14 reports requested

(Paragraph 62)

* 6 reports received: Conventions Nos. 30, 87, 89, 100, 103, 111
* 8 reports not received: Conventions Nos. 1, 14, 94, 98, 106, 107, 117, 149

Guinea — 38 reports requested

* 29 reports received: Conventions Nos. 3, 13, 14, 26, 29, 62, 81, 87, 89, 94, 95, 98, 99, 100, 105, 111, 112, 113, 117, 119, 120, 122, 132, 133, 135, 139, 142, 144, 149
* 9 reports not received: Conventions Nos. 10, 16, 33, 118, 121, 134, 140, 152, 159

Iceland — 6 reports requested

* All reports received: Conventions Nos. 87, 98, 100, 111, 122, 144

Israel — 13 reports requested

* 8 reports received: Conventions Nos. 1, 14, 30, 52, 87, 98, 101, 106
* 5 reports not received: Conventions Nos. 100, 111, 117, 122, 142

Kazakhstan — 11 reports requested

* All reports received: Conventions Nos. (29), (81), (87), (88), (98), (100), (105), (129), (135), (138), (144)

Madagascar — 19 reports requested

* 18 reports received: Conventions Nos. 14, 26, 29, 41, 81, 87, 88, (97), 100, 117, 119, 120, 122, 129, 132, (138), 159, 173
* 1 report not received: Convention No. (182)

Mongolia — 13 reports requested

* All reports received: Conventions Nos. 59, 87, 98, 100, 103, 111, 122, 123, (135), (144), (155), (159), (182)

Netherlands

Netherlands Antilles — 9 reports requested

* All reports received: Conventions Nos. 9, 14, 29, 58, 81, 101, 105, 106, 172

Niger — 16 reports requested

* All reports received: Conventions Nos. 6, 13, 14, 29, 81, 87, 95, 102, 105, 117, 119, 131, 135, 138, 142, (182)

Papua New Guinea — 12 reports requested

(Paragraph 58)

* All reports received: Conventions Nos. 26, 29, (87), 99, (100), (103), 105, (111), 122, (138), (158), (182)

Peru — 16 reports requested

* All reports received: Conventions Nos. 1, 14, 24, 29, 52, 55, 56, 67, 68, 71, 81, 101, 102, 105, 106, 169

Saint Kitts and Nevis — 8 reports requested

* 3 reports received: Conventions Nos. (29), (105), (182)
* 5 reports not received: Conventions Nos. (87), (98), (100), (111), (144)

San Marino — 8 reports requested

* 7 reports received: Conventions Nos. 29, 87, 103, 105, 138, 142, 182
* 1 report not received: Convention No. 140

Serbia and Montenegro — 26 reports requested

* 19 reports received: Conventions Nos. (12), (14), (19), 29, (32), (81), (89), (90), (97), 103, (106), (121), 129, (132), 138, (140), (142), (143), (158)
* 7 reports not received: Conventions Nos. (24), (25), (27), (102), (113), (114), (156)

Slovakia — 19 reports requested

(Paragraph 62)

* All reports received: Conventions Nos. 1, 13, 14, 29, 52, 102, 105, 115, 120, 128, 130, 138, 139, 140, 142, 144, 173, 182, (183)

Slovenia — 24 reports requested

* All reports received: Conventions Nos. 9, 14, 29, 81, 89, 91, 92, 100, 103, 105, 106, 119, 122, 126, 129, 132, 135, 138, 140, 142, (147), (173), (175), (182)

United Republic of Tanzania — 19 reports requested

* 16 reports received: Conventions Nos. 11, 12, 19, 29, (87), 95, 105, 131, 134, 135, 138, 140, 142, 144, 170, (182)
* 3 reports not received: Conventions Nos. 94, 137, 149

Thailand — 4 reports requested

* All reports received: Conventions Nos. 14, 29, 105, (182)

Trinidad and Tobago — 3 reports requested

(Paragraph 62)

* All reports received: Conventions Nos. 29, 87, 105

Uganda — 16 reports requested

(Paragraphs 51 and 62)

* 9 reports received: Conventions Nos. 29, 81, 98, 105, 122, 144, 154, 158, 162
* 7 reports not received: Conventions Nos. 17, 19, 26, 94, 123, 143, (182)

United Arab Emirates — 8 reports requested

* 7 reports received: Conventions Nos. 29, 81, 89, 105, (111), 138, (182)
* 1 report not received: Convention No. 1

United Kingdom

Anguilla — 7 reports requested

(Paragraph 62)

* All reports received: Conventions Nos. 14, 29, 58, 82, 101, 105, 140

Bermuda — 3 reports requested

* All reports received: Conventions Nos. 29, 82, 105

Falkland Islands (Malvinas) — 4 reports requested

* All reports received: Conventions Nos. 14, 29, 82, 105

Grand Total

A total of 2,344 reports (article 22) were requested,
of which 1,701 reports (72.63 per cent) were received.

