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PART
TWO

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Report of the Committee on the Application of Standards

Contents

PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

I. OBSERVATIONS AND INFORMATION CONCERNING REPORTS ON RATIFIED CONVENTIONS (ARTICLES 22 AND 35 OF THE CONSTITUTION)

A. General Observations and Information concerning Certain Countries

(a) Discussion of cases of serious failure by member States to respect their reporting or other standards-related obligations

The Employer members stated that document D.4 was partly a response to the suggestion made last November to the Committee of Experts by the Employers' group that a better analytical tool should be developed to understand why governments were not complying with their reporting obligations. This document was a first step in that it provided some history and background in relation to the reporting obligations and indicated the main reasons why governments did not submit the instruments adopted by the ILO to the competent authorities. They added that there was nothing wrong with the list of reasons mentioned, but that other significant reasons also needed to be taken into account, such as economic difficulties and the resources available for the preparation of reports, as well as the existence of the situation of war in the countries concerned. The main difficulty was that the failure by governments to submit reports in practice took on a far greater significance than violations which were currently mentioned in a special paragraph in the Committee's report on ratified Conventions. This was because the failure to report or to submit instruments to the competent authorities in effect undermined the effectiveness of the supervisory system.

The Worker members welcomed the opportunity to hold an exchange of views on the so-called "automatic cases", which tended at present to be treated in automatic pilot mode, which lead to certain perhaps undesired consequences. In the first place, it had to be mentioned that these cases covered both the failure to meet the obligations established by the Constitution and the failure to meet standards-related obligations. Secondly, they often involved failure to supply reports or information in response to comments. These types of failure were just as important. Indeed, the failure to supply reports could be considered a deliberate strategy by countries to avoid an examination which would show failure to comply with Conventions, particularly fundamental Conventions. This attitude was unfair to those countries which complied with their commitments and had sent reports, which had submitted new instruments to the competent authorities or which had consulted the social partners. Moreover, the reports submitted were sometimes very brief or prepared without consultation with the social partners. Thirdly, the "automatic cases" were also subject to criteria that were quantitative in nature, such as the repeated failure to send reports without any justification to explain the delay.

The Worker members made some suggestions to improve the examination of so-called "automatic cases". Firstly, a distinction could be made for those countries which could provide objective excuses or attenuating circumstances. Document D.4 presented by the Office contained an instructive list of the principal reasons for the failure of member States to fulfil their obligations. Some of these reasons appeared to amount to insurmountable or attenuating circumstances. For example, the general situation of a country due to conflict or natural disasters could be mentioned. Moreover, institutional factors, such as the situation of the labour administration, or the possibility of mobilizing the social partners, or the languages of the countries, could also be accepted in the beginning. The use of such excuses could not, however, be tolerated over a long period of time, as the situation should improve progressively. As such, countries that were encountering difficulties should develop a strategy for compliance with their obligations, which should be supported by technical assistance from the ILO. The obligation to submit instruments adopted by the ILO to the competent authorities should be based on the revised Memorandum concerning submission. Moreover, the involvement of the social partners should be encouraged by promoting the ratification of Convention No. 144. In conclusion, the Worker members stated that the current approach to "automatic cases" should be diversified. However, for those countries that did not comply with their obligations, it would be appropriate to re-establish the serious nature of their failure to send reports or to undertake tripartite consultations. In this case, it would be advisable to look into the possibility of including an automatic special paragraph and an explicit reference in the final report of the Conference. The new terminology used to refer to "automatic cases" namely "cases of serious failure by member States to respect their reporting or other standards-related obligations" was perhaps longer, but it was certainly clearer.

A Government representative of Afghanistan accepted with great pleasure the invitation to address the Conference Committee, which had a key role to play in promoting social justice throughout the world, by facilitating dialogue between governments and social partners. Sadly, for many years his country had been unable to send a delegation to meet the Committee. Hence, it was particularly auspicious to be able to share good news with the Committee's members. Since 2002, the International Labour Office had been working in Kabul. In that time, the ILO had sought to establish decent working conditions for all women and men by providing technical assistance to the social partners.

Since the ILO Liaison Office had been opened in the spring of 2003, several practical activities in support of the international labour Conventions ratified by Afghanistan had been commenced. Employment service centres had been established in Kabul and in several provinces. The Employment Services Centre Project which, amongst other activities, assisted jobseekers in gaining access to vocational training and employment, was funded by the German Government, with technical assistance provided by the ILO. In the near future, labour market surveys would be conducted and would provide information that would shape his country's national employment policy. The survey data would also help to identify training and employment-generation needs. In view of the success of current activities, he sincerely hoped that other ILO programmes would begin, such as an IPEC programme to combat child labour.

In May this year, the first tripartite workshop on issues relating to international labour standards had been held in Kabul. The workshop was hosted by the Ministry of Labour and Social Affairs, with the assistance of international labour standards specialists from Geneva and New Delhi. During the tripartite meeting, a joint report on the application of ratified Conventions had been produced, which had been forwarded to the International Labour Office for submission to the Committee of Experts. This report was testimony to his country's commitment to fruitful dialogue with both the Conference Committee and the Committee of Experts.

Following the parliamentary elections scheduled later in the year, it was the intention of the Afghan authorities, in close consultation with the social partners, to submit to the National Assembly the instruments adopted by the Conference since 1985. It was also intended to give priority to the ratification of fundamental Conventions relating to minimum age and child labour. The 1987 Labour Code was currently being amended so as to ensure that Afghan legislation fully complied with international labour standards. He called upon the Committee to recognize the progress made by Afghanistan in providing a tripartite report on the application of Conventions. It was the intention of his Government, together with representatives from employers' and workers' organizations, to continue to work in collaboration with the International Labour Office in the field of international labour standards.

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 regarding the three Conventions in question. He assured the Committee that Denmark had made every effort to ensure that Greenland met its reporting obligations in full and in due time. Putting the issue in perspective, he recalled that Greenland was the world's largest island, but had a population of fewer than 60,000 inhabitants. Accordingly, Greenland's administration was extremely small, which meant that it was vulnerable and sensitive to even small changes in staff. He had been informed that the person previously responsible for ILO reports had left for another job. This meant that Greenland had to rebuild the very special competence needed to respond to ILO report forms. At the same time, it had been emphasized

that Greenland recognized the importance of ILO instruments and would catch up on the missing reports as soon as possible.

Finally, he reminded the Committee of the fact that the Home Rule Authority in Greenland had full autonomy in the area of social and labour policy. The Danish Government could therefore neither instruct the Home Rule Authority in this area nor fulfil the reporting obligations on behalf of Greenland. He assured the Committee that Greenland was fully aware of its reporting responsibilities. The Home Rule Authority was actively examining the issues raised by the Committee of Experts and would endeavour to respond as soon as possible.

A Government representative of Liberia conveyed the greetings of the National Transitional Government and the people of Liberia. As a founding member of the ILO, Liberia had always endeavoured to play a meaningful role in upholding and promoting its principles. However, its activities within the ILO had been hindered due to the civil crisis which had torn the entire country. He thanked the United Nations and the international community, which had played a very commendable role in helping to restore stability in his country. Due to the prolonged crisis in Liberia, it had been very difficult to make any substantial reports on ratified Conventions. However, he provided a brief overview of the current efforts being made concerning the application of certain Conventions as peace and stability steadily returned to Liberia.

Following the ratification of Convention No. 182, Liberia had been making great efforts to ensure its effective implementation. Immediately following its ratification, the Ministry of Labour had embarked upon vigorous consultations with the tripartite stakeholders, as required by the Convention, to formulate a plan of action for its implementation. Following the holding of the National Tripartite Conference in Monrovia in December 2002, a commission had been established to handle all child labour cases in the country, namely the National Commission on Child Labour (NACOMAL), which was composed of representatives of the Government, workers and employers, as well as child advocacy groups and civil society organizations. The Commission was currently engaged in efforts to create the necessary awareness of the danger and implications of child labour in the country. It was also making efforts to negotiate with IPEC and other sympathetic organizations for assistance with its programmes. Considering the urgency of the matter, officials of the Commission were represented on his delegation to meet the IPEC Director.

He added that Convention No. 144, ratified by Liberia in 2003, was considered very meaningful for the country's labour administration in view of its potential to enhance and solidify the relationship between the tripartite partners. A national tripartite consultative group was being established for the implementation of the Convention.

In an effort to fully apply Convention No. 111, an Act had been submitted to the National Legislature to amend the existing labour laws of Liberia, which contained clauses that were quite discriminatory and gave employers undue advantages over workers, for example in relation to arbitrary dismissal. Adoption of the amendment to this provision was expected very soon. He added that Conventions Nos. 138 and 142 had been submitted to the National Legislature for ratification and a Bill to ban trafficking in persons for adoption into law. This Act would deter persons engaged in the business of violating other people's free movement in the country and would make it a felony for anyone to engage in the trafficking of persons.

Finally, he emphasized the tremendous efforts made by his Government to combat the spread of the killer HIV/AIDS in Liberia. His Government had engaged in sensitizing the labour force on control methods and had entered into a partnership with UNFPA under the project entitled, *HIV/AIDS in the workplace*. The project covered three countries and its extension to cover the rest of the countries was under negotiation so that the entire labour sector could benefit from this programme.

In conclusion, he said that reports on the other Conventions as requested by the Committee of Experts would be available by 15 September 2005.

A Government representative of Kiribati stated that the failure of his country to submit reports was due to administrative problems and he assured the Committee that his Government would make every effort to submit its reports on time. However, certain problems, such as lack of capacity and staff training did exist. Therefore, he reiterated the request for ILO technical assistance made by his Government at the Second South-East Asia and Pacific Subregional Tripartite Forum on Decent Work, held in Melbourne in April 2005.

A Government representative of Paraguay, with reference to paragraphs 20, 27 and 31 of the General Report of the Committee of Experts, stated that it attributed great transcendence to the ILO and its standard-setting function, guidance and technical assistance. His Government recognized the positive and constructive comments made by the Committee of Experts concerning national laws and regulations. He regretted that, despite the efforts made by the competent authorities to reply to these comments, they had not been able to do so and the information was overdue. He reaffirmed the will of the authorities of his country to fulfil its obligations relating to the ILO in conformity with international labour standards, and undertook to make every effort to submit the reports due and the information requested as soon as possible.

The Employer member of Iraq emphasized that his country was going through an extraordinary situation, but that it was nevertheless making progress towards democracy and compliance with its international commitments. Iraq had prepared a draft Labour Code in cooperation with the ILO Regional Office for Arab States, which would soon be submitted for examination to the National Assembly. The recent elections had helped to strengthen human rights in the country and had restored many of the freedoms of the population, including the right to establish trade unions and the right to strike. He hoped that the ILO would provide the technical assistance necessary for his country to build up its capacities and respond to the requirements of today.

A Government representative of the United Republic of Tanzania spoke on behalf of the Government of Zanzibar and indicated that the issues at hand were to do with the reports on Conventions Nos. 58, 81 and 86. The Government of the United Republic of Tanzania recognized the importance of accurate reporting on the ILO Conventions which it had ratified. In the absence of the Government representative of Zanzibar, he indicated that the Government was working closely with the ILO Office to submit the said reports by 15 September 2005. He concluded that both the Governments of the United Republic of Tanzania and of Zanzibar were engaged in changing their labour legislation and that information on these developments would be included in the reports submitted to the Office.

The Worker members emphasized that the obligation to submit reports was a key element of the ILO supervisory system. Failure to meet this obligation for two years or more gave the countries concerned an unjustified advantage as it prevented the Committee from examining their national law and practice in relation to the ratified Conventions. They recalled that only a few governments had spoken concerning their failure to meet their reporting obligations, while other countries had been either absent or not accredited to the Conference. Certain considerations, such as situations of crisis or conflict, the lack of personnel or resources, or restructuring had been invoked as an excuse. The Worker members called upon the Committee to urge these countries to respect their commitments and to invite them to request ILO technical assistance to this end.

The Employer members said that it was noteworthy that there had been greater participation by Governments in the discussion than in previous years. Evidently, if a government was not even accredited to the Conference or registered with the Committee, this was a clear signal that there was indeed a problem. They called for the Committee of Experts in future to provide more specific information on the reasons why governments were not fulfilling their reporting obligations. Fulfilling reporting obligations was fundamental because it was the basis of the work of this Committee and of the supervisory system. Without reporting, the supervisory system would fail before it even started. If governments did not supply information, it was difficult to assess whether they were complying with the requirements of ratified Conventions. They concluded that one of the reasons could be the lack of in-depth analysis by countries before ratifying a Convention and they called on the Office to provide appropriate assistance in this regard.

The Committee noted the information supplied and the explanations provided by the Government representatives who had taken the floor. The Committee recalled the fundamental importance of submitting reports on the application of ratified Conventions, not only for their actual communication, but also of doing so within the prescribed time limits, for the proper functioning of the supervisory system. The Committee expressed concern that the Governments of Antigua and Barbuda, Armenia, Denmark (Greenland), Grenada, Iraq, Kiribati, Liberia, Paraguay, Solomon Islands, Tajikistan, United Republic of Tanzania (Zanzibar), Turkmenistan and The former Yugoslav Republic of Macedonia, had not yet submitted reports on the application of ratified Conventions, and urged them to do so as soon as possible. The Committee decided to mention these cases in the appropriate section of its General Report. The Committee noted the member States which had taken the floor and explained the difficulties encountered, and those which had expressed their willingness to comply with their obligations. The Committee noted the member States which had requested ILO technical assistance and asked the Office to give effect to these requests.

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

The Worker members emphasized that first reports were of particular importance because they provided the basis on which the Committee of Experts carried out its first evaluation of the application of a ratified Convention, on the one hand, and helped the Government to avoid, from the beginning, problems of interpretation concerning the application of Conventions. They added that first reports were essential for the supervisory system and requested the member States concerned to make a particular effort to fulfil their obligations in this regard.

The Employer members said that the provision of the first report on the application of ratified Conventions was one of the first indications of whether a country was interested in applying them and that, once the decision to ratify a Convention had been taken, countries should be capable of sending the first report. Failure to provide the first report constituted a contradiction by a State which ratified a Convention but then did not submit information, or represented in the very least a lack of care at the time of ratification of Conventions. In their view, the failure to send the first report was a matter of particular concern.

A Government representative of Armenia explained that her statement would cover all the paragraphs of the Committee of Experts' report concerning reporting obligations. She said that, although Armenia had been a Member of the ILO since 1992, due to socio-economic

crisis and a painful transitional period of substantive institutional changes and structural and legal reforms, it had only been able to start cooperation with the ILO and to take steps towards the fulfilment of its reporting obligations as of 2004. For example, a special unit responsible for relations with the ILO, including reporting obligations, had been created within the Ministry of Labour and Social Issues and regular dialogue had been established with the social partners on the dissemination of practical knowledge about the principles and rights enshrined in ILO Conventions and other documents adopted by the International Labour Conference. She added that Armenia had signed a technical cooperation programme with the ILO and had ratified 13 new Conventions. All these steps showed the seriousness of her Government's commitment towards the ILO.

With reference to reporting obligations and the submission of Conventions and Recommendations to the competent authorities, she indicated that certain difficulties of a technical nature existed, such as the timely and accurate translation of documents into the national language and the lack of reporting skills of the staff involved. Her Government had requested technical assistance from the ILO to overcome these difficulties and she hoped for a positive response in this regard. She concluded by assuring the Committee that her Government was committed to fulfilling its obligations and overcoming delays.

A Government representative of Chad indicated that his Government had taken note of the comments made by the Committee of Experts on Conventions Nos. 132 and 182 and emphasized that his Government's reports had been submitted to the ILO last April.

A Government representative of the Bahamas stated that the report on Convention No. 147 was forthcoming and should be submitted within ten days. The Bahamas remained committed to ensuring that the reports due and replies to the comments of the Committee of Experts were submitted on a timely basis.

A Government representative of Kiribati indicated that the explanations given in his previous statement applied to this paragraph of the Committee of Experts' report. However, his Government would still need technical assistance on this matter.

A Government representative of Paraguay referred to his previous statement concerning the failure to supply reports for the past two years or more on the application of ratified Conventions.

A Government representative of Serbia and Montenegro recalled that her country had joined the ILO in 2000 and had since then ratified 69 ILO Conventions. She added that her Government had immediately started to report on the application of Conventions and had sent 25 reports so far. As was indicated in document D.3, a report had also been submitted on Convention No. 102. Six reports were still pending, but the Government was in the process of preparing them and they would be submitted as soon as possible. She indicated that the delay was due to the internal constitutional transformation that took place in 2003 and the fact that a large number of reports had to be prepared in a short period of time. She explained that the transformation had resulted in a substantial decentralization, following which labour matters had been fully transferred from the federal level to the level of the two states. Some time would be needed to organize the new administrative structures, but the newly established communication structures should enable the respective governments to proceed with reporting more expeditiously. She hoped that in the near future her Government would be able to submit the reports required by the ILO.

A Government representative of Uganda stated that the report on Convention No. 182 was under preparation. She added that a lot of progress had been made on this Convention following ratification and cooperation with IPEC. As this first report on Convention No. 182 needed to be comprehensive and detailed, her Government was making every effort to complete it on time while ensuring the necessary quality. The report would be submitted, along with the other reports due, between 1 June and 1 September 2005.

The Employer members indicated that the failure to supply the first report was often related to Convention No. 182, which had recently been ratified by a large number of countries. It was a paradoxical situation for a country to ratify a Convention and then immediately fail to provide a report. In response to the allegations by some countries of special circumstances as a justification for this situation, it was important to point out that the Office was ready to provide the necessary technical assistance and that such assistance should be given priority.

The Worker members observed that only eight Governments had replied, in the Committee, with respect to their failure to submit first reports on the application of ratified Conventions. Moreover, they had often given the same reasons for justifying this failure. It was unacceptable that certain first reports had been due for several years, which constituted a very serious failure. They called upon the Office to contact the member States concerned to determine the specific reasons for this failure and invited the latter to request the technical assistance of the Office, where necessary.

The Committee noted the information and explanations provided by the Government representatives who took the floor. The Committee reiterated the crucial importance of providing first reports on the application of ratified Conventions, and noted in particular the major impact in this respect of Convention No. 182, the most ratified of the fundamental Conventions in recent years.

The Committee decided to mention the following cases in the appropriate section of the General Report: in particular 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); since 1998 – Armenia (Convention No. 174), Equatorial Guinea (Conventions Nos. 68, 92); since 1999 – Turkmenistan (Conventions Nos. 29, 87, 98, 100, 105, 111); since 2001 – Armenia (Convention No. 176), Kyrgyzstan (Convention No. 105), Tajikistan (Convention No. 105); since 2002 – Azerbaijan (Conventions Nos. 81, 129), Bosnia and Herzegovina (Convention No. 105), Gambia (Conventions Nos. 29, 105, 138), Saint Kitts and Nevis (Conventions Nos. 87, 98, 100), Saint Lucia (Conventions Nos. 154, 158, 182); and since 2003 – Bahamas (Convention No. 147), Bosnia and Herzegovina (Convention No. 182), Dominica (Convention No. 182), Gambia (Convention No. 182), Equatorial Guinea (Convention No. 182), Iraq (Conventions Nos. 172, 182), Kiribati (Conventions Nos. 29, 105), Paraguay (Convention No. 182), Serbia and Montenegro (Conventions Nos. 24, 25, 27, 113, 114, 156), Uganda (Convention No. 182).

The Committee noted with concern that few countries had provided explanations and requested the Office to contact the countries listed. The Committee noted the countries which had requested assistance and asked the Office to give effect to these requests.

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

The Worker members observed that incomplete or unclear reports, or the late submission of the reports due, seriously hampered the work of the Conference Committee and of the Committee of Experts. Governments had to take the comments formulated by the Committee of Experts seriously and fulfil their obligations. The number of governments which failed to reply to requests made by the Committee of Experts was constantly increasing. This year, in 444 cases (covering 49 countries), the governments had not replied to the comments of the Committee of Experts, while last year this number was 325 (covering 37 countries). The attitude of these governments was unacceptable. The Worker members indicated that they had discussed the case of Pakistan with respect to Conventions No. 87 and 98 and the consequences for the workers in that country. As in the other cases, this situation was unacceptable in the opinion of the Worker members.

The Employer members said that at times the reports supplied by States were difficult to understand or the information provided was incomplete. The obligation to submit reports with additional information was part of the process covered by the general obligation to supply reports. There had been no improvements this year, as 49 countries, compared with 37 in 2004, had not provided the additional information requested. This was serious because such information made it possible to determine whether the case was serious. Without relevant and clear information, the entire process would fall apart, which also constituted a failure in relation to countries which regularly submitted their reports within the prescribed time limits.

A Government representative of Barbados regretted that her country had been unable to meet all of its reporting obligations, particularly since it was committed to the principles of the ILO and usually submitted fully detailed and timely reports. She assured the Committee that of those listed in the General Report, the reports on Conventions Nos. 63 and 81 had already been submitted. The report on Convention No. 118 was also ready and available for submission to the Committee. A simplified report on Convention No. 105 had also been submitted. However, there were outstanding comments in respect of this Convention relating to the observations made by the Committee of Experts. She added that there were also outstanding reports on Conventions Nos. 108 and 147. She explained that in each of these cases the difficulty in submitting the outstanding reports and comments had arisen because her Government had not yet received the comments from all of the social partners. She assured the Committee that reports on the remaining Conventions would be submitted to the Committee shortly.

A Government representative of Cambodia indicated that, as a result of the technical assistance provided by the Office, Cambodia had made progress the previous year. Hence, the reports for the year 2004 had already been sent. With regard to the reports for 2005, they had not yet been prepared because of the changes within the Ministry of Labour. In July 2004, the Government of Cambodia had been restructured and a new Ministry of Labour had been created, combining a part of the former Ministry of Social Affairs and the Ministry of Education. He added that his Government was ready to prepare the reports for 2005. However, because the staff of the different services had changed posts due to the restructuring, the staff that were competent in the field of labour had not yet taken up their functions, in particular those related to the drafting of ILO reports. He hoped that the new Ministry of Labour and Vocational Training would fulfil its reporting obligations.

A Government representative of Côte d'Ivoire indicated that his Government took due note of the information contained in paragraph 31 of the report of the Committee of Experts concerning failure to supply information in reply to the comments made on Conventions Nos. 81 and 129. He stated that his Government had not been able to send a reply within the established deadlines. The reports had been prepared, but the annexes were still missing. He indicated that his Government sincerely regretted this situation and was committed to fulfilling its obligations after the Conference. Moreover, he undertook to ensure that such delays did not occur again in the future.

A Government representative of the Democratic Republic of the Congo expressed his Government's regret at not having fulfilled its obligations. Concerning the failure to supply information in response to

the comments made by the Committee of Experts, he indicated that the normal operation of the public service of the State had been paralysed due to the difficulties encountered by the country as a result of the war. These difficulties had caused a delay in the submission of the reports concerning Conventions Nos. 81, 87, 98, 100, 102 and 150. However, the Government undertook to submit these reports to the employers' and workers' organizations and to supply them to the ILO not later than 1 September 2005. Concerning the reports requested under article 19 of the Constitution, his Government had found it inappropriate to send these reports without having first submitted them to the employers' and workers' organizations. To date, the reports concerning Conventions Nos. 1 and 30 on working time, Convention No. 122 on employment policy, Convention No. 142 on human resources development, Recommendation No. 69 on medical care and Recommendation No. 189 on job creation in small and medium-sized enterprises had been prepared. He added that his Government's failure to supply reports could be explained, among other reasons, by the fact that the Minister of Labour and Social Insurance had not received some correspondence. In conclusion, he stated that in order to facilitate the work of the Committee of Experts, his Government was determined to supply the reports requested within the time limits established.

A Government representative of Denmark referred to his previous statement and recalled Greenland's limited population and small administration. He said that Greenland deeply respected the ILO's instruments. He added that over the past 20-30 years Greenland had obtained increased autonomy on social and labour law issues. This meant that Greenland had sometimes been led to question commitments assumed by Denmark on its behalf. Moreover, the Government of Denmark could not instruct the Home Rule Authority in Greenland or fulfil the reporting obligations on its behalf. In 2003, his country had received important and systematic assistance from the ILO Office, which had helped it to determine precisely which Conventions should be considered as having been ratified by Greenland. He noted that this assistance would help Greenland to fulfil its reporting obligations, including the obligation to reply to the comments from the Committee of Experts.

A Government representative of Djibouti indicated that Conventions Nos. 111, 138 and 182 had been ratified the previous year, which meant that Djibouti had ratified the eight fundamental Conventions. With regard to the failure to submit information in reply to the comments of the Committee of Experts, Djibouti had ratified a fairly large number of Conventions (68) which had overloaded the labour services responsible for preparing reports. Moreover, several of these Conventions had no relevance to the economic activities in the country. The Government was therefore thinking about the possibility of denouncing certain Conventions. He requested the technical assistance of the ILO in relation to this matter.

A Government representative of Haiti indicated that information concerning Conventions Nos. 14, 24, 25, 29, 77, 78, 81, 87, 98, 100 and 106 would be sent to the Office.

A Government representative of Guinea indicated that, with regard to the issue of the failure to submit instruments to the competent authorities, the Government had submitted Conventions adopted by the ILO to the Parliament for ratification. Conventions Nos. 156 and 159, as well as Conventions Nos. 138 and 182 on child labour, could be mentioned as examples. With regard to the failure to supply reports for the past two years or more on the application of ratified Conventions, he indicated that Guinea had ratified 58 Conventions and thus had become one of 110 member States that had ratified all the fundamental Conventions, the principles of which were contained in the ILO Declaration. He took due note of the information provided and undertook to supply the necessary reports. Finally, concerning failure to supply information in reply to comments made by the Committee of Experts, he said that almost all the reports had been sent in accordance with the schedule prepared by the Government in collaboration with the international labour standards specialist. Thus, reports on Conventions Nos. 87, 95, 98, 113, 117, 122, 133, 139 and 140 had been supplied, as well as those concerning Conventions Nos. 135, 150 and 151. Reports on Conventions Nos. 3, 16, 100, 144, 149, 152 and 159 would be sent.

He recognized that the reports had not been prepared within the established time limits and said that in future this situation would change. Moreover, the reports that had not yet been sent would be supplied to the ILO. The Government was making efforts to fulfil its obligations. For example, a new Labour Code had been adopted which was more flexible. Furthermore, the reports were always sent to workers' and employers' organizations, in conformity with article 23 of the Constitution. Measures had also been taken with regard to child labour, and in particular the Government was collaborating with ILO/IPEC. Finally, he indicated that the reports would be sent by the end of 2005 at the latest and requested technical assistance from the ILO.

A Government representative of the Netherlands said that he appreciated being given the opportunity to explain the situation in Aruba in more detail before the Committee. He thanked the Committee of Experts for its transparency and good work. He said that the Labour Department of Aruba had undergone a major reorganization in June 2004. This reorganization had come with many changes in different functions and unfortunately had interfered with the day-to-day operation of the Department. He added that at the moment the Government of Aruba was busy responding to observations made by the Committee of Experts, as stated in the General Report, paragraph 31. He apologized for that delay and hoped that the necessary information would be submitted within the next three months.

A Government representative of Pakistan said that his country had sent reports on most of the Conventions ratified. He regretted that replies to some of the comments of the Committee of Experts had not been sent as they required certain information from different stakeholders, such as provincial governments and federal ministries. He said that the matter had already been referred to them. Some of the required information had been received, although a few had yet to respond. He noted that replies would be provided to the Committee in the near future. He informed the Committee that his Government was in the process of amending some of its labour laws, including the Industrial Relations Ordinance, 2002, which had been referred to in the comments under Conventions Nos. 87 and 98. He reiterated the importance and respect attached by his Government to the work of the Conference Committee.

A Government representative of Paraguay referred to his previous statement on failure to supply reports for the past two years or more on the application of ratified Conventions.

A Government representative of the United Kingdom apologized on behalf of Montserrat for its failure to fully respond to the requests for reports under article 22 of the ILO Constitution. She assured the Committee that this was not due to a lack of commitment on the part of the Government of Montserrat to fulfil its obligations as a Member of the ILO, but due to a question of capacity. She said that unfortunately the reality of the situation was that Montserrat was an extremely small autonomous island with limited human and financial resources. While this was not an excuse, it had to be recognized that heavy reporting schedules could place a considerable burden on even the largest administrations. Her Government had been working with the Government of Montserrat to help it address the capacity issue. In December 2004, in conjunction with the ILO Caribbean Office, her Government had held a workshop for a number of Caribbean-based territories, including Montserrat, with the specific aim of reviewing ILO reporting requirements and other standards-related activities. She was pleased to report that, following the workshop, the Government of Montserrat was making progress. A Human Rights Reporting Committee had been established which was considering ways to ensure that all future human rights reports, including those that covered ILO Conventions, were completed on time and that all outstanding ILO reports were submitted as soon as possible.

A Government representative of Yemen recalled that his country had ratified 29 Conventions, which demonstrated its readiness to fulfil its commitments in relation to the ILO and its instruments. He indicated that a copy of the new draft Labour Code had been sent to the Office for technical comments and that his country intended to consider these comments when assessing whether its legislation was in accordance with the obligations of the Conventions it had ratified. It was still awaiting a response from the ILO. He said that in the past his country had been able to submit its reports within the established time limits due to the technical assistance received. However, it had now encountered certain difficulties and required assistance, but he regretted to note that there had been a reduction in the rate of technical assistance to countries in his region in recent years. He therefore called for the volume of assistance provided in the region to be strengthened. In conclusion, he reaffirmed his Government's commitment to the ILO's principles and standards.

A Government representative of Zambia expressed deep sadness at the failure of his country to provide timely responses to the requests for information and the comments of the Committee of Experts. He assured the Conference Committee that this failure was not deliberate and was not intended to undermine the valuable work of the supervisory system. The reason lay with the long drawn-out process of the restructuring of the Ministry of Labour, during the course of which the staff experienced in attending to the reporting requirements of the ILO had taken early retirement. Nevertheless, he assured the Committee that in future all the reports and information required by the supervisory bodies would be attended to promptly. Some of the reports that were overdue had already been dispatched and the others would be prepared and sent off as soon as possible. With a view to resolving the problem of lack of capacity, approaches had been made to the ILO to provide training for the new administrative officers responsible for ILO reporting procedures.

The Worker members, while thanking the Governments concerned for their replies, stated that they had heard almost the same reasons as in the past for their failure to send replies to the comments made by the Committee of Experts. Despite the opportunity afforded to them, several Governments had not taken the floor on this subject. Considering the importance of the obligation to submit reports, the Worker members emphasized that governments had to be urged to comply with these requirements.

The Worker member of Pakistan said that he had listened to the statement by the Government representative and wished to draw his attention to the importance of submitting the reports due on Conventions Nos. 87, 98 and 100. He recalled that the Committee of Experts had requested the Government to amend the Industrial Relations Ordinance, 2002, to bring it into conformity with its international obligations under ILO Conventions. He therefore urged the Government to amend its legislation in the near future so that trade union rights were restored to workers, who were at particular risk in the current process of liberalization and privatization. He hoped that the commitment made by the Government representative would be put into effect in the near

future through strong action to amend the legislation that infringed the basic rights of freedom of association and collective bargaining.

The Employer members indicated that the explanations provided by Governments were similar to those which had been advanced for many years, namely war, administrative problems, the need for ILO technical assistance. Some speakers had referred to the issue of the ratification of many Conventions in a relatively short period of time, and others to the restructuring of the labour administration. Still others had undertaken to supply the reports in the near future. They emphasized the relevance and importance of supplying reports, which was part of and affected not only the work of the Conference Committee, but of the entire process of supervising the application of international labour standards.

The Committee took due note of the information and explanations provided by the Government representatives who took the floor. It noted with concern the large number of countries which had not replied to the comments on several Conventions. The Committee emphasized the great importance, for the continuation of dialogue, of providing clear, relevant and full information. It reiterated that this was part of the constitutional obligation to supply reports. It urged Governments to request the assistance of the ILO to overcome any difficulties they might face and asked the Office to give effect to such requests.

The Committee urged the Governments concerned, and particularly, Afghanistan, Antigua and Barbuda, Azerbaijan, Belize, Bosnia and Herzegovina, Burundi, Cape Verde, Cambodia, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Denmark (Greenland), Djibouti, Georgia, Grenada, Guinea, Guyana, Iraq, Kazakhstan, Kyrgyzstan, Liberia, Libyan Arab Jamahiriya, Netherlands (Aruba), Pakistan, Paraguay, Saint Lucia, Sao Tome and Principe, Solomon Islands, Tajikistan, The former Yugoslav Republic of Macedonia, United Kingdom (Montserrat), Yemen, Zambia, to make every effort to provide the requested information as soon as possible. The Committee decided to mention these cases in the appropriate section of its General Report.

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

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

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

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

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

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

Djibouti. The ratification of Convention No. 182, adopted at the 87th Session of the Conference.

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

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

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

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

Haiti. Since the meeting of the Committee of Experts, the Government has sent the reports due concerning the application of ratified Conventions.

Kyrgyzstan. Since the meeting of the Committee of Experts, the Government has sent the first report on Convention No. 81.

Latvia. The instruments adopted by the Conference at the last ten sessions (from the 81st to the 91st Sessions) have been submitted, on 4 June 2004, to the Parliament of the Republic of Latvia.

Lesotho. Since the meeting of the Committee of Experts, the Government has sent the first reports on Conventions Nos. 105 and 150 and replies to most of the Committee's comments.

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

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

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

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

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

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

Pakistan. Since the meeting of the Committee of Experts, the Government has sent the first reports on Conventions Nos. 100 and 182.

Saint Vincent and the Grenadines. Since the meeting of the Committee of Experts, the Government has sent reports on unratified Conventions, unratified Protocols and Recommendations.

Sao Tome and Principe. 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 4 May 2005.

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

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

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

Somalia. Since the meeting of the Committee of Experts, the Government has sent all of the reports due concerning the application of ratified Conventions.

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

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

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

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

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

Convention No. 29: Forced Labour, 1930

Mauritania (ratification: 1961). **A Government representative** stated that the inclusion of this case in the list of cases to be examined by the current session of the Committee was seen by his country as a constructive step, motivated by the intention to draw up an inventory of progress made in implementing the recommendations of the Committee of Experts, in particular following the direct contacts mission of May 2004.

The Government representative presented the measures taken by his Government since then: (1) the adoption of a draft Labour Code elaborated with the assistance of the ILO and the entry into force of the Labour Code on 16 July 2004; (2) the extension of the definition of forced labour provided in article 5 of the draft Labour Code to forced labour which did not result from the non-execution of an employment contract, in conformity with the formula proposed by the Committee of Experts; (3) the criminalization of forced labour through the Act of 17 July 2003 and by virtue of sections 5 and 435 of the new Labour Code. The penalties provided for also applied to aggravated acts of violence or threats of violence exercised by a person in order to ensure another person's services, or take the product of his or her activity. According to the Labour Code, the aggravated violence extended to violence against freedom of movement, freedom of work, the free disposal of one's goods and the free exercise of parental responsibilities (penalties foreseen: five to ten years of forced labour, fines, loss of civil and political rights); (4) the repeal of the provisions of the Labour Code concerning the administration and direction of trade unions, which were discriminatory vis-à-vis foreigners, by virtue of section 273 of the new Labour Code, which allowed foreigners to undertake such functions if they complied with certain conditions, in conformity with Convention No. 87; (5) the repeal of the Ordinance of 1962, which delegated certain powers to the local chiefs concerning the maintenance of public order, by virtue of the Act of 27 January 2005. It should be noted that this Ordinance had not been replaced and that its provisions which had been considered contrary to Article 2 of the Convention no longer existed; (6) the establishment of the list of services which were considered to be essential for the population by Order No 566/MFPT/MFPE adopted by the Ministers of the Interior and Employment. This list excluded henceforth the postal service and public transport.

The Government representative also presented the various measures taken by his Government in order to improve the living conditions of workers, promote standards and consolidate the rule of law: (1) initiation on 4 July 2004, of the first free collective negotiations organized in more than 20 years with the participation of the employers and the five trade union confederations, negotiations which had led in particular to an increase of the inter-professional guaranteed minimum wage (SMIG) by more than 365 per cent; (2) the elaboration of a technical cooperation programme to promote the ILO Declaration on Fundamental Principles and Rights at Work; (3) the implementation of programmes to fight against poverty, with encouraging results, which led to believe that the objectives set in the areas of health, education and housing would be attained by 2015; (4) the creation of an inter-ministerial structure aimed, in the first place, to introduce the organs responsible for the law's implementation to international labour standards in the area of forced labour (two seminars held in Nouakchott and Kiffa) and then, in the second place, awareness-raising among the populations, especially in the disadvantaged areas, with the support of the United States Embassy in Mauritania; (5) the national programme for good governance contained a component on "promotion of human rights and reinforcement of civil society's capacity". The Lutheran World Federation had been associated with this programme. The Government had recognized three human rights associations: the Mauritanian Human Rights Association, the think tank on economic and social development and SOS-Esclaves.

The Government was about to approve a national plan for the promotion and protection of human rights, elaborated with the assistance of the United Nations High Commissioner for Human Rights. The plan included sections on the most vulnerable groups and on the partnership between the Government and civil society. With regard to the second section, the Government had solicited the assistance of the ILO and the UNDP.

The Employer members recalled that Convention No. 29 required the suppression of forced labour in all forms, that the illegal exaction of forced labour be a punishable offence, and that penalties imposed by law were adequate and strictly enforced. Mauritania had adopted a first Decree to abolish slavery in 1905; the 1963 Labour Code prohibited forced labour and imposed relevant penal sanctions. As noted by the Committee of Experts, however, the Labour Code provisions only applied to employers and workers in a formal employment relationship. In 1980, the Government had adopted a declaration abolishing slavery, and in 1981, it had adopted an ordinance abolishing slavery and providing for compensation to former slave-owners. From 1990 to 2000, the Government had repeatedly insisted that forced labour no longer existed in the country.

They noted that previous comments of the Committee of Experts had held that slavery persisted in Mauritania, citing information from the report of the Working Group on Slavery of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Committee of Experts' current comments cited the observations in the report of the direct contacts mission of May 2004, which had noted that the Government considered the practice of forced labour "entirely exceptional and, in any case, not more developed than that in certain major cities in the industrialized world". The direct contacts mission had also noted the views of the Free Confederation of Mauritanian Workers (CLTM), which held that "situations of forced labour are widespread in Mauritania". The Employer members also noted that the direct contacts mission concluded that further research and investigation into the continued existence of forced labour was needed, and they therefore urged the Government to cooperate with such further investigations in order to determine the extent to which forced labour persisted.

The Employer members also noted the amended Labour Code of 2004, which abolished forced labour in any labour relationship, not just where it was governed by an employment contract. In addition, Act No. 2003-025 of 17 July 2003 regarding trafficking of persons made such acts punishable by imprisonment. They noted the Government representative's position that this legislation was also intended to prohibit violence in connection with the freedom of movement.

In view of the above, and in light of the conclusions of the direct contacts mission, it appeared that while progress had been made with regard to legislative measures prohibiting forced labour, more information was needed regarding penal sanctions for violations of this legislation. They urged the Government to provide information on the jurisdictions competent to receive complaints and the penalties imposed under the Labour Code and the Act on trafficking of persons, including the number of complaints lodged and the respective court decisions.

They commended the Government on action taken to combat poverty through economic and social means. This notwithstanding, the Employer members saw this matter as a problem of the application and enforcement by the Government of relevant national legislation. As a result, they urged the Government to improve the application and enforcement of national legislation, including the consistent enforcement of penalties for any offences relating to forced labour. Finally, as the direct contacts mission had noted, there was no enforcement mechanism for labour legislation, and resources allocated to the labour inspectorate were scarce. They wished to reinforce that allocation of additional resources for the labour inspectorate was only one of a number of mechanisms by which national legislation could be more effectively enforced. In conclusion, they urged the Government to acknowledge the problems of forced labour that still existed and to establish, with the ILO, an information and awareness-raising campaign to sensitize all elements of the population to the issue, including those who were most susceptible of being victims.

The Worker members recalled that this Committee had been examining this case since 1982 and raised a question regarding the evolution of the situation in the past 25 years. Despite numerous references by the Committee of Experts to the issue of persons descended from former slaves who were obliged to work for a person who claimed the status of being their "master", and the persistence of this phenomenon described in the report by the organization SOS-Slavery, the Government had not yet provided a response on the concrete cases nor indicated whether investigations had been conducted in these particular cases. The Government continued to minimize, and even to deny, the forced labour practices and to present them, as for the direct contacts mission of 2004, as entirely exceptional and not more developed than in certain major cities in the industrialized world. It was paradoxical that the Government denied the existence of slave-like practices and at the same time pursued amendments of its legislation aimed at the prohibition of such practices, thus following the demands formulated by the Committee of Experts requesting the extension of the prohibition of forced labour to any labour relationship, the imposition of sanctions in conformity with the Convention, the repeal of provisions allowing the village chiefs to requisition labour and the establishment of a complete list of essential services in which such practice was authorized. In this regard, the Worker members noted with interest and satisfaction the adoption of the new Labour Code, which had extended the scope of prohibition of forced labour to any labour relationship, even where it was not derived from an employment contract, the introduction of penal sanctions under the Act of 2003 punishing trafficking in persons, the establishment of the complete list of essential services and the repeal of the text allowing the requisitioning of persons. They observed, however, that those legislative changes had not yet been followed by practical

results, and that measures still had to be taken to make them operational. In fact, the application of the new laws was likely to create confusion in a situation where the principle of the prohibition of forced labour and the sanctions applicable in case of violation were provided for in the two different legislative texts. Besides, the Labour Code contained no reference to persons working at their former "master's" home and deprived of the freedom to move and to work anywhere else. As specified in the report of the direct contacts mission, the exercise of the right of appeal was therefore decisive. As it was explained in the report of SOS-Slavery, there was collusion between the "masters" and the judicial system. The "master's" descendants constituted the overwhelming majority of the leading class of the country, including the army administration, judicial staff and police forces. The direct contacts mission indicated that there was no labour law enforcement machinery because of the scarce resources allocated to the labour inspectorate. At the same time, strict application of economic, social and educational measures allowing for the reintegration and indemnification of the victims appeared necessary. The Worker members praised the legal progress achieved and wished that it were followed by practical results, and that the Government would be expressly requested to assume the obligations in regard to the integration in one and the same text of the provisions prohibiting forced labour and imposing sanctions, the preparation of detailed reports on the forced labour cases, competent jurisdictions and sanctions imposed, the organization of the information campaign on slavery, the elaboration of the social and economic action plan against poverty and the vestiges of slavery, the ratification and application of Convention No. 144 on tripartite consultations and the guarantee of freedom of expression for trade unions and civil society. Besides, while having noted the success of the direct contacts mission, the Worker members proposed a new mission of this kind in order to assist the Government in putting its obligations into practice and to assess the needs for technical assistance. They stated that they would be happy to see slavery definitively eradicated before the 25th anniversary of the first examination of this case by this Committee.

A Worker member of Mauritania stated that significant progress had been made and that ILO technical assistance had accompanied that process. Forced labour was related to the problem of poverty and was a scourge that developing countries must fight against. The way that SOS-Slavery had presented the problem of slavery in Mauritania was biased; it was an exaggerated and sensational account. The speaker also refuted the statements alleging that there was no freedom of association in the country. Similarly, it was not possible to assert that freedom of movement was restricted in the country. The direct contacts mission had not been able to find any instances thereof.

Another Worker member of Mauritania stated that his country had once again been included in the list of cases because the Government continued to deny the existence of slavery, and yet slavery existed and was practised in all its forms. That year, three people, including one journalist, had been imprisoned for around two months, accused of having helped a slave escape from his masters. The case was still pending before the court. Such action demonstrated the severity of the practice. Thousands of people were kept as slaves, yet the Government's arguments always referred to measures taken to combat poverty or illiteracy. Such measures were not, however, of any benefit to slaves, given their position, since they were the property of their masters. Today, their freedom, emancipation and promotion must be secured by means of specific policies and awareness campaigns.

The provisions of the new Labour Code were confusing, very general, and did not form a suitable regulatory basis for dealing with cases of forced labour or slavery. Similarly, penalties were not imposed upon offenders, and no judgements had ever been made in favour of slaves, despite the number of complaints filed in connection with the practice of forced labour. All the above demonstrated the Government's lack of commitment to eradicating slavery and improving the conditions of victims with a view to their integration into the working society of the country.