A total of 266 reports (article 35) were requested,
of which 239 reports (89.18 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions as of 17 June 2004

(article 22 of the Constitution)

Conference Year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Conference Year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%

III. SUBMISSION TO THE COMPETENT AUTHORITIES OF THE CONVENTIONS AND RECOMMENDATIONS ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE (ARTICLE 19 OF THE CONSTITUTION)

Observations and Information

(a) Failure to submit instruments to the competent authorities

The Worker members recalled that respect for the obligation of submitting the instruments adopted by the Conference allowed for the reinforcement of the links between the ILO and the national authorities, the promotion of the ratification of Conventions and the encouragement of a tripartite dialogue at the national level. The Committee of Experts had clearly specified that the obligation for governments to submit adopted instruments to examination by the competent authorities did not imply any obligation to propose ratification of the Conventions or acceptance of the recommendations under consideration.

The Employer members recalled that the submission to the competent authorities was the first obligation of member States following the adoption of an instrument by the Conference. They recalled that the obligation to submit did not imply any further obligation for member States, and no political decision had to be taken at that stage in relation to possible ratification. The Employer members also noted the indication contained in the Committee of Expert's report that the high number of ratifications of Convention No. 182 was due to the specific efforts made by the Director-General of the ILO. However, while that Convention had been ratified rapidly, some member States had at the same time failed to submit other instruments to the competent authorities.

A Government representative of Cambodia stated that due to the lack of human resources the ILO had provided technical assistance in late 2003 to built up the capacity of local staff with regard to reporting. As a result, four reports could be sent to the ILO. However, the Government had not been able to submit all reports in time. The speaker hoped that this would be possible in late 2004.

A Government representative of Latvia informed the Committee that his country planned to ratify Conventions Nos. 29, 138, 182 and 183 after the National Tripartite Co-operation Council had supported ratification. The formal ratification process had not started yet due to the absence of formal translations of these Conventions. By the end of April 2004, the ILO Regional Office for Europe and Central Asia had informed the Government that it was able to assist with regard to the translations and a list of proposed Conventions for translation was being prepared as a matter of priority. The problem would be solved before the next Conference.

The Worker members recalled that the obligation to submit should not present problems to countries with a democratic system. It was clear that the ILO instruments must be submitted to parliaments.

The Employer members recalled that only those governments which failed to submit information on the submission of an instrument for at least seven years were invited to provide explanations and that the number of instruments adopted by the Conference was much lower than ten years ago. There was thus no reason not to comply with this constitutional obligation.

The Committee took note of the information and explanations provided by the Government representatives. The Committee also noted the specific difficulties mentioned in order to meet this obligation. The Committee expressed the firm hope that the countries cited, in particular, Afghanistan, Armenia, Cambodia, Haiti, Lao People's Democratic Republic, Latvia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Turkmenistan and Uzbekistan, would transmit in the near future information on the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee expressed great concern over the delay or lack of submission and the increase in the number of these cases, because these were constitutional obligations, which were essential for the effectiveness of standards-related activities. In this respect, the Committee recalled that the ILO was in a position to provide technical assistance so that this obligation could be met. The Committee decided to mention all these cases in the appropriate section of its General Report.

(b) Information received

Comoros. The ratification of Convention No. 182, adopted at the 87th Session of the Conference (1999), was registered on 17 March 2004.

Kyrgyzstan. The ratifications of Conventions Nos. 182 and 184, adopted at the 87th and the 89th Sessions of the Conference (1999 and 2001, respectively), were registered on 10 May 2004.

IV. REPORTS ON UNRATIFIED CONVENTIONS, RECOMMENDATIONS AND PROTOCOLS (ARTICLE 19 OF THE CONSTITUTION)

(a) Failure to supply reports on unratified Conventions, on Recommendations and on Protocols for the past five years

The Employer members recalled that the reports on unratified Conventions requested under article 19 of the ILO Constitution were the basis for the establishment of the general surveys which aimed at getting an overview on the situation in all member States. These surveys were also a tool to highlight obstacles for ratification of the instruments examined and to reveal a possible need to amend them. This was however only possible if a sufficient number of reports was available. Recalling that the Conference Committee only dealt with cases of failure to supply reports under article 19 for the past five years, they urged the governments concerned to indicate the reasons for such failure and to supply the reports requested in the future.