The Government had recently recognized a number of trade union organizations and human rights associations, including SOS-Slavery. Although such action was courageous, the fundamental issue was that of the effective eradication of slavery through the adoption of specific measures. The Government should firstly acknowledge the existence of that phenomenon and reaffirm its commitment to taking economic, social and legal measures.

The speaker said that his organization, the CLTM, endorsed the recommendations of the ILO direct contacts mission, and assured the Government of its cooperation in eliminating the scourge in question, in the belief that the promotion of social dialogue and the creation of a permanent cooperation framework would be very positive in terms of human rights. Finally, he emphasized that the CLTM, his organization, was a trade union organization that was free and independent of political parties and the Government.

The Employer member of Mauritania said he was surprised to see Mauritania on the list of individual cases. Things had to be seen as they were; the case had to be tackled objectively and one should be wary of NGOs and political parties that used the situation to fulfil certain political objectives. Slavery no longer existed in Mauritania and the Government had set up appropriate structures to eradicate inequality and combat poverty. The information given by the Government was objective and true. Given the above, the speaker felt that Mauritania had been cited due to the valuable and substantial progress made.

The Worker member of the Central African Republic reminded those present at the meeting that despite the emergence of new forms of forced labour, one must not forget those forms which, although considered to be "old", were still very much in existence given the fact that the descendants of slaves were slaves today. Despite the uncertainty as to its scale, the phenomenon really existed, and subjected the many people affected in the various regions of the country to all types of incredible, but real, abuse. The information available did not clarify whether penalties for carrying out those practices were actually imposed, and there was no evidence of any conviction in that respect. The Government only provided very general responses. However, it formulated precise allegations against a trade union organization accused of using that issue for political means, contrary to the principle set forth in Convention No. 87 of non-interference in trade union activities aimed at defending workers' rights, including those of slaves, and therefore a solution should have been found in social dialogue and not in confrontation. The speaker observed that it was high time the Government provided precise statistics on the number of workers used as slaves, on the penalties imposed and on the practical reinsertion measures in place. In conclusion, the speaker recalled the need for proper dialogue on the issue of forced labour. The trade union organizations strongly hoped that such dialogue would very soon commence and that the Government would make efforts to ensure that, in its next report, the Committee of Experts would be able to note real progress in that area.

The Government member of France stated that it would be useful to know what this Committee still expected of the Mauritanian Government, which had received a direct contacts mission, as had been requested by the Committee in 2002 and 2003, and which had also put into effect the essence of the mission's recommendations.

The previous observations of the Committee of Experts concerned three points. Previously, forced labour was not sanctioned severely enough; the prevailing provisions in the Labour Code dealing with this matter assumed the existence of a labour contract, which was rare in cases of forced labour, and the sole penalties provided for were fines. The only means of applying heavier penalties was through other penal provisions. The Committee of Experts moreover criticized the too frequent use of the right to requisition staff and the extensive list of services considered as essential. On all of these points, the new legislation brought about considerable progress. The list of essential services had been revised, and more importantly, the new Labour Code had defined forced labour as a crime in itself, subject to ten years' imprisonment. It was necessary to continue to draw upon the ongoing work of the ILO and UNDP.

The case of Mauritania could turn out to be a case of progress in its legislative developments. But there also, the problem was the aftermath of slavery. Convention No. 29 could not solve the situations of poverty and cultural alienation experienced by the descendants of former slaves, even if they were free. The speaker stated that the ILO should develop better instruments to regulate the informal economy and to provide support for descendants of slaves with a view to ensuring their economic, social and cultural integration.

The Government member of Finland, speaking also on behalf of the **Government members of Denmark, Iceland, Norway and Sweden**, noted that while the Government appeared to consider the problem of slavery as marginal, the information sources cited in the Committee of Experts' report confirmed that slavery was a reality in Mauritania, the extent of which was unknown. She feared that the victims of this heinous practice were often vulnerable individuals belonging to economically weak groups, such as women and children. Nothing could justify slavery and it was a crime against the fundamental human right of personal freedom and integrity. It affected both individual dignity and psychological development and often led to deplorable social situations. She noted the Government's efforts in this matter, but it appeared that these measures had not been enough. She therefore requested the Government to give full effect in law and practice to the points raised by the Committee of Experts, to ensure that employers' and workers' organizations as well as NGOs were involved in this process, to avail itself of ILO technical assistance, and to provide a detailed reply to all questions raised in the report of the Committee of Experts.

The Government representative wished to answer certain questions that had been raised during the discussion. As regards the reference of the Employer members to the Ordinance of 1981, he explained that it had been adopted in the particular context of the adaptation of national legislation to Islamic law. The point was not to fill a legal void but to provide the moral authority for the prohibition of slavery as foreseen in the Labour Code.

As regards the definition of forced labour, reference should be made to Convention No. 29. Forced labour should not be confused with the problem of poverty. The existing legal gaps had been filled and if Mauritanians who lived in conditions of poverty and insecurity represented about 40 per cent of the population, not all of them were descendants of slaves. It was not easy to eradicate situations of poverty and vulnerability which resulted from social status, and the Government in recent years had proactively implemented a programme of action in economic, social and cultural domains that was especially aimed at descendents of slaves. It was not true that the Mauritanian Government

had not or was not undertaking efforts or measures targeting descendants of slaves. For example, it had organized ambitious programmes in the cities, particularly to provide accommodation, as well as in rural areas. It was worth noting that descendants of slaves were represented at the management level in public office, the armed forces, the police, public service, etc.

Concerning the question of application of appropriate penalties provided in the legislation, all the courts were competent to examine cases and accordingly apply appropriate penalties. In this regard, the Government had been committed to provide precise and exhaustive information on the cases mentioned in the report of SOS-Slavery. Moreover, it had not been proved that these allegations were correct.

As for the necessity to strengthen labour inspection, Mauritania had indeed limited resources common to a developing country, and international assistance for the strengthening of labour inspection would be welcome.

The speaker was surprised that the Worker members had referred to the existing contradiction between legislation and national practice. The Committee of Experts in its comments had requested to change the legislation. These changes had been made and due to the amendments to the Labour Code, Mauritania now had effective legal provisions to deal with all situations of forced labour. At the same time, the Government had taken a number of measures to combat, in practice, the problem of poverty as well as in the areas of schooling, education and health. The Government has done its utmost despite the limited resources it disposed of as a less developed country. There was no proof that in Mauritania anyone was compelled to work.

As regards the sensitization campaign requested by a number of speakers, the Government representative considered that this campaign had already started with the assistance of the ILO within the framework of the action plan to promote human rights, which included important information, communication and education measures, and that had to be approved shortly by the Government. In addition, in the past few years five workshops had been organized on the issue of domestic work of girls.

Finally, as regards the imprisonment of a journalist, the speaker indicated that the facts mentioned were not accurate. The Government was ready to accept all the positive and constructive actions which might help to eliminate the existing shortcomings.

The Employer members thanked the Government representative for his reply to the discussion. They indicated that the conclusions should reflect the positive measures taken by the Government in connection with the amendment to the Labour Code that had extended the scope of the provision regarding the prohibition of forced labour. They noted that forced labour had been made an offence under the amended Labour Code, and that the penalties for this offence had been included in the Act regarding the trafficking of persons. The Employer members therefore noted the progress made by the Government in bringing its national legislation into compliance with the Convention. Nevertheless, they emphasized the need for additional information on the jurisdictions competent to receive complaints and on the penalties imposed under the Labour Code and the Act regarding the trafficking of persons, as had been requested by the Committee of Experts.

The Employer members observed that, in the face of conflicting information received from the Government, on the one hand, and from the workers' organizations, on the other hand, it was unclear how widespread the persistence of the problem of forced labour was. They considered that further research and investigation on the continued existence of forced labour and the magnitude of the problem was necessary, which could entail a direct contacts mission.

The Employer members expressed their very serious concern with the persistence of the allegations of forced labour and urged the Government to adopt the necessary measures to eradicate all practices of forced labour in all of its forms, placing particular emphasis on the enforcement of the national legislation, including the penalties for the exaction of forced labour. Referring also to the Committee of Experts' comments concerning the absence of an enforcement mechanism for labour legislations and the scarce resources allocated to the labour inspectorate, which had been noted by the direct contacts mission in 2004, the Employer members considered it necessary to reflect in the conclusions that the allocation of additional resources was only one of a number of mechanisms by which the legislation could be more effectively enforced. Finally, the Employer members urged the Government to institute, with the assistance of the ILO, an information and awareness-raising campaign to sensitize all elements of the population to the serious problem of forced labour.

The Worker members favourably welcomed the progress made in legislation and appreciated the contribution made by the direct contacts mission. They had hoped to examine the effects in practice and requested the Government to undertake a series of concrete legal steps, namely, the abrogation of the powers of village chiefs, the introduction of sanctions in the new Labour Code, and the provision of reports on cases brought before justice. They also asked for policy measures in the form of an information campaign aimed at the whole population, and a plan of action against poverty and the repercussions of slavery and to promote freedom for civil society. They also invited the Government to make international commitments, in particular, the ratification of Convention No. 144 on tripartite consultation. In a positive spirit, the Worker members proposed the organization of a new direct contacts mission in order to determine in a definitive manner whether or not slavery existed in Mauritania, and to put into effect the commitments and the technical cooperation mentioned earlier.

The Committee took note of the information given by the Government representative and the discussion that had ensued. The Committee recalled that the present case had been discussed in the same Committee in the past, notably in 2002 and 2003. In that regard, the Committee noted that the Government had accepted the visit of the direct contacts mission, which had taken place in May 2004. The Committee took note of all the information set out in the report of the Committee of Experts, in particular that concerning the new Labour Code, adopted in July 2004, which provided for the prohibition of forced labour –a prohibition that covered any type of work, even that not subject to an employment contract –and the imposition of penal sanctions.

The Committee took note of the information given by the Government representative concerning the adoption of the new Labour Code; the penalization of forced labour under the law prohibiting trafficking in persons; the adoption of the decree laying down the list of essential service establishments; the increase in the interprofessional minimum wage; the programmes to combat poverty, especially the technical cooperation programme devised in conjunction with the ILO for the promotion of the ILO Declaration on Fundamental Principles and Rights at Work; and the creation of an inter-ministerial structure which aimed to make those responsible more aware of the application of labour standards, including those on forced labour. The Committee also took note of the statement by the Government representative concerning the recognition of human rights associations involved in activities that focused on issues related to forced labour.

The Committee indicated with some concern that in its report the direct contacts mission referred to allegations, made by certain workers' organizations, that some forced labour practices continued to exist –practices that were the vestiges of legally abol ished slavery.

The Committee noted the Committee of Experts' concern about the possible effects, in practice, of the fact that the general prohibition on forced labour was provided for in the Labour Code, while penalties were provided for in a specific law punishing another crime, namely the law prohibiting trafficking of persons of 2003.

The Committee trusted that the legislative measures adopted would produce rapid practical results that would bring an end to the vestiges of slavery and that the Government would be able to provide information on legal actions taken in various jurisdictions, by virtue of section 5 of the Labour Code, and on the penalties imposed.

The Committee, having noted the progress made by the Government in the field of legislation, invited it to submit an exhaustive and detailed report that:

(1) responded to all the comments made by the Committee of Experts;

(2) contained full information on the competent jurisdictions to receive complaints and the penalties imposed;

(3) contained all elements relating to the awareness campaign;

(4) provided information on the consultations held with the social partners.

The Committee invited the Government to continue to avail itself to the technical cooperation of the ILO and other donors, which should include an awareness campaign on forced labour.

The Committee, having taken into account the conflicting information on the persistence of the practices of forced labour and slavery, decided that the Office undertake a fact-finding mission. That mission should review the effective application of national legislation.

(**MYANMAR** (ratification: 1955). See Part Three.)

SUDAN (ratification: 1957). **A Government representative** stated that he was the Chairperson of the Committee for the Eradication of Abduction of Women and Children (CEAWC), which reported to the Presidency of the Republic and thus in a position to report on the details of the case. He was pleased to report that the CEAWC was dealing with 14,000 reported abduction cases, of which 11,000 had been successfully resolved through laborious documentation, tracing, retrieval, and reunification measures. Over US$3 million had been spent on these efforts, two-thirds of which the Sudanese Government had provided in the period from March 2004 to March 2005, due to the slow flow of donor funds. The Government had committed to funding the resolution of the remaining 3,000 abduction cases, of which many were not abduction cases in the strict sense, as the persons affected, with the knowledge of international agencies, had requested not to be transferred back to their place of origin. The cooperation of the CEAWC with the Dinka Chiefs Committee (DCC) underlined the peace-building perspective of the work of CEAWC.

Because of government funding, the CEAWC had been able to process more than 7,500 cases last year alone. This showed that Sudan was serious about addressing the problem of abductions. Indeed, these efforts had been recognized by the international community, such as in the 61st Session of the United Nations Commission on Humans Rights, which had adopted a resolution (E/CN.4/RES/2005/82) welcoming the

efforts of the Government of Sudan to combat the abduction of persons, in particular the work of the CEAWC, and the Deputy Special Representative of the UN Secretary-General for Sudan, who in a letter of 11 May 2005 had noted that many abducted persons had returned home.

With regard to the comment of the ICFTU contesting the position that the Government had taken at the 2004 session of the ILC, namely that all abductions in Sudan had stopped, the Government representative reconfirmed that indeed all abductions had ceased. He noted that the Dinka Chiefs Committee (DCC), which had been a major complainant in the abduction cases, was now an integral part of the CEAWC (four out of the six top positions were held by Dinka) and could testify to the fact that the abductions had stopped.

On the one hand, the UN Commission on Human Rights had in many of its resolutions endorsed CEAWC course of action in not pressing penal sanctions, as long as abductors were cooperating with CEAWC. For example, resolution No. 2002/16 referred to «bringing to justice the perpetrators who are not wishing to cooperate».

In view of the above progress, the case of Sudan should not have appeared on this Committee's list and should be considered closed. If not, this Committee would face the unprecedented situation of pursuing a case in which the local communities affected and the concerned UN organizations had noted progress.

Another Government representative (Minister of Labour and Administrative Reform) pointed out that the progress that had been made could not have been possible without the participation of the tribal groups concerned – the Dinka, the Messiria, the Rezigat and others. He regretted that the Committee of Experts' report was based on old and erroneous information, and he was surprised that the case had resurfaced after it had been shelved the previous year. Moreover, he pointed out that the United Nations agencies referred to the problem of abductions, whereas this Committee spoke of slavery, a term his Government totally rejected.

He announced that the Government and the Sudanese People's Liberation Movement (SPLM) had ended the conflict in the Southern Sudan, Blue Nile and Nuba Mountain regions, which was the underlying cause of the abductions. The historic agreement signed by the Government and the SPLM on 9 January 2005 in Nairobi would seal this peace. A constitutional commission had been established to draft an interim Constitution, which would go to Parliament and the National Liberation Council of the SPLM for endorsement next week. The interim Constitution would include a bill of rights banning slavery. He thanked the participants of a recent donors' conference in Norway, in particular Norway and the EU Member States, the United States, and the African and Arab countries, for their support of the peace process. Next year, the Sudanese ILO delegation would include SPLM members.

In light of the above, he called for the case to be closed. He reminded the Committee that his delegation was against a direct contacts mission and would reject any proposal to establish one. He also stated that any attempt to link this case with the situation in the Darfur region was unacceptable, as that particular case had a different dimension and was being addressed by the Government, the United Nations and the African Union. He voiced his concern about members that tried to use this weak case for their own political reasons. There was a need for this Committee to review its functions so as to prevent a double standard. The ILO should concentrate on the positive developments in the case and provide technical assistance, especially in the areas of demobilization and resettlement of refugees and displaced persons.

The Worker members regretted that the Committee had to examine once again the application of Convention No. 29 by Sudan. During the last session of the Conference, the Committee expressed its deep concern with the continuing reports of abductions and forced labour practices and requested the Government to take effective and quick measures to bring to an end these practices. The Worker members noted both the positive and negative elements in the Committee of Experts' observation following the Government's report submitted in October 2004, as well as the comments transmitted by the international bodies, international workers' organizations and NGOs. After the conclusion of the three peace protocols in May 2004, one of which contained provisions concerning human rights and the rights of the child, and the liberation of more than 1,000 abducted persons, they praised the conclusion this year of a comprehensive peace agreement in the North-South conflict. Unfortunately, these developments did not bring a solution to the grave problems of the application of Convention No. 29.

According to the Government, abductions had been stopped completely. Indeed, the Committee for the Eradication of Abduction of Women and Children (CEAWC) had not registered new cases of abductions for two years. However, this fact was not entirely convincing, since the CEAWC had no capacity to collect information and to conduct investigations. For the Darfur region, in particular, all the available reports issued either by the NGOs or by the international bodies, including the latest report of the United Nations International Commission of Inquiry on Darfur, revealed numerous cases of abductions and sex slavery. The Commission of Inquiry assumed, in particular, that cases of rape and other forms of sexual violence were committed on a large scale in Darfur by the Janjaweed militia and by the regular army soldiers.

The CEAWC recognized that 14,000 persons had been abducted. It provided assistance in the retrieval of 2,628 victims between 1999 and May 2004. Thus, about 10,000 abducted persons were still waiting to be identified and reunited with their families. However, according to the information communicated by UNICEF, the retrieval operations by the CEAWC had been suspended since March 2005.

Besides, the Government had been requested on many occasions to ensure that the appropriate penal sanctions were effectively applied to perpetrators. The CEAWC confirmed that the best way to eradicate the abductions was to institute legal proceedings. During the last session of the Conference, the Minister of Labour stated before this Committee that the Government provided for financial means allowing the CEAWC to resort to legal action, while making it clear that these procedures were too long and susceptible of becoming harmful to the victims themselves. Today, the first legal action against those responsible for abductions was still awaited. The Government should at least accelerate the judicial procedures and ensure better protection for the victims.

The Worker members observed that the Government reiterated all the time its condemnation of all forms of slavery and confirmed its commitment to cooperate with the international organizations to eradicate the phenomenon of abductions. Consequently, they once again proposed a direct contacts mission in order to assess the real situation on the spot and to evaluate the country's needs in technical assistance, even if they noted from the statement of the Government representative that the Government would not accept such a proposal.

The Employer members expressed their surprise that the Government appeared defensive in this case; they thought they would welcome the opportunity to provide information which was not available to the Committee and to highlight the positive developments in the matter. They recalled that Convention No. 29 required each ratifying member State to undertake to suppress the use of forced or compulsory labour in all its forms within the shortest possible period, and that for the purposes of this Convention the term "forced or compulsory labour" should mean all work or service which was exacted from any person under the menace of any penalty and for which the said person had not offered himself voluntarily. They noted that the Government had not stated that forced labour had been abolished. The fact that there were 3,500 cases remedied in the past year indicated that there was still a problem, which was not likely to disappear very soon. This made it difficult to agree with the Government's position that the case was closed.

There was not enough information available to evaluate if abductions had indeed ceased in the Sudan. The Government had mentioned that it had submitted a report to the ILO, but the Employer members were not aware of any document submitted to the Committee, as was the usual practice. As a result the Government should ensure that any relevant information was submitted to the Committee of Experts.

The Employer members were also surprised by the total rejection of a direct contacts mission, especially in light of recent developments in the Sudan. The peace agreement and opening of society would appear to call for greater engagement with the ILO. Such a mission would allow for a greater understanding of the details of prosecutions of cases of abductions. In conclusion, the Employer members agreed that there had been some tangible positive steps in this case. However, much of the information was unverifiable, so it was not possible to say that forced labour had been abolished in the country.

The Worker member of Sudan stated that the accusations of slavery and forced labour were not just an insult to the Government but to the Sudanese people and trade unions who, he recalled, had overthrown two military governments through popular uprisings and strikes. The case had been first discussed in 1984 following the publication of a book by two Sudanese scholars. The Government had always maintained that the main reason behind abductions was the 50-year civil war which had recently ended. After discussions with the international community, the CEAWC was established with international financial support which had not yet been received. Nevertheless, with its own meagre resources, the Government had resolved 75 per cent of the cases of abductions and had, through tedious negotiations, concluded a peace accord. Yet, none of these positive developments was reflected in the report of the Committee of Experts, even though they were commended by the UN Commission on Human Rights. This case was being inappropriately linked to the Darfur situation, which was miserable but which would be overcome without foreign intervention. The Committee should seek to make available the technical assistance that had been mentioned in the conclusions of this case last year. It was time for this Committee to steer away from political issues and concentrate on the application of international labour standards, an important issue for workers in Africa and the underdeveloped South.

The Employer member of Sudan emphasized that Sudan had made progress but the Committee of Experts had not noted this in its report. He cited, in particular, the conclusion of a global peace accord which included, at the same time, the drafting of an interim Constitution guaranteeing human rights and commitment to the revision of national laws with a view to ensuring their conformity with the peace agreement and the interim Constitution. Social dialogue had been strengthened in Sudan and had become an essential instrument in dealing with important issues facing the country. The international community appreciated and encouraged this progress.

The speaker stated that the abductions were linked to the civil war. Thanks to the peace agreement, these had ceased and several hundreds of people had been returned to their place of origin. But new challenges

appeared on the horizon concerning the creation of opportunities for decent work, and guarantees of the rights of the child and human rights. He hoped that the Committee would take note of these developments with a view to supporting them and he invited the ILO to provide Sudan with the assistance necessary to reinforce trade union organizations and to promote social dialogue.

The Government member of Luxembourg, speaking on behalf of the **European Union, as well as of Albania, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Norway, Romania, Serbia and Montenegro, Switzerland, The former Yugoslav Republic of Macedonia, Turkey and Ukraine**, expressed the European Union's grave concern with the situation that was the subject of the Committee of Experts' observations and strongly condemned the continuing slave-like practices of abduction, trafficking and forced labour in Sudan, which impacted especially on women and children. The speaker also noted with deep concern the convergence of allegations and a broad consensus among the United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the practices of abduction and the exaction of forced labour, which constituted a gross violation of Convention No. 29, since victims were forced to perform work for which they had not offered themselves voluntarily, under extremely harsh conditions and combined with ill-treatment which might include torture and death.

The speaker recalled that, in 2004, this Committee invited the Government to take effective and quick measures to punish those responsible for the violations. She urged the Government to take the necessary measures to ensure that legal proceedings were instituted against perpetrators and penal sanctions were imposed, thus putting an end to impunity, which should be a high priority.

The speaker pointed out that the European Union was committed to supporting the restoration of peace and development in Sudan and backed the efforts undertaken by the African Union in this regard. The European Union welcomed the Comprehensive Peace Agreement (CPA) signed in January 2005 in the North-South conflict, but remained deeply concerned about the continuing violence against the civilian population in Darfur. She expressed the hope that the upcoming peace talks in Abuja would be successful, and that the full implementation of the CPA would be achieved and positive developments in the crisis in Darfur would take place. Given the gravity of the situation, she urged the Government to take immediate and effective action to eradicate all forms of forced labour.

The Government member of Nigeria expressed her dissatisfaction with the mode of the selection of individual cases and pointed out that the original list of individual cases had been altered to the disadvantage of the African region.

A point of order was raised by the **Worker member of France**.

The Chairperson ruled on the motion by calling on the speaker to stick to the point of the discussion.

The Government member of Nigeria continued by stating that Sudan had been going through the throes of war, which had been of great concern to the African region, and she considered the Sudanese case to be the result of the conflict. She was happy to note that the situation had been brought to an end. Referring to the information provided by the Government representative to the Committee concerning the activities of the CEAWC, the speaker observed that international organizations like UNICEF had provided some assistance in order to complement the Government's efforts in this area and had acknowledged these efforts. She suggested that, since the war had come to an end and the Government had shown convincing evidence of its commitment to eliminate abductions, this Committee should reconsider its stand on the case. She also recommended to remove this case from the list of individual cases and to provide assistance to the Government to effectively deal with the matter.

The Worker member of Cuba stated that the report of the Committee of Experts highlighted the complexity of the case of Sudan. There was no doubt as to the gravity of the situation described, although references to its causes were few. Meanwhile, as acknowledged by the Committee, the Government had taken positive steps and renewed its commitment to resolving the problem of forced labour. Efforts should be made to understand the enormous challenges faced by the Government in effectively carrying out its responsibilities. Recently, there had been news of a peace agreement in an armed conflict that had affected the country since 1955. The peace agreement would undoubtedly play an important part in the future development of the country, yet a significant amount of time and effort would be needed before it produced successful results in practice.

For all the aforementioned reasons, the speaker requested that the Committee recommend the provision of technical cooperation from the ILO and the international community, in order to enable the Sudanese Government to make greater progress in resolving the problems identified in the present forum – problems that it had to commit itself to dealing with. It was important to take into account that the war had ended, which meant that there would be a favourable climate for the normal application of laws and for the improved fulfilment of the Government's obligations. The present Committee should also be careful to take into consideration the information provided by the Sudanese Worker member, the progress made to date, and the renewed commitments of the Government. The speaker hoped that legislation in Sudan would be rigorously applied, ensuring full compliance with Convention No. 29.

The Government member of South Africa noted that a number of international organizations and governments had taken it upon themselves to ensure that the Government and the people of Sudan were given much-needed support. He pointed out that in situations where war, poverty and suffering reigned, ILO Conventions would remain very hard to implement. However, it appeared that the Government had made great progress. The speaker called upon governments and organizations from all over the world to respond positively to the appeal of the Sudanese Government on behalf of the Sudanese people. He pointed out that, in this spirit, ILO technical assistance would play a very important role in addressing the current issue and emphasized the importance of dialogue.

The Worker member of Brazil said that she had read very carefully the report of the Committee on Experts and the report on the field activities of the Committee for the Eradication of Abduction of Women and Children, which had managed to resolve 75 per cent of cases. She had also read the report by the Government of Sudan, which highlighted the Government's efforts to retrieve abducted persons and bring an end to the phenomenon of abduction in the region of conflict. Moreover, she had studied with special attention the observations of the ICFTU based on the reports of the US Department of State.

The speaker felt that the present Committee should ask itself why it had insisted, for 16 consecutive years, on bringing Sudan before the Committee, why it had tried to impose sanctions on Sudan on the pretext of forced labour, when all those present at the meeting knew that there was a civil war in the south of the country and that the Government, following the protocols, had signed a peace agreement in January of that year. The Committee should also ask itself what the real technical reason was for saying that there was forced labour in a region when what really existed there was war. The answer to those questions was very simple and was well illustrated in the account published in the United States press by a member of the United States mission to Sudan – an account that clearly highlighted the existence of vast oil reserves in southern Sudan and in the region of south Darfur. That, and that alone, was why the US Department of State was really interested in imposing sanctions on Sudan, thus justifying other well-known serious consequences, and also explained the continued existence of armed conflict in the region.

Consequently, the speaker ended her statement by urging the Committee not to commit any further acts of injustice against a long-suffering African country that had been exploited and punished by war. While acts of injustice were repeatedly committed against certain countries by imposing sanctions, the superpowers not only enslaved other nations, but also promoted war and military occupation in order to take away their wealth.

The Worker member of the Libyan Arab Jamahiriya stated that trade union organizations, such as the Trade Union Confederation of Coastal and Saharan Countries and the Organization of African Trade Union Unity, regularly visited Sudan and were therefore more familiar with the realities of the country. The civil war had lasted more than 50 years and he was pleased with the peace accord that had been signed at the beginning of this year as well as with the will shown by the Government to ensure stability in the country. The report of the Government indicated that abductions had ceased and that the Government was ready to examine previous cases, a development which deserved support and encouragement so that the Government could maintain the process of peace and stability which it had begun.

In conclusion, he stated that the Committee, because it was neutral and just, should appreciate the efforts made by the Government of Sudan and provide it with the necessary support instead of systematically placing it on the list of individual cases as had been done in the past 16 years.

The Government member of Egypt pointed out that according to reports of certain international organizations, the efforts made by Sudan had borne fruit. Despite economic problems and geographic challenges, Sudan manifested a political will to combat the scourge of forced labour through the CEAWC. She stated that donor countries had contributed to the financing of CEAWC projects and she invited the Office to provide the Government with technical assistance to overcome further difficulties.

In conclusion, she underlined that Sudan had made progress and she hoped that the donor countries would increase their aid so that this country could fight forced labour even better. She invited the Committee to take note of the efforts made by Sudan in light of the particular conditions it faced.

The Worker member of Senegal noted that the case of the violation of Convention No. 29 by Sudan was again before the Committee and that the information contained in the report of the Committee of Experts contested statements made by the Government. This Committee should therefore objectively evaluate the facts. Indeed corroborating sources, notably the report of the United Nations International Commission of Inquiry on Darfur of 2005, indicated that the practice of abductions, trafficking, forced labour and sexual slavery affected thousands of women and children in the regions where there was armed conflict. Despite the commitment by the CEAWC to prosecute those responsible and the funds that had been attributed towards this goal, no legal action had been undertaken against perpetrators. The

efforts of the Government in this regard were spotty. Slavery continued to be a reality in Sudan where thousands of people still awaited their liberation and where new abductions still took place. While the global peace accord signed by the Government and the SPLM in January 2005 was a positive development and contributed to a new environment, it would not automatically lead to the end of abductions and violations of human rights, as the events in Darfur had shown. Thus while different perspectives persisted, standards had to continue to apply and this Committee had to remain loyal to its values no matter what happened. A refusal to accept a mission by the ILO signified that the Government refused to cooperate, and the Committee should thus maintain the course, even if this might not please all.

The Government member of the Libyan Arab Jamahiriya stated that thanks to projects which the Government of Sudan had implemented with the international community, the Government had succeeded in resolving several hundreds of cases of abductions and forced labour. He recalled that these efforts had been recognized by the Commission on Human Rights in April 2005, but in contrast, they had not been mentioned in the report of the Committee of Experts. In view of this progress, he requested that Sudan be removed from the list of individual cases.

The Government member of Cuba said that the peace efforts that had been made with the support and participation of a regional mechanism, had made it possible to entertain the hope that the prolonged conflict which had caused the people of Sudan unspeakable suffering, including the types of violations referred to in the Committee of Experts' report, would be brought to an end. The peace agreements should facilitate the establishment of a government of national unity, under which it would be the responsibility of all parties to jointly guarantee an end to all forced labour practices. This opportunity to be in control of the situation should encourage the implementation of legislative, administrative and penal measures to put an end to the impunity of those guilty of such acts. The eradication of all forms of forced labour and the promotion and dissemination of international labour standards would not only justify the existence of the ILO, but would contribute greatly to the consolidation of peace and national reconstruction in a prosperous society. The ILO should be ready to respond positively to the request for technical assistance for the adoption of new legislation and other measures.

The Government member of the Syrian Arab Republic stated that Sudan had experienced a civil war that had lasted for over half a century and had devastated the country, in particular economically and socially. Despite this difficult situation, the Government had made considerable efforts to establish peace and stability in the country, which would result in the economic and social stability that was necessary to improve conditions of work. Taking into account, in particular, the Government's efforts to apply international labour standards and to remedy the situations caused by the war, he hoped that the ILO would provide his country with the material and technical assistance necessary to help to overcome the difficulties that it was facing.

The Government representative was pleased to hear from all the comments made that the elements presented in his report to the Conference Committee had been generally accepted. However, one correction should be made with regard to certain figures mentioned during the discussion. The true figures were 3,500 and 7,500 abducted persons who the CEAWC had been able to retrieve and who had rejoined their families. These figures did not refer to prosecutions of those responsible for the abductions. Since the commencement of the activities of the CEAWC in 1999, and following the cessation of hostilities, the total of 11,000 abducted persons had been retrieved and some were reunited with their families.

He stated that he did not wish to make any comments on the allegations made by some of the Worker members. Many United Nations agencies had visited Darfur and had confirmed the situation as explained by the Government. They had agreed that the CEAWC was effective in dealing with the matter. Nevertheless, he believed that Darfur was of no relevance to the case that was being discussed by the Committee.

He affirmed that, with respect to the measures taken concerning abductions, his Government would continue to use traditional methods, such as tribal conciliation meetings, rather than undertaking legal action to prosecute those responsible for the abductions. This was the wish of the tribes and the Dinka Chiefs Committee. He added that even the United Nations had accepted this approach.

In conclusion, he emphasized that there was no forced labour in his country, although abductions had occurred. Those who had been abducted had stayed with their abductors until payments were made and arrangements were made for their reunification with their families. However, he insisted that the case was now closed as there were no more abductions. In view of the formation of a government of national unity, including those who were previously opponents, it was necessary to focus on development and recovery.

The Worker members said that the discussion on the case of Sudan had been marked by great differences of opinion between the members of the Committee, and even within the Workers' group. In this respect, they indicated that the ICFTU and WCL delegates disassociated themselves from the views expressed by some of their Worker colleagues. Diverging views and ideologies had always been respected in the Workers' group. It was, therefore, necessary for this rule to be respected by all and for all official reports describing certain undeniable facts to be taken into consideration. It was important to remember that tripartism, the underlying principle of the ILO, was based on free thinking and independence of opinion.

The Worker members proposed that a direct contacts mission should visit the country to obtain more information on the current situation and thereby clear up any misunderstandings. Such a mission could assess the need for technical assistance. They called on the Government to organize such a mission, which would also reinforce its position. Nevertheless, in the event that the Government did not accept a direct contacts mission, the Committee would be bound to adopt strong conclusions, which would have to describe this as a case of continued failure. They also requested that the case be included in a special paragraph of the Committee's report.

The Employer members said that of all the cases examined by the Committee, this was one of the most serious and had been examined on many occasions. The real question was whether forced labour had been abolished in practice in the country. Clearly, while the Government was making some effort, as it had indicated to the Committee, the measures taken needed to be reinforced.

The Employer members wished to recall that the work of the Conference Committee needed to be based essentially on facts rather than representations. Moreover, they recalled that in long-standing cases, such as the present one, it was not at all unusual for the conditions prevailing in a country to be the subject of independent verification. Indeed, if the Government wanted this case to be closed, as it claimed, it should welcome such independent verification. If other United Nations agencies were visiting the country, the ILO should be able to do so too.

They nevertheless expressed the belief that a certain sensitivity was required in a case in which there had been a certain amount of progress over the past two years. The progress made should be recognized and the financial and other support provided by the international community should be reinforced. As they imagined that the Government representative had no authority to do anything other than reject a proposal for a direct contacts mission, an effort could be made to find an alternative solution. Sudan was, after all, a poor war-scarred developing country. The Government should be requested to provide a detailed report containing full and specific information on all the matters raised by the Committee of Experts. The ILO should also enter into discussions with the Government with a view to the establishment of a credible fact-finding process. If the Government believed that the case was closed, it should be prepared to demonstrate that it was closed. However, they indicated that if the Government was not prepared to agree to a fact-finding exercise this year, the attitude of the Employer members would change next year.

The Committee took note of the information supplied by the Government and of the discussion which ensued. The Committee noted that this case had been discussed in this Committee over a period of years. The Committee noted the report of the Committee of Experts that the situations concerned constituted gross violations of the Convention, since the victims were forced to perform work for which they had not offered themselves voluntarily, under extremely harsh conditions and combined with ill-treatment which might include torture and death.

The Committee took note of the information provided by the Government according to which it had dealt through traditional means with 11,000 out of the 14,000 cases of abduction which had cost more than 3 million dollars, two-thirds of which was contributed to by the Government. The Government further indicated that over the last 12 months about 7,500 persons were retrieved compared with 3,500 from 1999 to 2004. The Government referred to the end of the civil war and the fact that the practice of abduction no longer existed. The Government requested technical assistance in the area of demobilization and reinsertion.

The Committee observed the convergence of allegations and the broad consensus among the United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the practices of abduction and the exaction of forced labour.

The Committee noted that while there had been positive and tangible steps, including the conclusion of the Comprehensive Peace Agreement, it was of the view that there was no verifiable evidence that forced labour had been abolished.

The Committee invited the Government to avail itself of the technical assistance of the ILO and other donors to enable it to eradicate the practices identified by the Committee of Experts and to bring the perpetrators to justice.

The Committee considered that only an independent verification of the situation in the country would enable it to determine that forced labour in the country had ended. The Committee therefore decided that, in the framework of the ILO technical assistance, a full investigation of the facts be undertaken and requested the Government to provide the ILO with all the necessary assistance.

The Committee requested the Government to provide detailed information on all the issues on an urgent basis in its next report to the Committee of Experts and expressed the firm hope that the full application of the Convention, in law and in practice, could be noted in the near future.

Convention No. 77: Medical Examination of Young Persons (Industry) Convention, 1946 and Convention No. 78: Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946

Ecuador (ratification: 1975). **A Government representative** (Minister for Labour and Employment) stated that his Government's presence at the Committee was an indication of its keen interest in ensuring compliance with the Conventions. The current constitutional Government wanted to resolve the problems deriving from the application of ILO standards, which had existed for a number of years. Indeed, as a demonstration of its desire to address that situation, another Government representative was also in attendance at the present Committee.

Another Government representative stated that, as a member of the National Congress and chairman of the Labour and Social Committee, he was extremely interested and very much predisposed to bring Ecuadorian legislation into conformity with the content of the international labour Conventions. A Labour Code reform bill had been drafted, based upon the observations of the Committee of Experts for Conventions Nos. 77 and 78. The legislative bill defined "industrial undertakings" and "non-industrial undertakings" and determined the obligatory nature of the medical examination of young persons, the periodicity of such examinations until the age of 21, and the carrying out of those examinations free of charge. The Health and Hygiene Unit of the Ministry of Labour and Employment was authorized to issue the medical certificates and could also suggest physical and professional rehabilitation measures in the event that the examinations revealed any disability. The new legislation required that employers kept the original certificates so that they could be made available to labour inspectors. Labour inspectors had to carry out the necessary visits to verify compliance with the standards. Copies of the documents pending before the National Congress in relation to the aforementioned Labour Code reform bill had been submitted to the Office.

As regards the work of young persons, and within the framework of the fight against child labour, another Labour Code reform bill had been introduced in order to ensure a minimum working age of 15, the limit of the working day, maximum loads carried, bans on working in certain activities in case of violation of the labour rights of young people, and the corresponding administrative and legal claims required under the international labour Conventions. Copies of the documents pending before the National Congress in that respect had also been submitted to the Office.

The Employer members noted that this case had been identified with a footnote by the Committee of Experts, indicating that they had lost patience with the Government of Ecuador. They recalled that the purpose of Conventions Nos. 77 and 78 was to prevent the employment of children and young persons under the age of 18 unless they had been found fit through medical examination for the employment in question, in industrial undertakings and in non-industrial occupations respectively. These instruments were clearly important for the protection of children.

They recalled that since Ecuador had ratified the Conventions 29 years ago, it had not adopted legislation to give effect to them. The Committee of Experts had made previous requests for legislative measures to be taken in 1995 and 2001. A Labour Code had been adopted in 1997 which prohibited the employment of young persons under the age of 18 in industries or occupations deemed to be dangerous. In 2002, the Committee of Experts had commented on the Government's stated intention to introduce regulations which would reflect the definition of "industrial undertakings", as set out by Conventions Nos. 77 and 78. This year's report provided no indication if this had happened. In 2003, the Committee of Experts had pointed out that, while recognizing the Government's efforts to give effect to Conventions Nos. 138 and 182, such steps did not necessarily address the issues raised by Conventions Nos. 77 and 78. There was no indication in this year's report that the Government had responded to the detailed requests for information made by the Committee of Experts in 2002 and 2003.

It was no doubt worrying that no progress had been made in this case for so long, and it revealed the need for this Committee to consider a broader range of Conventions. Technical cases like this one were important and deserved regular consideration. The Employer members emphasized that the failure to implement the Conventions and to provide information meant that this Committee could not assess how serious the problem of young persons working in industrial undertakings actually was. They were interested to know if there were any practical measures in place addressing this matter, especially in the informal sector, despite the lack of legislation. They also hoped that the Experts would consider what steps, if any, labour inspectors should take in view of Article 7 of both instruments, which required employers to file and keep available to labour inspectors either the medical certificate for fitness for employment or the work permit or workbook showing that there were no medical objections to the employment as may be prescribed by national laws or regulations. They also wished to receive more information on the situation on the ground, especially in the informal economy. Finally, they wished to know if the Experts had considered this case in light of the fact that in Ecuador's legal system, ILO Conventions were directly applicable as law, an element which might shift the focus of the case to more practical questions.

In conclusion, the Employer members stated that the Committee should assess whether or not the Government of Ecuador had supplied the requested full particulars to this year's Conference. The information supplied by the Government today was welcome, but its late arrival caused problems for the effective and transparent tripartite discussion in this Committee. They hoped to have the benefit of the Government's information in the next report of the Committee of Experts.

The Worker members indicated that they had been very careful and patient, perhaps too much so, in respect of the violations of Conventions Nos. 77 and 78, which Ecuador had ratified 30 years ago. It was pitiful that, after all this time, there had been no step forward. The topic of the violation of the respect for health and safety at work was of concern, especially when talking about the health and quality of life of workers, and this subject was all the more serious when it concerned young workers.

The Worker members emphasized that in Ecuador and in the majority of Latin American countries, every day large contingents of children entered the labour market in risky jobs and receiving wages much lower than those of ordinary workers. The number of child workers in Ecuador was impressive. Some estimates referred to 1,200,000 child workers. In view of such figures, it was crucial that the Government adopt urgent measures to conform to the Conventions under discussion. Common sense dictated that it was logical to perform a medical examination on children before they began work, and during and after a job as well. In this sense, section 141 of the Labour Code of 1997 required medical examinations of persons under 21 years of age who worked in mines or quarries.

In spite of the observations of the Committee of Experts over all these years, the Government of Ecuador, or successive governments, had not taken note of these comments, without explaining why there were requirements for medical examinations for certain jobs and not others. Without doubting the good intentions of the Government representatives, the Worker members wanted more precise information with regard to the timeframe in which legislation that would deal with this shameful situation would come into force. The Government should be more concrete and present detailed information on its draft legislation, in addition to seeking the technical advice of the ILO.

The Worker member of Ecuador expressed his concern at the outrage provoked by the Government of Ecuador and the 29-year delay in taking legislative action to give effect to the provisions of the Conventions. This situation put at risk the health and life of the workers, who lacked coverage by any legal instrument implementing the objectives of the Convention and were subject to employers who were not really obliged to respect it, even though there was partial legislation such as the Labour Code and the Children and Young Person's Code which governed certain activities.

With respect to Article 1(3) of Convention No. 77, he stated that if the competent authority defined the line of division which separated industry from agriculture on one hand, and commerce and other non-industrial occupations on the other, it was clear that after 49 years of existence, a revision of the Convention and/or a revision of legislation was necessary, in view of the fact that the agricultural sector underwent a permanent evolution toward large agro-industrial enterprises, which appeared and created great risks in developing countries which did not make the health of workers a priority but rather focused on reducing production costs. For example, in Ecuador, the banana and flower industry reached important production levels for export, and, as a consequence, the workforce found itself without protection, because the majority of workers were youths, in many cases children, who were not subject to medical examinations either before or after recruitment. Moreover, because of the growing poverty in the country, around 1,200,000 children worked, which, when compared to the 900,000 persons working in the formal sector, indicated that more children worked than adults.

The speaker stated that there was neither the political will nor the resources necessary to provide protection for workers. Indeed, there were technical and scientific studies which demonstrated the serious health problems from which workers suffered, such as skin cancer and respiratory and pulmonary ailments. Indiscriminate fumigation and the lack of control over the use of chemicals engendered congenital deformations, not only in workers, but also on bordering plantations and populations. The use of discarded plastic materials sprayed with chemicals by workers was an irresponsible act against workers and their families. Therefore, the responsibility of the State in the protection of the health of workers was large, and it should provide for the examination of workers before entering employment in order to prevent chronic illnesses and to protect public health. This situation was all the more difficult to control given that almost all banana and flower plantations used contract labour or hourly workers, with a high incidence of minors, and which did not allow trade union activity so as to exercise more control. At the slightest indication of organizing a trade union, workers were fired or subject to intimidation. For example, on the property of the greatest banana exporter in Ecuador, criminal acts had been perpetrated against workers for the sole reason of having wanted to organize.

To conclude, the speaker expressed his confidence that the current Government would adopt all measures necessary to apply the two Conventions in question, and make amendments where necessary, in the briefest time possible, so as to conform to the standards ratified by Ecuador.