The Worker members recalled that the report submitted in application of article 19 of the ILO Constitution acted as a basis for general surveys and provided an overview of obstacles which might prevent States from ratifying the Conventions. These same reports also allowed to determine whether standards remained adapted to economic and social realities. The Worker members deplored the fact that this year only 51.93 per cent of the reports requested for the General Survey had been submitted.

A Government representative of Slovakia took note that her Government had been late in its submission of reports under article 19 of the ILO Constitution. The Government undertook to submit its reports before the end of the year.

A Government representative of Ireland regretted that his Government had failed to submit reports on unratified Conventions due to the pressure of an extremely heavy workload. The utmost was done to ensure the timely submission of such reports in the future.

A Government representative of Mali emphasized that her country was committed to providing, in future, the reports requested under article 19 of the Constitution of the ILO. Nevertheless, she emphasized that the period between the receipt of a request for a report and its return was very short.

A Government representative of Mongolia regretted her Government's failure to deliver reports on unratified Conventions. Although being simplified in the last several years, reporting to the ILO remained a time and resource consuming process. While the Ministry of Social Welfare and Labour provided adequate resources available to it, there was still a shortage of human resources to translate the detailed questionnaires into Mongolian, to communicate them to the relevant organizations and bodies in the country, to process the data received and to prepare and translate back to English the necessary reports. Mongolia would continue to provide reports on ratified Conventions. With regard to unratified Conventions, the Government would seek the support of specialized research institutions and independent experts and hoped for ILO assistance in mobilizing the necessary funding in this respect.

A Government representative of Uganda indicated that Uganda was preparing the necessary report in consultation with workers' and employers' organizations. The report would be submitted to the ILO by the end of July. Uganda was committed to its obligations.

A Government representative of Iraq regretted that Iraq had been unable to submit the reports requested due to the priority given to the preparation of the draft Labour Code.

The Employer members expressed their concern about the low participation in the present session and in particular of those countries specially invited to provide explanations to the Committee as to why they had failed to comply with reporting obligations under the ILO Constitution. They said that one should reflect on how to improve this situation. Those member States which did not provide explanations to the Committee were reminded that they would be mentioned in the general part of the Committee's report. In conclusion, they hoped that the promises made by Government representatives would be kept and that reporting obligations would be fulfilled.

The Worker members regretted that the statements by governments had not contributed much regarding the reasons for which they had not sent a report. The Worker members requested the Committee to insist that governments meet their obligations better in the future as they were enshrined in the ILO Constitution.

The Committee took note of the information and explanations provided by the Government representatives. It emphasized the importance attached to the constitutional obligation to communicate reports on unratified Conventions, Recommendations and Protocols. The Committee insisted on the fact that all member States had to fulfil their obligations in this regard and expressed the firm hope that the Governments of Afghanistan, Bosnia and Herzegovina, Cameroon, Congo, Democratic Republic of the Congo, Equatorial Guinea, Georgia, Guinea, Iraq, Ireland, Kyrgyzstan, Liberia, Mali, Mongolia, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda and Uzbekistan, would in the future respect their obligations under article 19 of the Constitution. The Committee decided to mention these cases in the appropriate section of its General Report.

(b) Information received

Since the meeting of the Committee of Experts, reports on unratified Conventions, Recommendations and Protocols have been received from the following countries: Central African Republic, Grenada and Nepal.

(c) Reports received on unratified Conventions Nos. 122 and 142 and Recommendations Nos. 169 and 189 as of 17 June 2004

In addition to the reports listed in Appendix III on page 159 of the Report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following countries: Grenada, Papua New Guinea and South Africa.

INDEX BY COUNTRIES TO OBSERVATIONS AND INFORMATION CONTAINED IN THE REPORT

United Kingdom

Part One: General report, para. 203
Part Two: I A (c)

Uzbekistan

Part One: General report, paras. 198, 200, 201, 207
Part Two: I A (a), (b)
Part Two: III (a)
Part Two: IV (a)

Venezuela

Part Two: I B, No. 87

Yemen

Part One: General report, para. 201
Part Two: I A (b)

Zimbabwe

Part Two: I B, No. 98

No. 24 – Thursday, 17 June 2004

PRINTED IN SWITZERLAND