The Employer member of Ecuador said it was worrying that his country had not incorporated the content of Conventions Nos. 77 and 78 into its legislation, despite having ratified them a long time ago. Conventions were not only to be adopted and signed, they should also be complied with. He made it clear that the assertion that the formal sector in Ecuador mistreated child workers was not true. Employers in the formal economy contracted workers of statutory age, who joined companies in full possession of their rights. He regretted that Ecuador had not submitted information on those Conventions to the Committee of Experts. Employers would be vigilant to ensure that the ILO Conventions were incorporated into the legislation of their country. Ratified Conventions had to be observed in practice.

A Government representative (Minister for Labour and Employment) stated that the fact that the current Government of his country had come to power only three weeks ago did not relieve it of the responsibility to ensure compliance with ILO Conventions. He wished to express his Government's keen interest in incorporating the content of international labour standards into Ecuadorian legislation. It might have seemed as if Ecuador lacked the authority and the legislation to ensure the respect of the most fundamental human rights. He pointed out that such an assumption was a grave misunderstanding, since Ecuador had specific regulations on the protection of human rights, within a constitutional framework that monitored the observance of those regulations. Human rights and the protection thereof were not the responsibility of one State, but the entire international community. There were regulations covering pre-employment, periodic and retirement medical examinations, as well as those assessing aptitude for work. There were basic standards, like Convention No. 182, the Children and Young Persons Code, the Labour Code (with its reforms that had already been presented to Parliament) and specific protective regulations, such as Decision No. 584 and the Regulations on the Health and Safety of Workers. Such a body of legislation supported the activities of the Ministry of Labour.

The speaker regretted that compliance with the relevant Conventions had not been achieved in the past 29 years, together with the consequent inconvenience caused to the international community. For that reason, he requested that his Government be granted the opportunity to rectify this situation and that faith once more be had in a Government that was democratic and therefore respectful of human rights. The information requested by the Committee of Experts would be presented in that spirit and the Government stood ready to receive ILO technical assistance. The Committee of Experts would then be able to examine the legal context of his country and would see that young people were in fact legally protected. The law governing those issues was being discussed for a second time, after which it would undoubtedly be immediately approved, published and brought into effect.

Another Government representative said that he shared the unease that had just been expressed. There were, however, indications that the matter would be resolved. He felt that a logistical deficiency had occurred of which he had not been aware. In his capacity as chairman of the Labour and Social Committee of the National Congress since 2003, he made a commitment to tackle that situation in such a way as to end incompliance with the ILO Conventions. There was still time, until September 2005, to submit the relevant information to the Committee of Experts, and he was very much predisposed to deal with those issues in Parliament before the end of the year.

The Employer members thanked the Government representatives for the information provided and noted the apology made by the Minister of Labour and Employment. They were of the view that, if needed, the Government should avail itself of ILO technical assistance to implement Conventions Nos. 77 and 78 in national legislation. The protection of youth in employment was fundamental to the economic development and growth of a country. They noted the Government's offer to accept a mission to Ecuador. It was also important to be constructive rather than critical in this case. The Employer members insisted that the Government provide the Experts with draft legislation intended to give effect to Conventions Nos. 77 and 78 and a timetable for its full implementation, in time so that the Experts could consider this information at their meeting in November 2005. Given the information provided by the Minister on the situation in his country, they also felt that the Government should confirm to the Experts the involvement of labour inspectors with regard to Article 7 of both Conventions. The Committee would benefit from the Experts' assessment of practical steps taken on the ground in different sectors, both in the formal and informal economy. In conclusion, they stated that it was time for progress to be made and for this Committee to have a full factual and legal understanding of the case.

The Worker members stated that the situation of children workers in Ecuador called for in-depth consideration and certainly in relation to other Conventions like Nos. 138 and 182, which clearly were related with those under consideration in this Committee. The Committee must consider the data submitted by the Government, and the latter should supply a more detailed information on the draft law, request the technical assistance of the ILO and to provide to this Committee detailed information on the legislation and measures to avoid the violation of the Conventions under consideration and to protect the children who had to be integrated in the labour market.

The Committee noted the information provided by the Government representative, Minister of Labour, and the discussion that ensued. The Committee noted the information contained in the report of the Committee of Experts according to which, 29 years after ratification and despite repeated requests from the Experts, the Government had not yet adopted legislative measures to give effect to the provisions of the two Conventions.

The Committee noted the information provided by the Government representative. A Bill to amend the Labour Code which, according to the Government representative, was based on the comments that the Committee of Experts had been making for years, had been submitted to the National Congress. The Government indicated that it had furnished a copy of the Bill to the Office and that, if necessary, it would request assistance from the Office in order to bring the legislation into conformity with the Convention. The Committee noted the regret expressed by the Government concerning the serious delay in responding to the long-standing comments of the Committee of Experts. It expressed the hope that this Bill would be adopted without delay to give effect to the provisions of these two Conventions. Moreover, the Committee requested the Government to adopt the necessary measures in collaboration with the most representative organizations of employers and workers concerned, in order to guarantee the dissemination of information to all persons concerning the requirement for the medical examination of minors under 18 years of age before their admission to employment so as to ensure the implementation of the Conventions in law and in practice. The Committee requested in particular that measures be taken requiring the employer to keep available for labour inspectors either the medical certificate for fitness for employment, or the work permit, or the work book showing that there were no medical objections to employment. It requested the Government to submit information, for review by the Committee of Experts, on the results of the work of labour inspectors in this regard.

Noting that the Government was open to availing itself of ILO technical assistance, the Committee decided that a technical advisory mission should be undertaken to the country to evaluate the situation of compliance with the Conventions in law and in practice. The Committee insisted that the Government provide, in its next report, detailed information on all the issues raised by the Committee of Experts, including on any progress made concerning the adoption of the Bill to amend the Labour Code and the timetable for its adoption. It also requested the Government to report on the practical steps taken in order to apply the Conventions with the social partners and to indicate the results achieved in its next report.

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

Romania (ratification: 1973). **A Government representative** explained that section 256 of the Labour Code, which provided for a special law to regulate the functioning and organization of the labour inspectorate, should not be understood in the sense of repealing existing legislation. Such special law regulated the organization and functioning of the labour inspectorate within the general framework of Labour Code. Both Act No. 108/1999 on Labour Inspection and the respective Regulation approved by Government Decision No. 767/1999 had been drafted in accordance with the provisions of Convention No. 81, so there was no need to repeal these texts.

The speaker indicated that Articles 13 and 17 of Convention No. 81 concerning the powers of labour inspectors were implemented by Act No. 108/1999 on Labour Inspection, which provided for compulsory measures in order to remedy any deficiencies found, including the application of penalties, taking out of service any technical equipment in case of imminent danger of accident, as well as informing the prosecutor of cases considered as criminal offences. Statistical information on the exercise by labour inspectors of their powers to initiate legal proceedings could be found in the Annual Report of the Labour Inspectorate that would be transmitted to the ILO in the near future.

Since the Labour Code did not provide for penalties applicable to employers for the non-observance of the provisions on hours of work and rest periods, the Labour Inspectorate had initiated proposals to amend and supplement it in this respect. The Government was discussing the amendments to the Labour Code with the representative trade unions and employers' organizations. The texts of the amendments would be communicated to the ILO after approval by the competent authorities.

The speaker further indicated that confidentiality of the source of complaints was ensured by the Law on Labour Inspection, and any case of infringement was punishable with appropriate penalties and could be brought before the Discipline Commission of the Territorial Labour Inspectorate. Provisions concerning confidentiality would be also included in the Statute of the labour inspector, the adoption of which was scheduled for 2005. However, she noted that in the records of the Labour Inspectorate there were no registered complaints related to non-compliance by labour inspectors with the provisions on confidentiality of the source of complaints.

Concerning the application of adequate penalties in the sense of Article 18 of the Convention, the speaker indicated that, in order to take

into account inflation, the amount of financial penalties set by the legislation had been increased in 2002 by Government Decision No. 238/2002, a copy of which would be transmitted to the ILO in the near future, together with the other documents requested by the Committee of Experts.

As regards the training of labour inspectors, which was carried out within the framework of a national programme for professional training, the speaker mentioned two projects implemented with the assistance of the Ministry of Labour and Social Affairs of Spain, as well as the training programme planned at the National Institute of Administration on applying labour legislation.

Finally, the speaker pointed out that the Government was determined to pursue its efforts to improve the legislative framework in compliance with the provisions of ILO standards.

The Worker members recalled that, since 2003, Romania had a Labour Code which provided that, in order to put into operation its provisions relating to the organization and functioning of the labour inspectorate, a special law should be adopted to that effect. In this regard, Convention No. 81 provided that officials of the labour inspectorate had to be impartial, while exercising their functions under the supervision of a central authority, to be adequately trained, to be assured of stability of employment to guarantee their independence and, lastly, to be sufficient in number. Besides, the labour inspectors must benefit from the reimbursement of any professional expenses connected with the performance of their duties, in order to have the highest possible autonomy. In this regard, it followed from the Committee of Experts' report that the system of the reimbursement of their professional travel expenses was under revision, but that more information was required on this matter. The Committee of Experts also noted that the Government was undertaking measures to strengthen the administrative capacity of the labour inspectorate, the scope of these measures was not yet known and their conformity with Convention No. 81 and coherence with other applicable legislative texts should be examined. The Worker members also stated that they had been informed about a draft law aiming, inter alia, at the definition of the status of labour inspectors and hoped that the Government would keep the Committee of Experts informed on this point. The functioning of the labour inspectorate in its relationship with the complainants, as well as the putting into operation of the balanced policy of sanctions, constituted another important aspect of the legal framework of labour inspection. Thus, the Committee of Experts noted that the policy of sanctions in relation to the offences in the field of hours of work and rest periods was far from being transparent and requested clear and tangible information on the existing policy of sanctions. The Worker members supported this request and considered that it was an important question in the sense that the clear and non-equivocal policy of sanctions brought progress and social peace and contributed to the legal security of the complainants. This policy must be also really dissuasive in the sense that it should involve sanctions that were higher than any profit gained by perpetrators. The Government had to take these considerations into account in the course of the adaptation of its legislation.

In addition, the Worker members noted that, according to the Committee of Experts, the guarantees of confidentiality of complaints filed by the workers, particularly in the field of hours of work, were insufficient. However, the absence of the real guarantee of confidentiality opened the way to pressure or reprisals against potential complainants, which, in addition to the burden of proof borne by the workers, made their position even more difficult. These circumstances made the means at the workers' disposal to defend their rights purely theoretical, and the Government should provide information on the risks encountered by the workers who filed a complaint.

In conclusion, the Worker members wished that, in the nearest future, the Government, after having announced many reforms but having communicated little information as to their content, would furnish to the Committee of Experts the indications on the nature and the scope of the reforms envisaged.

The Employer members recalled that Convention No. 81 had been a subject of discussion in the present Committee in 1988. The Report of the Committee of Experts made reference to the enactment, in 2003, of the Labour Code, in which it was provided that a special law would govern the creation and organization of the labour inspectorate. The enactment of the said Code would not have repealed previous provisions relating to that subject, and labour inspection methods were being revised in accordance with European Union directives. Further clarification was required in order to adequately establish the legal texts that governed the organization and operations of the labour inspectorate.

With regard to Articles 13 and 17 of the Convention, relating to the powers of inspectors to take specific steps in serious and urgent cases, and to the liability to legal proceedings of persons who violated the provisions, such powers were provided for in other regulatory provisions. It was, therefore, a case of establishing whether the inspectors applied in practice the powers bestowed upon them by the Convention. That was difficult to establish, since the Government had not submitted an annual general report on labour inspection activities, as required under Articles 20 and 21 of the Convention.

As regards the provisions of Article 15(c) of the Convention, relating to confidentiality of the source of complaints, the Committee had requested that the Government provide it with information on how such confidentiality was guaranteed. Another aspect concerned Article 18 of the Convention, relating to adequate penalties for violations of legal provisions enforceable by inspectors and for obstructing inspectors in the performance of their duties. From the Report, the fact also emerged that the level of financial penalties was not adjusted to take into account inflation. The Committee of Experts would consider it regrettable if employers preferred to pay fines because they found them more economical than taking often costly occupational safety and health measures or paying workers' salaries on time. In the Employers' view, that economic assessment by the Committee of Experts ignored other mechanisms put at the disposal of inspectors by the Convention, such as the power to warn and advise, or even the powers provided for in Article 13, paragraphs 1, 2 and 3, which were as follows:

– to take steps with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health and safety of the workers;

– to order alterations to the installation or plant, to be carried out within a specified time limit, to secure compliance with the legal provisions relating to the health or safety of the workers;

to adopt measures with immediate executory force in the event of imminent danger to the health or safety of the workers.

As regards Article 11, paragraph 2, of the Convention, relating to the arrangements to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties, the Employer members indicated that it was a matter of determining whether the amount of funds assigned to labour inspectors was enough to fulfil that purpose.

The Employer members noted that the Committee had noted with interest the detailed information received concerning the various measures adopted, which covered the training, the number of inspectors, procedural manuals, good practice guides for employers, etc.

Finally, the Employer members emphasized that the aforementioned information did not substitute or entirely cover the content of the annual general report specified in Article 21 of the Convention, and it was therefore hoped that the Government would be able to submit that report as soon as possible, in compliance with Article 20 of the Convention.

The Worker member of Romania stated that the need for the active labour inspection, which would have at its disposal adequate resources and powers, had always been advocated by the Romanian trade unions.

The existing problems seemed to result from the fact that the Labour Code adopted in 2003 provided for the adoption of a special law on the organization of the labour inspection, without repealing the old legislation in this field.

The legislation gave to the labour inspectorate the powers of supervision, command and pursuit and provided for a wide scope of sanctions. However, it might be noted that in practice the inspections resulted in simple notifications deprived of any force, even in case of multiple offences. Judicial complications led to the impunity of perpetrators. Due to the small amount of fines, the employers preferred to pay fines rather than to undertake changes and necessary costly reorganizations, while the non-respect of the confidentiality of the source of complaints by the inspectors exposed the workers to reprisals. Besides, under the pressure of the international financial institutions and foreign investors, the Government revealed the intention to abridge the Labour Code in an unacceptable way. The speaker, therefore, requested the Government to take appropriate measures to bring the legislation into conformity with the Convention and to assess the necessity of the technical assistance to harmonize or amend the Labour Code.

The Government representative, in response to questions raised by the Worker member of Romania regarding the confidentiality of sources of complaints to labour inspectors, stated that her Government would soon adopt measures to clarify this situation. She noted that the registry of the labour inspectorate contained no complaints regarding the confidentiality of complainants. This document, along with others requested by the Committee of Experts, would be transmitted soon.

The Worker members thanked the Government for the explanations it had given, particularly those relating to the efforts made to train inspectors in cooperation with another European Union country. They encouraged the Government not to reform the Labour Code under pressure from international financial institutions, but to do so in the light of ILO international labour standards, and reiterated their hope that the Government would provide the Committee of Experts, before its next session, with useful information regarding the scope and nature of the envisaged legislative reform. They particularly insisted on the need for a guarantee that the travelling expenses of inspectors would be adequately reimbursed, and also emphasized the questions of complaint confidentiality and the establishment of a transparent and dissuasive sanctions policy. The Committee of Experts should, in that respect, examine the conformity of both the Labour Code and the related draft amendments with ILO standards. If the Government did not provide the required information without delay, a technical assistance mission should be proposed.

The Employer members highlighted the positive aspects mentioned by the Committee of Experts. They requested that the Government take steps to clarify the legislative situation and that it submit an annual inspection report containing all the elements provided for in Articles 20 and 21 of the Convention, as well as all the other infor-

mation requested by the Committee of Experts. If need be, the country could ask the Office for technical assistance to help bring itself into conformity with the Convention.

The Committee noted the information provided orally by the Government and the discussion that followed. The Committee noted that the issues raised by the Committee of Experts related to the shortcomings of a legislative. structural and logistical nature, which are hindering the proper operation of the Labour Inspectorate.

The Committee noted the statements made by the Government representative concerning the efforts made by his country to strengthen labour inspection by increasing the numbers of staff and undertaking training programmes for inspectors in the context of European and bilateral cooperation. According to the Government, following the adoption of a new Labour Code in February 2003, tripartite consultations had been held with a view to the amendment of the legislation, through the establishment of appropriate supervisory mechanisms, including methods for the determination and adjustment of financial penalties. The envisaged changes should improve compliance with legal provisions, particularly in relation to the use of overtime hours, weekly rest, night work and child labour. According to the Government, the level of the penalties applicable for violations of the labour legislation in general had been readjusted taking into account monetary inflation, under Decision No. 238 of 2002. A copy of this Decision and of certain texts respecting the travel expenses of labour inspectors would be provided to the Office in the near future. The Committee also noted the Government's commitment to provide detailed information in its next report to the Committee of Experts and to inform the Office of the outcome of the tripartite consultations held with a view to strengthening the inspection system, as well as on the draft revision of the status of the labour inspectorate.

The Committee encouraged the Government to pursue its efforts to strengthen the numbers and quality of human resources in the labour inspection services. It also requested it to take the necessary measures rapidly to bring the legislation into conformity with the Convention and to provide the relevant information requested by the Committee of Experts, as well as information on the nature and scope of application of the envisaged reforms. The Committee emphasized in particular that measures should be taken so that inspectors could discharge their functions effectively, as envisaged in Article 13 of the Convention, in the event of danger to the health or safety of the workers. It also requested the Government to ensure that, in accordance with Article 17 and 18, violations of the legal provisions enforceable by the labour inspector gave rise to legal proceedings against those responsible and that the penalties applicable were set in manner that remained dissuasive despite monetary fluctuations and that they were effectively applied.

The Committee drew the Government's attention to the importance of the principle of the confidentiality of sources of complaints, as set out in Article 15 (c) of the Convention, to ensure the protection of workers against any risk of reprisal by the employer. it further emphasized that the climate of confidence necessary for the collaboration of workers in inspection activities required strict respect for this principle by inspectors: it emphasized that it was the responsibility of the Government to ensure compliance with this principle and requested it to keep the Office informed of the progress achieved in this respect.

The Committee also reminded the Government of the need to take measures to ensure that an annual report was published and communicated to the ILO by the central labour inspection authority, in accordance with Article 20, and that it contained the information required by each of the clauses of Article 21, if possible in the manner set out in Recommendation No. 81, which supplemented the Convention. The Committee emphasized that the publication of a report of this nature was intended to provide visibility to the operation of the inspection system and to allow for its evaluation with a view to its improvement, taking into account in particular the views of the social partners. The Committee requested the Government to envisage, if necessary, having recourse to the technical assistance of the Office for the implementation of the relevant provisions of the Convention.

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

ARGENTINA (ratification: 1960). **A Government representative** noted that the Committee of Experts in its observation of 2004 had expressed the hope that the dialogue initiated by the Government in 2003 would be reflected in the near future by the full implementation of some strictly normative aspects of Act No. 23551 on trade union associations which had been the subject of comments in previous years.

The speaker announced that her Government had presented on 6 May 2005 its detailed reply to the comments of ICFTU and the Argentine Workers' Central (CTA).

She recalled that, on examination of Act No. 23551, the Committee of Experts had, in 1989, expressed satisfaction at its promulgation, given that it was the result of a full social and political consensus and that it replaced that markedly anti-union standard set by the dictatorship which governed Argentina from 1976 to 1983. The satisfaction expressed by the Committee of Experts was corroborated by the attitude of the Government which began, in May 1984, a complete process of consultation with the ILO, culminating in the report produced by the direct contact mission led by the late. Nicolas Valticos, with the proposal to bring the new legislation into line with the principles of Convention No. 87. Valticos's mission provided the groundwork for the pillars of the future law on union associations, whose parameters were respected by legislators in developing and implementing the new normative regime.

Since the beginning of the legislative process, there had been a genuine intention to adapt the law to ILO principles making it compatible with the specificities and complexities of the country, in particular of the union movement.

Act No. 23551 followed the pattern in which the Argentine union movement had developed throughout the second half of the twentieth century in which the establishment and functioning of all trade union associations was guaranteed. There were 2,716 first-level union associations registered in Argentina, of which 1,380 (more than 50 per cent) had trade union status. In addition, of the total union associations with union status, 55 per cent or exactly 731 had requested and negotiated their union status.

As to the second-level associations, 92 federations were registered in Argentina, of which 74 had trade union status. More than 80 per cent of second-level entities had trade union status.

In addition, there were 14 trade union third-level associations in Argentina and more than 40 per cent of the six confederations also had union status.

In Argentina, the number of public and private salaried workers totalled 9,100,000 men and women, with on average one first-level union association for every 3,350 salaried workers.

In the same way, according to data provided by the respective union associations, there were some 3,750,000 affiliated workers at the first-level, i.e. more than 40 per cent of salaried workers belonged to a union. If trade union associations of the higher level were also included, this figure would rise to 6,250,000 members or over 65 per cent.

The data provided spoke for itself and showed that men and women workers in Argentina freely enjoyed and exercised their inalienable rights to form the associations which they found appropriate and could join if they wished.

Similarly, national practice demonstrated that Argentine legislation relating to trade union associations guaranteed free and full exercise of freedom of association, whose primary purpose was social dialogue, especially the collective negotiation of employment contracts.

Argentina could claim a high level of achievements in collective bargaining. From 1988 to date 1,169 collective agreement had been concluded, 406 of which were current. Collective agreements at the enterprise level concluded in this period numbered 763, or 65 per cent of the total. Since 1988, 97 collective agreements a year had been concluded on average.

The speaker pointed to the sustained economic growth recorded in Argentina in the last biennium, with support for economic, social and labour policies closely linking growth, employment and distribution of wealth, as well as direct measures by the Ministry of Labour, Employment and Social Security to promote collective bargaining. Collective bargaining had recorded unprecedented unheard of development. In 2004, so many collective contracts and wage agreements had been concluded that the figures recorded during the 1990s had been doubled.

The speaker stated that the data provided demonstrated clearly that in Argentina freedom of association was not only a recognized legal right but also a right that was fully exercised to an extent that it placed the country in the leading ranks of the countries of the world that were more advanced in social dialogue, unionization and collective bargaining.

Legislation did not impede the exercise of obtaining trade union status for registered union associations in the full exercise of freedom of association which prevailed in the country. A total of 197 union associations had obtained union status in keeping with the process stipulated by Act No. 23551 and its associated decree. This meant that, on average, over the 16 years in which Act No. 23551 had been in force, a union was granted union status every month.

The previous trend had been accelerated by the development of an administrative policy which used the comparison mechanism for representation established in section 28 of Act No. 23551, which was only brought into action to check that there was no imbalance between the personal and territorial limits of the registered association requesting union status and those of the association which already had union status.

The consensus between the two most representative trade unions in the public sector (UPCN and ATE) was incorporated by the Ministry of Labour in Resolution No. 255 dated 22 October 2003, which allowed competition between already formed unions and new associations which claimed legitimate representation in the public sector. The principle of pluralistic representation was therefore integrated into the public sector.

All the above demonstrated that the will of the social players in the

public sector in two unions, one an affiliate of the CGT and the other of the CTA, through dialogue and consensus, was indispensable in order to incorporate changes to the representation of the workers, tailored to the dynamics of the separate sectors.

Regarding the legislative processing of commercial trade unions and those in the trade or professional categories, the speaker recalled that points (a) and (b) of section 4 of Act No. 23551 explicitly guaranteed and promoted the right of workers to form trade union associations that they considered to be appropriate and to join or leave the same, as provided for in Convention No. 87. In addition, section 10 of the same Act considered trade union associations similar to those set up for workers in the same activity or related activities, such as those intended for workers in the same trade, profession or category even though they broke down into distinct activities or workers who offered services within the same enterprise. Three union specifics taken into account for incorporation under Article 2 of Convention No. 87 recognized the right of workers to form organizations that they deemed appropriate: (a) vertical trade unions which grouped workers in the same branch, industry or economic activity; (b) horizontal trade unions which grouped workers in a same trade or profession, even if they divided into branches or distinct sectors; and (c) enterprise-level trade unions.

National legislation (section 23 of Act No. 23551) regulating trade union legislation allowed all trade union associations without distinction to: (a) represent on request the individual rights of their members; (b) promote the setting-up of cooperative and mutual societies, the improvement of labour, social security and social insurance legislation; and promote general education and occupational training of its workers; (c) set membership payments; and (d) hold assemblies and meetings without prior authorization and also to represent collective interests whenever an association with union status was not present in a particular activity or profession.

Registered first-level associations, in affiliating with a second-level organization were provided with all the rights of first-level associations with trade union status as long as the management adhered to and integrated into a first-level association.

Decree No. 757/01 of 2001 established that trade union organizations with registration had the right to defend and represent before the State and before employers, the individual interests of their members on identical terms to the clauses contained in section 22 of Decree No. 467/88, regulated byAct No. 23551.

Tax law had established that all trade unions, without distinction, were subject to exemption from payment of taxes for regular profits and were not obliged to pay other national taxes, such as, for example, a tax on personal wealth or on assumed minimum earnings.

Section 47 of Act No. 23551 featured a highly protective clause on universal coverage, which gave each worker or trade union – without distinction – who was prevented or obstructed in the exercise of their legally guaranteed rights of freedom of association, the protection of these rights before a competent court, in conformity with fast-track proceedings, for which the law had ordained the immediate halting of all anti-union activity. Jurisprudence had determined that the criterion for interpretation of rights of freedom of association must be wide ranging, even if the provisions of Section No. 23551 were not self-contained, but rather derived from article 14bis of the national Constitution.

The speaker maintained that all legislation which regulated the exercise of fundamental rights could always be improved. It had to be acknowledged that national law and practice together with democracy had allowed Argentine workers to enjoy the full exercise of their rights of freedom of association. The Government had always been receptive to carrying out technical cooperation activities with the ILO, which would result in advances in the way designated to improvements in national legislation. Currently, there was a constructive process in hand in Argentina, the foundation of which was social dialogue. This way, which progressed according to consensus, had already recorded significant institutional achievements which reflected the plurality of the separate social actors. Such achievements were borne out by official participation of the CTA, all the social and labour organs of MERCOSUR, the consultation provided for Convention No. 144, the round-table dialogue on the promotion of decent work in which the worker delegation had taken part at the 90th, 91st, 92nd and 93rd Sessions of the Conference.

In 2004, the Government had convened and re-established the functioning of the National Council for Employment, Productivity and Minimum Wages, after years of inactivity, which was attended by both employers' and workers' organizations. The CTA began, in September 2004, the application formalities for union status within deadlines, applying the procedures laid down in Act No. 23551.

The speaker noted that, as indicated by the Committee of Experts in its observation of 2004, her Government had to present its comments on the questions raised before September, in the context of the regular reporting cycle.

In conclusion, the Government representative reaffirmed the political will to bring about social and employment changes but this will would not be sufficient if it were not accompanied by a search for consensus. In order for the legislative changes to be viable and fruitful, they had to be carried out through comprehensive social dialogue and constructive participatory consensus.

The Employer members expressed doubts with regard to the appropriateness, as a basis for discussion before the Conference Committee, of the observation of the Committee of Experts concerning the application of Convention No. 87 by Argentina, given that the brevity of the observation made it difficult to understand the substance of the case. Although technically the presence of an observation in the report of the Committee of Experts meant that the Conference Committee could hold a discussion on this case, this particular observation was included in the report merely because of comments made by the ICFTU and the CTA without any indication as to the position of the Committee of Experts in relation to these comments.

The Employer members suggested that the Committee of Experts needed to reconsider the timing of observations made on the basis of comments sent by employers' and workers' organizations, so as to avoid comments which were so limited in scope that the Committee could hardly find any basis for discussion. The practice was that, if comments were made by employers' and workers' organizations, an observation would be included in the report of the Committee of Experts regardless of whether the Government had answered or not. But, if these comments were simply referred to without any corresponding analysis by the Committee of Experts, then they were not very useful for the work of the Conference Committee. This Committee was not a complaints-based body such as, for instance, the Committee on Freedom of Association. Its mandate was not to examine complaints but to verify whether a country had given effect to a ratified Convention in law and in practice. The introduction of observations in the report of the Committee of Experts, based solely on external comments without any finding by the Committee of Experts, created a possibility of manipulation of the system; it ensured that, if an organization made a complaint, the case would be included in the report and therefore could also be found on the list of cases to be discussed before the Conference Committee. However, the criterion for including cases on the list should not be whether trade unions were active or passive in specific countries. Inclusion in the report of the Committee of Experts should not be automatic every time there was a comment from an employers' or workers' organization, unless the Committee of Experts had something to say on it. Otherwise, it might be better to leave such comments out of the report and address them in the framework of the regular reporting cycle when the Government's report was examined. As to the failure of the Government to reply to the comments by the ICFTU and the CTA, which had been noted with regret by the Committee of Experts, the Employer members would have liked to know the date on which the deadline for providing such a reply had expired, as this element would have enabled them to ascertain the Government's commitment to the supervisory mechanism.

In conclusion, the Employer members emphasized that what mattered was not the number of observations included in the report of the Committee of Experts but their quality. The legislative problems which were the subject matter of the observation under discussion were completely unknown to the majority of the members of the Conference Committee who were not familiar with Argentine law. There was not enough information on the context and no findings as to the facts by the Committee of Experts. The Employer members therefore noted with regret the Committee's inability to properly discuss and give consideration to this case and stated that the conclusions on this case should be appropriately limited.

The Worker members asserted that after careful consideration they approved the inclusion of this case as an individual case. They considered that the respect of every worker's right to join a trade union of his own choice in conformity with the principles set forth by Convention No. 87 was neither a concession to neo-liberalism nor a return of authoritarian interference into trade union activities. The aim was to adapt trade union law to the particular context of Argentina. For over 15 years, several contradictions between Argentine legislation and the Convention had been pointed out, including by the Committee on Freedom of Association, as noted by this present Committee in 1998.

While recognizing the merits of Act No. 23551, the Committee of Experts had criticized the following sections of this Act: section 28, which required an association, in order to contest the trade union status of an association, to have a "considerably higher" number of members (*'personería gremial"*); section 21 of implementing Decree No. 467, which qualified this term: as well as sections 29, 30, 38(5), 48 and 52 of the Act. In response to the criticism raised over the years, successive Governments had initially promised measures and had then invoked lack of consensus, with no concrete results. In 1998, the Conference Committee concluded that "Act No. 23551 contained conditions for granting trade union status (*'personería gremial'*) which were not compatible with the Convention" and deplored that "the Government did not provide any additional elements in response to the questions raised for number of years". A technical assistance mission carried out the following year did not result in any definite conclusion. Likewise, an additional mission in 2001 did not contribute an adequate response.

The current situation was characterized by the problems of actual relevance concerning trade union status (*'personería gremial"*), namely anti-unionism and considerable discrimination in collective bargaining and in the protection of trade unionists. Moreover, the situation could turn into a trade union monopoly, which would be unacceptable from the point of view of the Convention in so far as it would not correspond to freedom of choice of workers but would be rather imposed by law.

Given these facts, the Worker members declared that they were obliged to consider this case as one characterizing the continuous lack of implementation and that they were expecting evidence of real political will on the part of the Government to reach a durable solution on the substantive issues raised in the observation of 2003.

A Worker member of Argentina reported that the Committee of Experts had insisted on the incompatibility of the Act on trade union associations with Convention No. 87 for 15 years. Since the adoption of the Act of 1988, four technical assistance missions had been carried out in the country without positive results.

In its report for 2000, the Government explicitly recognized the incompatibility of the law with the Convention. For its part, the Committee of Experts had reiterated on several occasions the necessity to bring the national legislation into conforming with the Convention. Nevertheless, the Government had not taken concrete action to date. In effect, for example, since the mission which took place in 2001 in the country, with the aim of lending technical assistance to a tripartite commission, three decrees had been promulgated which did not meet requirements for compliance. Moreover, one of them, which referred to the possibility of self-financing of registered trade unions, was repealed 30 days after its promulgation.

The speaker stressed that in Argentina two classes of trade unions existed – those which had trade union status and consequently all rights and benefits, and registered trade unions which enjoyed more limited rights.

The sections of the Act criticized by the Committee of Experts referred mostly to the dispute system of " trade union status" classification by a registered trade union against a trade union already holding trade union status.

The Act demanded that the requesting union have a considerably higher number of members; as a minimum, it should exceed the previous organization's paying membership by 10 per cent. Such organizations, which contested union status and which were registered, lacked the most fundamental rights, unlike organizations with trade union status. In effect, these latter enjoyed the right to special protection of their representatives, the right to representation in a dispute, especially the right to strike, and the right to deduct membership contributions from workers' wages.

The Committee of Experts and the present Committee had both raised objections to the section which referred to the awarding of union status for commercial, office, professional or first-level trade unions if a trade union type of activity already existed, since the Act demanded so many requirements that it was practically impossible to incorporate. In this way, the Ministry of Labour recently denied union status to the union of managerial staff of the Banco Provincia of Buenos Aires since the Asociacion Bancaria previously existed with trade union status. The Committee on Freedom of Association had examined a similar situation which affected the trade union of the Lockhead company which had applied for trade union status.

As far as collective representation in the case of conflict was concerned, the Committee of Experts had considered that associations with trade union status were given an advantage compared to other organizations in matters of representation of collective interests that were different from collective bargaining. Among these collective interests was primarily the right to strike which was denied to registered-only organizations. For example, in a recent case examined by the Committee on Freedom of Association, which concerned the Workers' Union of commercial employees of Jujuy in which a member of a trade union without union status was fired as a result of strike action, reintegration was not considered possible because the trade union lacked union status. Moreover, when a registered organization had recourse to strike action, the Ministry of Labour initiated the conciliation process with the main union in the conflict setting aside the organization that was at the origin of the conflict.

On the other hand, the possibility of deducting union dues and other contributions was only granted to entities with trade union status. The Committee on Freedom of Association had examined the question in case No. 2050 and had requested that the Government take measures in a manner that did not discriminate against organizations that were registered only. The speaker noted that special protections granted to the trade union representatives in conformity with Conventions Nos. 87, 98, and 135 were only extended in Argentine law to the representatives of organizations that had trade union status. There were innumerable legal examples that demonstrated that representatives of simply registered organizations did not enjoy employment stability and as a consequence could be dismissed.

All of this led to the conclusion that trade union protection in national legislation was not sufficient, contrary to the assertions of the Government. In effect, the special protection established in Convention No. 98 was not a preventive mechanism, but rather provided judicial recourse that could be activated after the dismissal had taken place or for another anti-union act. In this manner it violated the principle of equality between the organizations. The anti-discriminatory arrangements in the Act did not create special protection , rather the opposite, as noted by the Government in 2002. In effect, the Committee of Experts had identified this type of general protection as insufficient.

The speaker noted that the privileges granted to organizations with union Status should not be confused with a system of representative trade unions accepted by the supervisory organs of the ILO. In effect, this set of rules only affected collective bargaining.

The so-called "Argentine model" created real privileges that went beyond collective bargaining to the benefit of certain organizations and, consequently, with discrimination against other organizations. It has to be noted that the Government unjustifiably delayed the recognition procedure for more than six months, adding reasons not grounded in the law. Moreover, in previous meetings of this Committee, the Worker members had referred to the violation of the human rights of certain trade union leaders. In effect, the trade union leaders were tried on numerous occasions simply because they had participated in various strikes and conflicts. In this sense, in conjunction with the National Human Rights Secretary, draft legislation was prepared that the Executive never submitted to the Parliament. In reality, one found more than 4,000 workers and trade union leaders who risked legal action.

Before adopting any conclusions, it had to be noted that the technical assistance missions obtained insufficient results, due to the continued breaches by the Government. The speaker concluded that the Government must be urgently requested to bring its legislation into line with Convention No. 87 and commit itself in the near future and communicate the results obtained at the next session of the Committee of Experts.

Another Worker member of Argentina, speaking on behalf of the General Labour Confederation of Argentina (CGTRA), said that the current Act, in keeping with the spirit and the letter of Convention No. 87, established the principle of "the most representative union" and its respective privileges in conformity with international practices. This Act had consolidated and continued to consolidate the representative unions that had managed to carry on during the worst crises by establishing a broad and efficient social network and dealing with the effects of the decline of the current economic and political model. This Act and its regulatory Decree, through the resulting implementation structures, enabled the current unions, which had been strengthened and organized under the Trade Union Act, to consolidate the rights of employed and unemployed workers and their families, during the terrible crisis that had recently affected the country. This was why strong support for these institutions was important. This Act enabled union unity, allowed unequivocal representation and effective action, and encouraged political pluralism in the union movement. There were no privileged trade unions, but trade unions that cared for the needs of workers.

The Act was based on the existence of free, strong and democratic trade unions organized by the workers themselves according to the principle of freedom, which granted more powers to the most representative unions at the federal, branch, trade and enterprise levels. Representativity was what made it possible to grant trade union status to a registered organization, which gave it collective bargaining and conflict resolution capacity. Any organization could request trade union status, and only in the event that another organization with trade union status already existed at the federal, branch, trade, occupation or enterprise level, would a process to compare representativity be undertaken as provided by the same Act.

The Argentine trade union system guaranteed the unequivocal will of the workers to form trade unions within a context of freedom, while strengthening the effectiveness of trade union action and avoiding fragmentation of this strength, which was the result of workers' unity. Indeed, the unity of trade unions was compatible with the right to trade union plurality and therefore respected freedom of association under the terms and scope of the Convention.

The speaker emphasized that freedom of association should not be defined out of context, but should respond to the social situation and labour relations in the country. Negotiation by workers constituted one of the main elements of freedom of association. In the context of the critical economic situation, Argentine law guaranteed the development of sufficient organizational and negotiation capacities, in conformity with the concepts established in Convention No. 87. The concept of freedom of association took precedence over that of individual freedoms; it was neither an end in itself, nor was it an individual freedom, but an instrument for workers as a group to contribute to the protection of their common interests.

The current Act responded to existing balances in labour relations, as it was respectful of the democratic principles of trade unions and guaranteed the fulfilment of workers as a group. Freedom of association existed in Argentina because there were no restrictions to the right to form workers' organizations or obtain legal status. Neither were there limitations to trade unions or federations, nor obstacles to international affiliation. There was no obligation to belong to a central, nor were there obstacles to free and democratic internal organization independent of the Government and employers. There were no obstacles to the creation of internal movements within organizations, which guaranteed the plurality within and the strength of their external expression. The Act prohibited the suspension or dissolution of a union by administrative authority and thus provided for protection from and punishment of trade union persecution. Furthermore, the Act had proved to be effective in the face of dictatorships, the most extreme neo-liberal policies, and profound crises that had affected the country. On the other hand, even in the event that Parliament agreed to amend the law, there were no guarantees that an excessively rigorous application of the law, not validated by the situation, would ensure better protection for the workers. A discussion of these issues was always possible in the context of democracy and the framework established by the national Constitution.

The Argentine trade union system had the ability and opportunity to help the millions of workers who were unemployed as a result of the crisis, by taking on the responsibility of applying the laws of mutual solidarity between those who had work and those who had lost their jobs. This would not have been possible without the existence of strong trade unions which were the result of the model that had been challenged by some sectors. Thus, the present trade union movement was able to create a system to address the specific needs of unemployed workers and their families so that none of the workers that had lost their jobs and had a trade were deprived of its services. The current model ensured the protection of employment, gave hope to those who had lost their jobs, and provided an active presence in the face of poverty, unemployment, marginalization and the needs of the unemployed.

The Worker member of Italy stated that in the context of globalization it was extremely important that the principle of freedom of association could be defined in a comprehensive way in legislation and fully implemented in practice. The speaker pointed out that the full implementation of this right not only could give further possibilities to workers by making them more responsible and develop the effectiveness of key ILO principles, such as tripartism, social dialogue, industrial relations and collective bargaining, but could also improve the quality of response to the challenges that a country like Argentina was facing. There could be no alternative to such an approach.

The existing limitations to the right to organize did not make negotiations with employers easier. On the contrary, fair legislation that provided the possibility for all workers to establish an organization of their own choosing would create a background of wider participation and responsibility. The Argentinian Government, which had ratified Convention No. 87, should therefore take adequate steps to amend its legislation with a view to eliminating the restrictions that the Committee of Experts had identified over the past few years, and after four technical assistance missions, in particular to review the concept of "considerably higher" number of members, as compared to other organizations, for acquiring trade union status; to repeal provisions permitting only associations with trade union status to benefit from the check-off of trade union dues; and to revise provisions giving trade union protection only to the organizations with trade union status.

The speaker recalled that in Italy trade union membership not only was still high but continued to grow, despite new forms of work, the precariousness of the labour market and increased unemployment. There were three major trade union confederations and a number of small trade unions, all of them benefiting from the same rights and duties, taking part in collective bargaining and industrial relations and having the right to check-off, even though their membership was less than that of the majority union. Each elected trade union representative both from the big and the small organizations had the right to be protected in the same way and no trade union status was required for a union to be able to negotiate with the employers. Similar rights should be granted to Argentinian workers.

Progress could never come from limitations, but from dialogue and the widest acceptance of ILO instruments. There was an urgent need to create conditions for legislative changes, which would pave the way for sound and inclusive industrial relations and collective bargaining at the company and sectoral level, and for a broad and consistent social dialogue and tripartite consultations for the improvement of workers' life.

The Worker member of Brazil wished to express her opposition to the inclusion of Argentina in the list of countries that did not respect freedom of association. Including Argentina in the list demonstrated that the present Committee sought to condemn those countries whose governments wished to maintain a sovereign development policy.

After having survived one of the bloodiest dictatorships in Latin America, Argentine workers had had to face the lengthy liquidation of their country by a submissive government that had sold its own nation and that maintained a close relationship with the United States. During that period, the Argentine Government had not been questioned before the present Committee. Now that Argentina had a democratic government that wanted to get the country's economic development back on track, now that the country was beginning to adopt a different approach to the problem of debt, and now that it was limiting the activities of the big multinationals and preventing other large companies from reducing rights and hampering the trade union organization of workers, Argentina appeared on the list of countries that did not respect freedom of association.

It was not for the ILO to try to divide Argentine workers. That had nothing to do with freedom of association. The Argentine trade union movement had a long and historical tradition of fighting for workers' rights and of unitary trade union organization. Democracy and freedom of association meant the plurality of ideas within a single organization, without the imposition of any exclusivity or hegemony. In Argentina, only recently, both CGTs had merged to form a single CGT, representing 90 per cent of Argentine workers. Such action had been an important step towards consolidating democracy and freedom of association in the country and should be welcomed enthusiastically by the present Committee.

The Worker member of Spain stated that discrimination and special treatment were not based on any objective system of measuring representation, but simply on the basis of "I arrived first" and "I was already here". Therefore, the trade union that had already been established could collect trade union dues through check-off facilities, a right that was denied to new trade unions. The trade union that had already been established could protect its representatives, while new trade unions could not, even if they had the same number of members. The trade union that had already been established could call a strike, manage it and negotiate it, while new trade unions could not. Finally, the speaker requested that the Committee recommend in its conclusions something more than a technical assistance mission, since it was a not a case of whether the Argentine Government had the knowledge or technical capacity to bring Argentine legislation into line with ILO standards, but a problem regarding the political will to end trade union discrimination.

The Worker member of Norway recalled that during five previous sessions of the ILC the fact that the Government of Argentina had not brought its legislation in line with Convention No. 87 had been lamented. During the ILC in the year 2000, the Government finally had acknowledged the substance of the comments of the Committee of Experts and admitted that Argentine law was in conflict with Convention No. 87. The Nordic workers had waited patiently for the Government to fulfil its promise to remedy this situation, but this had been in vain. Act 23551 gave certain unions privileges not given to others. New unions needed 10 per cent more dues-paying members than already established unions in order to be registered as trade union organizations. A simple majority was not enough. Those unions which were not registered as trade unions were considered associations, with few of the benefits of registered unions. Only registered trade unions were allowed to represent workers in a conflict, engage in collective bargaining, demand legal protection for their members and use the check-off system to collect dues. Only registered unions were allowed to strike.

She further noted that the economic reality of Argentina had changed considerably since the Constitution of Argentina established the practice of recognizing only one national union central. Especially in the last decade of economic crisis, employer-worker relations had become much more complex. Workers' rights were threatened to an unprecedented degree. In this regard, she recalled that the CTA had been founded in 1991. However, because of Argentine law, it was not recognized as a trade union organization until 1997. Despite the fact that the CTA had more than a million members, it was not invited to participate in the ILO Conference until 2003. It was still not allowed to register sectoral unions as trade union organizations. Because it was a new organization without the privileges given by law to established organizations, only 57 of its member organizations were registered as trade unions while 180 were regarded as associations. There had been cases where shop stewards in these associations had been fired for exercising their right to union activity because they did not have the legal protection granted to shop stewards in registered unions.

She concluded by stating that the workers of Argentina deserved the right to be represented by the trade union of their choice. The CTA was a democratic and representative trade union organization. She requested the Government of Argentina to facilitate a change in the law in order to bring it into line with the Convention it had ratified in 1960.

The Worker member of Uruguay, after emphasizing the good work carried out by Mr. Gernigon (the recently retired, former head of the Freedom of Association Branch and who had been ever attentive to workers' needs), stated that he was quite familiar with the Argentine trade union movement, since Uruguay was a neighbouring country and the movement was a long-standing one. He was therefore well aware of its unitary vocation. At present, workers in Argentina had more than one choice as regards trade unions, a situation that he would not comment on. However, that did not mean that both Centrals could not work and contribute jointly with respect to issues that were very important to workers in the region, when participating in the Confederation of Central Unions of the Southern Cone *(Coordinadora de Centrales Sindicales del Cono Sur)*. They did the same institutionally in the Consultative Economic and Social Forum, amongst others.

The failure of Argentine legislation to adapt fully to Convention No. 87 had for years been a subject of discussion in the Committee. The different Governments had not listened to the Committee's recommendations, despite a number of ILO technical missions carried out in Buenos Aires.

The speaker said that he had noted the Argentine Government's willingness to bring its legislation into line with the Convention, but emphasized that the Government must not continue to prolong that process, and that it must promise, before the Committee, and in conjunction with the trade unions, to report the following year that the country had brought itself into conformity with Convention No. 87.

The Government representative welcomed the comments made by the spokesperson for the Worker members, who had acknowledged the importance of Act No. 23551, a product of Argentina's recently recovered democracy and of the strength of the Argentine trade union movement. She reaffirmed that her country had submitted a report on Convention No. 87 in 2003 and that it would do so again in September 2005.

As regards the observations made by the ICFTU and the CTA, referred to by the Committee of Experts at its 75th Session, the speaker reiterated that her Government had submitted its comments in writing to the International Labour Standards Department in May 2005. Consequently, her Government did not owe any reports relating to the issue under examination. She made it clear that Act No. 23551 con-

ferred important rights on registered associations and that section 23 thereof granted a registered association the right to set its membership fee and to receive that fee from its members. That right guaranteed the growth and patrimonial development of trade unions.

The speaker reaffirmed that in Argentina the right to strike was enshrined in article 14bis of the National Constitution and that it was not subject to any restriction in the text of Act No. 23551, indeed all trade union associations were entitled to exercise that right. With regard to the cases that had been cited, she indicated that her Government had submitted its reports as required. As she had said before, Argentine legislation could indeed be improved, within a context of political freedom and democracy. Consequently, she reiterated her country's commitment to carrying out ILO technical cooperation activities, with the active participation of the social partners, in order to achieve the necessary consensus between those who were the true protagonists of freedom of association.

Within that context, she reiterated her desire to find, in social dialogue and consensus, in fulfilment of the mandate set forth in ILO Convention No. 144, the instrument needed to ensure the legitimacy of the regulatory changes that deserved to be made.

The Employer members stated that four elements should be reflected in the conclusions. First, the Government should provide a timely report to the Committee of Experts so that the information could be subject to complete review; secondly, the Committee should insist that the Government implement Convention No. 87 in law and practice; thirdly, the Government should follow up on its stated willingness to accept technical assistance by the Office; and finally, the Committee of Experts should provide a comprehensive and complete examination of the matter in their next report.

The Worker members stated that as a result of the discussion and the information received over the years, they thought they had a precise and exhaustive idea of the problems relating to freedom of association in Argentina. Although all the parties recognized the importance, originality and historical role of the Argentine trade union movement, the fact remained that Argentine legislation did not fulfil all the requirements set forth in Convention No. 87. It was the Government's task to ensure the application, in law and in practice, of all the provisions of that Convention. The Worker members hoped that the Government would not delay in taking all the necessary steps to find appropriate solutions to the problems under discussion, with ILO mediation if necessary, and that the report to be submitted to the Committee of Experts at its next session would show evidence to that effect.

The Committee took note of the information provided by the Government representative and the discussion that followed. The Committee noted from the observation of the Committee of Experts that for several years it had been requesting the Government to amend certain provisions of Act No. 23551 of 1988 on trade union associations and the corresponding Decree, which contained requirements as regards the granting of trade union status to trade union associations, the requirements to contest trade union status and the benefits which associations with trade union status enjoyed over those that were simply registered. The Committee noted that the Government had already sent its reply to the comments of the International Confederation of Free Trade Unions (ICFTU) and the Central of Argentine Workers (CTA) on the application of the Convention which set out the abovementioned legislative questions and certain acts of anti-union repression.

The Committee took note of the statements of the Government according to which trade union legislation, which had respected the guidelines of ILO technical assistance in 1984, had guaranteed the majority of trade union rights set forth in the Convention, as shown by the high number of trade union associations, the rate of unionization (more than 65 per cent), and the number of sectoral and enterprise-level collective agreements (1,169). The Committee noted that, according to the Government, a great majority of the registered organizations enjoyed trade union status and that each month a new union was accorded this status. The Committee noted that the Government was open and receptive for the carrying out of technical cooperation with the ILO to improve national legislation, on the understanding that the right path was broad social dialogue and the participative construction of consensus. The Committee hoped that this information would be examined by the Committee of Experts at its next meeting.

The Committee hoped that the dialogue between the Government and all the social partners, with technical assistance by the ILO, would translate into amendments of the legislation permitting the full application of the provisions of the Convention in national law and practice.

The Committee requested the Government to provide in its next report information on all outstanding issues, so that the Committee of Experts would dispose of all the elements for a complete examination of the situation in the country.

Belarus (ratification: 1956). The Government communicated the following written information:

The Commission of Inquiry regarding Belarus' observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was appointed by the Governing Body of the International Labour Organization at its 288th Session in November 2003. The Government of Belarus gave every support to the Commission to accomplish its task. All the necessary information, meetings and consultations were provided. The Commission issued its report in July 2004. The report contains recommendations for the Government of Belarus concerning improvements of the national legislation in the field of freedom of association and protection of trade union rights. The deadline for the implementation of some recommendations was fixed for 1 June 2005. In November 2004, the Government of Belarus officially stated that everything that would be undertaken by the Government to fulfil the Commission's recommendations would be carried out within the framework of the law, in strict conformity with its competence, principles of division of power and non-interference of the State in the internal business of trade unions. In order to implement the recommendations of the Commission, the Government of the Republic of Belarus has taken the following steps:

1. According to the requirement of the Commission its recommendations have been published in the magazine of the Ministry of Labour and Social Protection of the Republic of Belarus named *Labour Safety and Social Protection*, which is distributed in all Belarusian enterprises and organizations.

2. The Government has adopted the appropriate plan of action. The copy of the plan has been forwarded to the International Labour Office.

The actions stipulated by the plan will be carried out in three basic directions:

– Further improvements of the national legislation and law enforcement on creation and registration of trade unions; realization by trade unions of their authorized activity (recommendations Nos. 1, 2, 3, 6, 9 and 10).

– Perfection of the mechanisms of protection of the rights of trade unions and prevention of discrimination in the sphere of labour relations owing to membership of the workers in trade unions (recommendations Nos. 4, 5, 7 and 8).

– Development of social partnership and social dialogue (recommendations Nos. 11 and 12).

3. In line with the recommendations, the Government has developed the draft Law of the Republic of Belarus "On associations of the employers" aimed at the further development of the system of social partnership. The draft Law has already been studied by the ILO and has received a positive reaction. Also in line with the recommendations, the Government is working out the new draft Law of the Republic of Belarus "On trade unions". At this stage the provisions of the draft are discussed at the level of experts of the Ministry of Labour in close cooperation with the wide range of interested state agencies, trade unions and employers.

4. In line with the recommendations, the Government has established an expert council on development of the social and labour legislation aimed at maintaining the constant dialogue and interaction between the authorities, trade unions (including representatives of the Federation of Trade Unions of Belarus and the Belarusian Congress of Democratic Trade Unions), employers, NGOs, scientists, and the Ministry of Labour of Belarus. The Council provides a wide forum for exchange of the views and proposals on the development of the national labour legislation, role of the State, trade unions and employers in the system of social partnership.

5. In line with the recommendations, the Ministry of Labour of Belarus has prepared and submitted to all interested parties (enterprises, trade unions, state agencies) the Explanatory Letter with interpretation of the norms and provisions of the international and domestic legislation determining principles of interaction between social partners and non-interference by the employers and trade unions in the internal affairs of each other.

6. In line with the recommendations, during the period of January-April 2005, the State Labour Inspection has examined the number of enterprises employing more than 2 million workers in total on the subject of law enforcement practice in conclusion of fixed-term labour contracts. More than 1,000 infringements of labour legislations were found and 226 entrepreneurs were penalized (fines, management responsibility etc.). The inspection, however, did not discover any facts of anti-trade union discrimination on those enterprises.

7. Now the Ministry of Labour of Belarus, in cooperation with the ILO, is preparing joint seminars within the framework of implementation of the recommendations of the Commission.

For the implementation of some recommendations the Government urgently needs technical and expert assistance from the International Labour Office, namely, in the field of trade union registration, regulation of trade union mass actions, regulation of external financial assistance, building up education and awareness tools. The Government of Belarus remains committed to continue to cooperate with the ILO in perfection of the system of socio-economic relations in Belarus and in further fulfilment of the recommendations of the Commission of Inquiry.

In addition, before the Committee, a **Government representative** emphasized the importance of the cooperation between her Government and the ILO Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by the Government of the Republic of Belarus of Conventions Nos. 87 and 98, in order to gain a proper understanding of the present case. Although the Government had

not considered it necessary to appoint the Commission of Inquiry, once it had been established it had demonstrated its willingness to cooperate with the Commission, for example by providing all necessary information on the law and practice concerning freedom of association and hosting the mission of the Commission to Belarus in April 2004. During its mission, the Commission had met government officials, trade unions and employers' organizations without any interference from the Government. It had then conducted formal hearings in Geneva at which the Government had been represented by officials of the Ministry of Labour and Social Protection and the Ministry of Justice of Belarus. The Commission had expressed its appreciation to the Government of Belarus for the full cooperation it had provided in respect of all aspects of the Commission's work and for its cordial and open attitude.

The Government had studied carefully the report entitled "Trade union rights in Belarus" prepared by the Commission of Inquiry and the recommendations contained therein. In its letter to the Director-General, as well as at the 291st Session of the Governing Body in November 2004, the Government had expressed its willingness to fulfil the Commission's recommendations, in the light of the situation of Belarus and its sovereign interests.

The Commission's recommendations included 12 points and covered various issues. Several recommendations, including the deadline for their implementation, needed to be adapted to the particular situation of Belarus. To do so, the Government had adopted a Plan of Action, under which the process of implementation of the Commission's recommendations would involve all the social partners and other concerned parties. The Plan aimed at further improvement of the national legislation and practice on the establishment and registration of trade unions and the exercise of their activities, improvement of the mechanisms of protection of trade union rights and protection against acts of anti-union discrimination, and the development of tripartism and social dialogue. The practical implementation of this Plan was to be carried out on the basis of a list of concrete measures to be taken within the first six months of 2005. This first stage of the implementation process had been already carried out and the Government was presently working on the second stage of this process. The recommendations of the Commission had been published in the Journal of the Ministry of Labour and Social Protection, *Social and Labour Protection,* and could be found on numerous web sites, including the ILO web site.

The Commission had further recommended taking measures to prevent acts of interference by employers in the activities of trade unions, in particular by issuing clear instructions to enterprise managers. In this regard, the Ministry of Labour and Social Protection had sent a letter to all concerned parties in which it had explained that the relevant national legislation and international standards on social partnership prohibited all acts of interference by social partners in the each other's internal affairs.

The Commission of Inquiry had raised the issue of the use of fixed-term contracts, which were a significant trend in many countries. The legislation of Belarus also provided for the possibility to conclude fixed-term contracts. The main legislative acts in this area were the Labour Code and Presidential Decree No. 29 of 26 July 1999 on additional measures to improve labour relations, to strengthen labour and managerial discipline. The Labour Code laid down the conditions for conclusion of fixed-term labour contracts and set their maximum length at five years. Decree No. 29 granted the employer the right to conclude contracts with workers for a minimum term of not less then one year and provided for additional guarantees for employees with whom the contracts had been concluded, such as additional paid holidays and increased wage rates. The Labour Inspectorate, with the participation of trade unions, carried out regular inspections to supervise the use of fixed-term contracts. During the period of January-April 2005, the Labour Inspectorate had examined the application of labour legislation concerning the use of fixed-term contracts in enterprises employing, in total, over 2 million workers. A number of violations had been found, fines had been imposed on 226 employers, and administrative sanctions had been taken against 210 employers. However, in general, it appeared that contracts were concluded in accordance with the legislation in force. She added that workers employed on fixed-term contracts enjoyed the same rights as those employed under indefinite labour agreements, i.e. the right to organize and to collective bargaining and the right to strike. No cases of discrimination in the use of fixed-term contracts had been found. As anti-union discrimination was prohibited under section 14 of the Labour Code, any decision by an employer to conclude a fixed-term contract with an employee based on his or her trade union membership would be illegal.

The recommendations of the Commission of Inquiry paid close attention to the question of the registration of trade unions. The Plan of Action provided for the improvement of the legislation, including the relevant provisions of the law on trade unions. The Government was already working on a concept to make changes to this law. To this effect, the Ministry of Justice had analysed the application of legislation on trade union registration. In particular, all cases of refusal to register primary trade union organizations had been examined. According to the information made available by the Ministry of Justice, as of 1 January 2005, some 20,195 primary trade unions were registered, compared with 1,031 in 2004. The complaints addressed to the ILO mentioned 43 cases of denial of registration of primary trade unions. However, according to the analyses of the Ministry of Justice, in ten cases the primary trade unions had not applied for registration and in six cases, the organizations were duly registered. In only eight cases, the primary organizations, following a denial of registration, had reapplied for the registration, and in only nine cases denial of registration had been appealed in court. However, practice showed that if a decision to deny registration was not based on the legislation, recourse to the courts brought positive results, as illustrated by the registration of a primary trade union of the Belarusian Free Trade Union at the "Alforma" enterprise.

The Government of Belarus was ready to review the situation and take measures relating to any well-founded complaints of violation of trade union rights. However, it could only act within the scope of its competence and could not overturn judicial decisions or bypass the legislation in force.

The Commission of Inquiry had requested the Government to undertake a thorough review of its industrial relations system. To accomplish this task, a special Council of Experts, composed of representatives of the Government, trade unions, employers' organizations, NGOs and academics, had been established by the Ministry of Labour and Social Protection. Trade union members of this Council were represented by the Federation of Trade Unions of Belarus and the Belarusian Congress of Democratic Trade Unions.

She noted that the Plan of Action and the list of measures to be taken had been submitted to the ILO. The Government had been informing the ILO of the steps taken to implement the recommendations. All further information in this respect would be provided to the Committee on Freedom of Association. In order to give effect to the recommendations of the Commission of Inquiry, the Government was counting on the ILO's technical assistance and consultations had been held with the Office for this purpose, and particularly for the organization of three seminars on international experience on the establishment and registration of trade unions, mechanisms to protect trade union rights and the development of social dialogue. Such seminars would allow a better understanding of the tasks before the Government and the determination of the best approach to be taken to implement the recommendations. The proposal to conduct the seminars had been made by the Belarusian delegation during the Governing Body session in March 2005. Although the possibility of organizing seminars in May 2005 had been discussed, unfortunately, due to the circumstances beyond its control, their organization before the Conference had not been possible. The Government had received a communication from the Office emphasizing the need to discuss this question during the Conference.

In conclusion, she said that her Government had difficult and complex issues to solve, but that concrete steps had already been taken to implement the recommendations of the Commission of the Inquiry. Certain recommendations had already been implemented. Others, which were more complex, including those of legislative nature, needed more effort.

The Worker members said that the Committee of Experts' report recounted the history of the case of Belarus from November 2003, when a Commission of Inquiry had been established by the Governing Body. They emphasized that this was the tenth anniversary of the complaint submitted to the ILO in 1995 by the ICFTU, the WCL, the Free Trade Union of Belarus and the Congress of Democratic Unions of Belarus concerning serious restrictions on the right to strike, the suspension of trade unions by presidential ordinance, serious acts of anti-union discrimination and the arrest and detention of trade union members. On several occasions the Committee on Freedom of Association had examined cases on this subject and the Government had adopted an "empty chair" policy in 1996 and 2002. Despite making occasional progress, Belarus had been the subject of comments by the Committee in 2000, 2001 and 2002, following which the Governing Body had decided to establish a Commission of Inquiry, which had formulated 12 very explicit recommendations.

The Worker members noted the Government's statement that it had adopted a plan of action. The details of this plan, however, should have been revealed much earlier to the parties concerned, with a view to its examination by the Committee. The Government claimed it was establishing a council of experts composed of the Ministry of Labour, trade unions and NGOs, but there was no indication of any measures taken to guarantee that it was of a balanced composition. The Worker members emphasized that the Government alone was responsible for bringing the national legislation into conformity with international labour standards and that in no case could the ILO share this responsibility. They were sceptical about the official information provided.

The Worker members recalled the recommendations made and assistance offered by ILO bodies for several years, to which the Government still had not replied or acted upon. They therefore considered that the comments of the Committee of Experts were still valid, despite the text presented to the Committee by the Government. They also referred to the conclusions of the ILO European Regional Meeting in February 2005 and the position of the European Commission, which might envisage reconsidering the aid allocated to the country in view of the flagrant violations of ILO standards on freedom of association.

In conclusion, the Worker members stated that the situation was too serious for them to be satisfied with promises of action or future requests for assistance. The exercise of any form of independent trade union activity in Belarus was in real danger. They demanded action demonstrating the political will to respect ILO standards and requested

the Committee to adopt conclusions which reflected the gravity of the case.

The Employer members thanked the Government representative for the information provided and recalled that the Committee had been discussing the case for over ten years. They indicated that, after listening to the Government representative, they remained somewhat sceptical of the Government's will to give full effect to the Convention at any time in the future. The Government representative had said that measures would be taken in the light of national conditions and bearing in mind its sovereignty. They therefore reminded the Government that almost half a century ago when it ratified the Convention it had made its decisions concerning the issues of sovereignty involved. The Government representative had also stated that some of the recommendations of the Commission of Inquiry would have to be adapted in the light of national conditions. In this respect, the Employer members recalled that the Convention concerned fundamental workplace standards and the very basic and fundamental issue of freedom of association and the right to organize. Although providing a list of the planned activities, set out in a Plan of Action, the Government representative had indicated that their implementation would take longer than envisaged by the Commission of Inquiry. Moreover, although it had been reported that measures were envisaged to prevent interference by enterprises in trade union activities, the Government representative had made no mention of the issue of interference by the Government, on which the Committee of Experts had expressed deep concern.

The Employer members noted that the Government representative had referred to the development of a concept in relation to this case. However, they emphasized that, in view of all the action taken on the case by various ILO bodies, the concept of what needed to be done should now be fairly clear. The real form of assistance that was required by the Government from the ILO was technical assistance for the drafting of legislation to give effect to the Convention, so that effective measures could be taken to overcome the discrepancies highlighted by the Committee of Experts.

The Worker member of Belarus, on behalf of the Federation of Trade Unions of Belarus (FPB), the largest trade union centre in the country, noted that trade union pluralism existed in Belarus, as illustrated by the existence of about 40 trade unions which were either united into two trade union centres or functioned autonomously, and that this fact explained the diversion in the views on the issues discussed by the Conference Committee. He regretted that neither the observations of the Committee of Experts, nor the previous conclusions of the Conference Committee had taken into account the information which was regularly provided by his organization to the ILO, and which testified to the substantive changes undergone by the trade union movement in Belarus during the past few years. For instance, currently no law on labour and social issues could be adopted without consultations with trade unions. The rights of trade unions in the field of monitoring the application of labour legislation were also increased. He underlined that this process involved not only the FPB, but also other trade unions. The tripartite National Council for Labour and Social Issues held regular meetings three to four times per year. The government working group was headed by the First Deputy Prime Minister. This fact testified to the influence trade unions had and to the seriousness with which the Government considered the ILO principle of tripartism. The tripartite General Agreement dealing with the issues of labour, social and economic interests of workers and providing for the protection of trade union activists was an example of promotion of social partnership in the country. In the last six months, about 400 trade unions had been established in the private sector of the economy, mainly in small enterprises, where relations between workers and employers were not always good. All of the abovementioned accomplishments were due to the hard work of trade unions, especially the FPB.

However, he was not completely satisfied with the statement of the Government representative. He understood that, although the process of changing the legislation was by nature a slow one, he considered that the Government was moving too slowly. He also expressed his reservations as concerned the issue of fixed-term labour contracts. The gaps in the legislation on contractual forms of employment allowed employers to act in an arbitrary fashion. The fact that there were no massive violations in the use of this type of employment was only due to the fact that the legislation was supplemented by the abovementioned General Agreement. However, this Agreement was not an act of legislation but rather of a recommendatory nature. He called on the Government to adopt a legislative act, the draft of which was prepared by the unions at the beginning of this year.

The speaker welcomed the Plan of Action adopted by the Government to implement the recommendations of the ILO Commission of Inquiry and thought that this would contribute to the improvement of social and labour legislation, particularly because this process would involve the active participation of trade unions. Establishment of the Council on the questions of improvement of social and labour legislation was another important step, and the active participation of trade unions in this body would make the work on the amendment of legislation on establishment and functioning of trade unions even more productive. He concluded by stressing the need for ILO technical assistance in implementing the Plan of Action.

The Government member of the United States indicated that the 2004 observation had confirmed and expanded upon the concerns that the Committee of Experts and the Conference Committee had been raising for many years. These concerns included requirements of law that affected uniquely those unions that were outside the structures of the FPB or opposed its leadership. These requirements gave rise to apprehensions that they were being applied intentionally to suppress independent unions, in flagrant violation of the provisions of the Convention. The Commission of Inquiry documented numerous examples of this and the experts noted with deep concern reports from the Congress of Democratic Trade Unions that proposed amendments to the Law on Trade Unions would further strengthen what was a de facto state-controlled trade union monopoly in Belarus.

The Commission of Inquiry had made 12 very specific recommendations to the Government of Belarus, most of which should have been implemented by the time this Conference had convened, but were not. The speaker called upon the Government of Belarus to implement all of the Commission of Inquiry recommendations in full and without further delay. The recent election of the Government of Belarus to a regular seat on the ILO Governing Body made it all the more imperative that the Government demonstrated by its actions that it was committed to the principles the ILO stood for. Among these principles, none was more fundamental than the right of workers and employers to establish democratic organizations of their own choosing, free from the interference of governments and government-dominated organizations enjoying virtual monopoly status under laws that contravened ratified ILO Conventions.

The speaker noted that the ILO, with support from her Government and others, was attempting to ensure that independent trade unionism in Belarus survived a sustained assault by the Government of Belarus, which was well-documented in the report of the Commission of Inquiry. The Committee of Experts had warned that the survival of any form of independent trade union movement in Belarus was truly at risk. She stressed that eveything possible should be done to ensure that this warning did not come true. The workers of Belarus deserved no less than workers everywhere: trade unions that spoke for them, were accountable to them, and were free from government interference.

The Government member of Cuba expressed surprise at the inclusion of Belarus in the list of countries because of the short period of time since the presentation of the report of the Commission of Inquiry and the Government's reply. Instead, progress in the application of the Plan of Action by the Government should be evaluated depending on what was contained in its next report. The Government had not had sufficient time to take all legislative and administrative action to apply the Plan of Action, whose objective was the restructuring of the entire system of labour and social relations in the country. In addition, account should be taken of the written information supplied by the Government to the Conference Committee. The draft Law on Employers' Organizations had been forwarded to the ILO for comments. Also, the Labour Inspectorate had visited enterprises employing in total more than 2 million workers and recorded more than 1,000 violations, sanctioned 226 enterprises, but had not found any anti-union activities. Account should be taken of the fact that the Government fully supported the Commission of Inquiry. However, the time allowed for compliance with recommendations was not enough. The Government had requested ILO technical assistance. Such technical assistance would facilitate application of the measures contained in the Plan of Action.

The Government member of Luxembourg, speaking on behalf of the Member States of the European Union, as well as Bulgaria and Romania as countries in the accession process; Turkey and Croatia as candidate countries; Bosnia and Herzegovina and Serbia and Montenegro, countries of the process of stabilization and association and potential candidates; Norway, EFTA country member of the European Economic Area; as well as Ukraine and Switzerland; recalled that in its statement during the 291st Session of the Governing Body (November 2004), the European Union had expressed serious concern about the situation in Belarus as regards adherence to democratic principles, human rights and respect for the rule of law, as well as the nonfulfilment of its international commitments. The European Union had called upon the Government of Belarus to fully implement all 12 recommendations made by the Commission of Inquiry without delay and within the deadlines set in the report.

The EU remained deeply concerned by the observations of the Committee of Experts following the conclusions of the Commission of Inquiry. The Committee of Experts stated that the survival of any form of an independent trade union movement in Belarus was truly at risk.

The EU was closely monitoring the situation in Belarus, where the lack of progress could result in the temporary withdrawal of benefits under the Generalised System of Preferences. In this context, the EU was deeply concerned by the findings of the report of the investigation carried out by the European Commission, which highlighted serious and systematic violations of the most basic principles of freedom of association in Belarus. These findings were consistent with the conclusions of the Commission of Inquiry and the observations of the Committee of Experts.

The EU further noted the Government's information concerning steps taken or envisaged including the reference to a Plan of Action with a view to implementing the recommendations of the Commission of Inquiry. The EU expected the Government of Belarus to fully implement the conclusions of the Commission of Inquiry and to give full effect in law and in practice to all the points raised by the Committee of

Experts on the application of the Convention. The EU called for a meaningful and constructive dialogue between the ILO and the Government of Belarus in order to guarantee the full implementation of the recommendations of the Commission. These were essential, not only for the protection of workers and their rights, but also for the development of democracy.

The Government member of the Russian Federation considered that the Government of Belarus had made efforts to resolve the problems raised by the Commission of Inquiry and the Committee of Experts. As concerned the most important but very complex issue of legislation, the work was being carried out, but needed a certain amount of time. In this connection, all the relevant technical assistance from the Office would be of great importance. He emphasized the willingness of the Government of Belarus to cooperate with the ILO and considered that the situation was developing in the right direction and that adequate solutions would be soon found.

An observer of the International Confederation of Free Trade Unions (ICFTU) and President of the Belarusian Congress of Democratic Trade Unions (CDTU)) stated that the list of violations of trade union rights in Belarus continued to grow and included the denial of registration of about 30 independent trade unions, the requirements of legal address and of 10 per cent minimum membership to establish a trade union, harassment, detentions, dismissals and transfers of trade union leaders and union members and the continuing denial of the CDTU's right to participate in the meetings of the National Council for Labour and Social Issues. As far as freedom of association was concerned, the situation in Belarus had considerably worsened. Eight members of trade unions who had testified before the Commission of Inquiry had been fired. The acts of pressure exerted on trade unions and their members to leave their unions intensified as hundreds of persons had been called in by the local authorities and threatened with non-renewal of their labour contracts and reprisals by the police. During these meetings, explicit reference had been made to the Presidential Instructions. The registration of the Radio and Electronics, Automobile and Agricultural Machinery Workers' Union had been denied, as was the registration of a trade union in Mogilev due to a problem with the legal address. The State mass media, the only media that existed in the country, treated the independent trade unions as "enemies of the people" and "traitors sponsored by western bosses". He doubted that the Government would implement the recommendations of the Commission of Inquiry, as was already demonstrated by the continuous refusal of the Government to implement recommendations of other ILO supervisory bodies. He considered that the Plan of Action was a clear attempt by the Government to evade its responsibilities as no Plan of Action could replace the good will needed to ensure respect for trade union rights in Belarus.

The Government member of Myanmar congratulated the Government of Belarus for its efforts in cooperating with the Commission of Inquiry and for adopting an appropriate National Plan of Action. His Government was encouraged to learn that the Government of Belarus had developed a draft law on associations of the employers. His Government also noted the commitment of the Government of Belarus to implement the recommendations of the Commission of Inquiry and to cooperate with the ILO. The ongoing constructive engagement between the Government of Belarus and the ILO was therefore supported.

The Government member of China noted that the Government of Belarus was taking positive steps to give effect to the recommendations of the Commission of Inquiry and had made progress in this respect. The Government had also reiterated its willingness to cooperate with the ILO. What was needed at this stage was the provision of technical support by the ILO and the international community to the Government. Such help would enable the Government and the social partners to jointly put the Plan of Action into practice so as to implement the Convention.

The Government representative explained that her Government had approached the Office with a request to hold three seminars on international experience with the establishment and registration of trade unions, mechanisms to protect trade union rights and the development of social dialogue. Such seminars would provide additional knowledge on freedom of association principles and would allow a better understanding of the tasks before the Government and the determination of the best approach to be taken to implement the recommendations of the Commission of Inquiry. She emphasized that her Government fully understood its responsibility to implement the recommendations of the Commission of Inquiry. The Plan of Action was based on the list of concrete measures to be taken in this respect. Its first stage had been already carried out and the Government was currently working on its second stage. The Government maintained contacts with the ILO and would continue to provide further information to the Committee on Freedom of Association. In line with Recommendation No. 12, the Government had established an expert council on the development of social and labour legislation. Trade union members of this Council were represented by the Federation of Trade Unions of Belarus and the Belarusian Congress of Democratic Trade Unions.

In regard to the concern expressed over the adaptation of the implementation of the Commission's recommendations to the reality of Belarus, she stated that in Belarus, as in many other countries, the principle of separation of power prevented the Government from acting outside of the scope of its competence.

With respect to the question of anti-union discrimination, although her Government understood the need to improve the machinery of protection against of acts of anti-union discrimination, currently all workers who felt themselves victims of discrimination, in accordance with section 14 of the Labour Code, had the right to appeal to courts.

Social dialogue was recognized in Belarus. The Government, workers' and employers' organizations cooperated and worked together in the Committee on Improvement of Labour Legislation and the National Council on Social and Labour Issues. She pointed out that the Belarusian Congress of Democratic Trade Unions (CDTU) along with the Federation of Trade Unions of Belarus (FPB) were both members of the National Council, despite the fact that the FPB was a much larger organization, and explained that if the membership of the Council was to be determined by the number of members, the CDTU would not be able to become the member of the Council.

The Government representative pointed out the achievement of the Government in the sphere of social protection and employment policy. She concluded by stating that freedom of association was guaranteed by the Constitution and recognized by other legislative acts. Her Government was open to dialogue and ready to accept ILO assistance in order to improve the situation. It had already adopted a certain number of measures and would continue to do so.

The Worker members remarked that the Government had presented the situation in terms that brought its credibility into question. For instance, it had accepted to review labour legislation in cooperation with the ILO, but only on condition that the recommendations made to it be congruent with its policies. Over the last ten years in Belarus, independent trade unionism had gradually disappeared. Currently, the Government had put a Plan of Action into operation, but without stipulating its content. It claimed that it was fighting precariousness of jobs through extension of fixed-term contracts, but the reality completely negated these claims. It had made no reply on the non-respect of the immunity of persons who had provided information to the Commission of Inquiry; nor on the number of trade unions that had nonetheless obtained their registration without having to enter the structures of the FPB. It had also made no response to the fact that the Congress of Democratic Trade Unions had not been invited to sit with the Group of Experts on legislative reforms, despite having announced the setting up of this latter to the ILO Governing Body six months ago. The Worker members had asked that the conclusions reflect the fact that this case constituted a continuing failure to implement the Convention and that an impartial evaluation of the situation was required, in conformity with each of the points raised in the report of the EU.

The Employer members maintained the scepticism they had expressed in their opening remarks as to the real prospects of resolving this case rapidly. They recalled that the Government had ratified the Convention 49 years ago and expressed the wish that the Government would resolve all problems at hand before the 50th anniversary of the ratification. The Plan of Action announced by the Government representative was reminiscent of similar plans announced in the past and the Committee should not be prepared to accept another delay. The momentum should be maintained for the swift adoption of measures for the full implementation of the Convention. In this regard, the Employer members took note of the Government representative's statement that her country needed technical assistance from the ILO on advice in drafting the statutory provisions necessary to bring the law into line with the Convention. The Employer members agreed with the Worker members that this case was serious and indeed, a special case, given that the institution of a Commission of Inquiry was a rare event which occurred only in serious circumstances. The Employer members considered that the Government should be given credit for its intention to address several issues. Thus, the case should be included in a special paragraph in the Committee's report but should not be referred to as a case of continuous failure to implement the Convention.

The Committee took note of the written information supplied by the Government, the statement made by the Government representative, the Deputy Minister of Labour, and the discussion that took place thereafter. The Committee noted from the comments of the Committee of Experts that the Commission of Inquiry submitted its report to the Governing Body at its 291st Session in November 2004. The Committee recalls that the conclusions and recommendations of the Commission of Inquiry concerned the application of rules and regulations relating to the activities of trade unions and other public associations in a manner amounting to a condition of previous authorization for the formation of unions and with an impact uniquely upon those unions outside of the traditional trade union federation or which oppose it, contrary to Article 2 of the Convention; the non-conformity of the law on mass activities, and its application, with Article 3 of the Convention and of Presidential Decree No. 8 on measures for receiving and using foreign free aid with Articles 5 and 6 of the Convention. The Committee, like the Committee of Experts, further notes with deep concern the information concerning proposed amendments to the law on trade unions aimed at substantially increasing the requirements for trade union registration at various levels.

The Committee noted the Government's indication according to which it has adopted an appropriate plan of action to give effect to the recommendations of the Commission of Inquiry and

that it has submitted to all interested parties an Explanatory Letter on the norms and provisions of international and domestic legislation. The Government also indicated that the recommendations of the Commission of Inquiry were published in a magazine of the Ministry of Labour, which is sent to almost all enterprises in the country. It also referred to an experts' council established to review the labour legislation, which included in its composition the Federation of Trade Unions of Belarus (FPB) and the Congress of Democratic Trade Unions (CDTU).

The Committee expressed its grave concern at the serious discrepancies between the law and practice on the one hand and the provisions of the Convention on the other, which it considered seriously threatened the survival of any form of an independent trade union movement in Belarus. It deplored the fact that no real concrete and tangible measures had yet been taken to resolve the vital matters raised by the Committee of Experts and the Commission of Inquiry, including as regards a number of recommendations made by the latter that were to have been implemented by 1 June 2005. It urged the Government to take the necessary measures immediately to ensure that full freedom of association was ensured in law and in practice so that workers could freely form and join organizations of their own choosing and carry out their activities without interference by the public authorities and to ensure that independent trade unions were not the subject of harassment and intimidation. Furthermore, the Committee supported the recommendation made by the Commission of Inquiry that the presidential administration issue instructions to the Prosecutor-General, the Minister of Justice and court administrators, that any complaints of external interference made by trade unions should be thoroughly investigated, and considered that such steps aimed at ensuring truly effective guarantees for the rights enshrined in the Convention would further benefit from the Government's implementation of the recommendations made by the United Nations Special Rapporteur on the independence of judges and lawyers. The Committee requested the Government to provide a full report on all measures taken to implement the recommendations of the Commission of Inquiry for examination by the Committee of Experts at its next meeting.

The Committee further urged the Government to accept a mission from the Office to assist in the drafting of the legislative amendments requested by the Commission of Inquiry and to evaluate the measures taken by the Government to implement fully the Commission's recommendations.

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

Bosnia and Herzegovina (ratification: 1993). The Permanent Mission of Bosnia and Herzegovina to the United Nations Office in Geneva, in a letter dated 10 June 2005 and signed by the Ambassador Jadranka Kalmeta, communicated the following information:

Because of force-majeure, the delegation of Bosnia and Herzegovina regrets to be unable to assist at the meeting of the Committee on the Application of Standards on 11 June.

Due to this, we attach the NON PAPER prepared by the delegation of the Government of Bosnia and Herzegovina.

We take this opportunity to express our renewed gratitude to the ILO, in particular, to the Regional Office in Budapest and the Office in Sarajevo. We hope that the ILO will maintain its support and valuable assistance to enable Bosnia and Herzegovina to fulfil its obligations towards this Organization.

Non paper

Suffering from the heavy consequences of the recent military conflict and going through the process of reforms in nearly every sphere, Bosnia and Herzegovina is facing at present numerous challenges.

The new Law of 15 March 2003 concerning the Ministries and other administrative bodies of Bosnia and Herzegovina designated the Ministry of Civil Affairs as the body ensuring coordination between the entities of the country (which together with the cantons of the Federation of Bosnia and Herzegovina have full authority in this area), taking the responsibility particularly for the areas of work, employment, social protection, health and pension system. With regard to the ILO, the Ministry has the following priorities:

(1) provision of reports on the ratified Conventions;

(2) provision of reports on the non-ratified Conventions;

(3) complaints and observations submitted to the ILO concerning non-observance by Bosnia and Herzegovina of ratified Conventions, including:

(a) the case of Aluminium-Mostar;

(b) the case of Ljubija;

(c) the case of the Confederation of Independent Trade Unions of Bosnia and Herzegovina;

(d) the case of the employers of the Serb Republic of Bosnia and of the Confederation of Employers of the Federation of Bosnia and Herzegovina;

(e) the case of the Associated Workers' Trade Union;

(4) payment of contribution.

To fulfil its obligations towards the ILO, the Government has taken the following measures:

The case of the Confederation of Independent Trade Unions of Bosnia and Herzegovina

In May 2005, the Government, by way of the Ministry of Civil Affairs and the Ministry of Justice, requested special assistance from the ILO with a view to resolving this issue (modification of the legislation to allow the registration of the Confederation at the state level) and expertise on the part of the ILO. Last month, an agreement between the Confederation of Independent Trade Unions of Bosnia and Herzegovina and the Trade Union of the Serb Republic of Bosnia has created the Trade Union Confederation at the national level. Progress has been made in the elaboration of the legislation concerning social dialogue and social partners at the national level.

The case of the employers of the Serb Republic of Bosnia and of the Confederation of Employers of the Federation of Bosnia and Herzegovina

With regard to the complaint made by the employers' organizations of the two entities, the Government stated that these organizations have the right to obtain state registration. Pursuant to this, an Association of the Employers of Bosnia and Herzegovina was established. The Government considers this case to be resolved. The ILO and the Committee on the Application of Standards will be informed of the latest developments in writing.

Conclusion

– The authorities of Bosnia and Herzegovina in liaison with the ILO office in Sarajevo undertake considerable efforts to prepare reports on ratified Conventions. It is a great pleasure to inform you that with the help of the ILO office in Sarajevo 13 reports have been prepared and will be sent to the ILO in the near future. Preparation of other reports is under way.
– Aware of its obligations, Bosnia and Herzegovina prepares the necessary documents and translations for the responsible state bodies. We hope that the report of the next session of the Conference would mention Bosnia and Herzegovina among States fully complying with their obligations.
– With regard to the complaints concerning violation of the Conventions by Bosnia and Herzegovina, it will request replies from the constituent entities on what has been accomplished in the cases of Aluminium and Ljubija and inform the ILO in writing.
– The case of the employers' organizations being resolved, Bosnia and Herzegovina with the help of the ILO will try to resolve the problem of registration of the Confederation of Independent Trade Unions by modifying the legislation. It will provide all the necessary assistance in order that the Confederation applies, together with the Association of the Trade Unions of the Serb Republic of Bosnia, the decision to establish the Trade Union Confederation at the national level.
– We take this opportunity to once again express our gratitude to the ILO and in particular the Regional Office for Europe in Budapest and the office in Sarajevo. We hope that the ILO will continue to provide valuable assistance enabling Bosnia and Herzegovina to fulfil its obligations to the ILO.

The Chairperson noted that the Permanent Mission of Bosnia and Herzegovina to the United Nations Office in Geneva had indicated in a letter dated 10 June 2005 that, for reasons of force majeur, the delegation of Bosnia and Herzegovina regretted that it would be unable to attend the meeting of the Conference Committee on the Application of Standards on 11 June 2005. Information was appended to the letter summarizing briefly the action taken by the Government of Bosnia and Herzegovina in order to comply with its constitutional and standards-related reporting obligations and the assistance requested from the Office.

The Worker members expressed their indignation at the attitude of the Government of Bosnia and Herzegovina in relation to both the Committee and the ILO. It should be recalled that this was the third year that this case had been examined by the ILO supervisory bodies. Three complaints had been submitted to the Committee on Freedom of Association since 2002. These complaints were from both employers' and workers' organizations, the last of which had been submitted by the Confederation of Free Trade Unions of Bosnia and Herzegovina. The first complaint had been made to the Committee on Freedom of Association in 2002, which had adopted conclusions in 2003 requesting the Committee of Experts to examine the case, taking into account its legal implications. Nevertheless, despite the observations made by the Committee of Experts in 2003, 2004 and 2005, the Government had not replied. Once again today, the Government had not appeared. However, it had provided some information, which was contained in a written document submitted to the Conference Committee but this information did not provide any new elements. The Government said that it was ready to accept ILO technical assistance, but it was difficult to see the value of such assistance when the Government showed no willingness to cooperate. This situation was unacceptable and the Government needed to be aware of this. As the Government had not shown up, there appeared to be a problem of procedure. However, taking into account

the deceitful attitude of the Government and its absence, despite its registration at the Conference, the Worker members proposed that the Committee should note that it had received written information from the Government, but that they had brought no new elements to the case. Furthermore, as this was a case of repeated failure to cooperate with the ILO supervisory system, they called for it to be included in a special paragraph of the Committee's report as a case of continued failure to comply with standards-related obligations.

The Employer members considered that there was little the Committee could do in relation to this case in view of the absence of the Government representative. In its report, the Committee would have to confine itself to expressing regret at the failure of the Government to appear before the Committee to discuss the problems relating to its application of the Convention and to note that by this absence it was undermining the ILO's supervisory system.

BURUNDI (ratification: 1993). **A Government representative** first recalled his country's attachment to the international labour Conventions which it had ratified, particularly Convention No. 87. He provided details in answer to the points raised by the Committee of Experts in its observations.

Regarding the principles laid down in Article 2 of Convention No. 87, in particular the right of workers without distinction of any kind – including public servants – to form organizations of their choice and to affiliate to them, several provisions in Act No. 1/018 of 20 October 2004, guaranteed this right. Section 37 of that Act did not forbid magistrates to form associations but simply stipulated that the exercise of the right to strike could be regulated for certain professional categories, while laying down, naturally, that union rights were not recognized for members of the armed forces and security forces. Under section 33 of Act No. 1/001 of 29 February 2000 on the reform of the statute of magistrate, magistrates had the right to freedom of association, including the right to strike as set out in relevant regulations. It was true that the Ministry of Justice had considered that the registration of the Union of Magistrates of Burundi (SYMABU) was not valid because section 14 of the Labour Code excluded magistrates from its field of application. However, a regulatory text on freedom of association of magistrates was being studied. In the same way, the validity of the registration of all public sector trade unions which had been registered with the Ministry of Labour and Social Security was currently being studied by an ad hoc committee.

Regarding the right of minors to freedom of association, it could be noted that, even if, according to the Labour Code, minors needed parental authorization for this, in practice this obligation was not taken into account.

Regarding the provisions relating to the election of trade union leaders which were contrary to Article 3 of the Convention, the Government would undertake to study a modification of section 275 of the Labour Code as requested by the Committee of Experts.

Regarding the right to strike, the provisions for application of the Labour Code relating to the modalities of exercise of this right had not yet been taken. The Committee of Experts' proposals which sought amendment of section 213 of the Code, were being studied with the social partners.

For the revision of the Labour Code, a consultant hired by the National Council for the fight against AIDS would contribute to the integration of HIV/AIDS into this instrument. A tripartite workshop to validate this integration was planned for the near future. The Government and the workers' trade unions would doubtless want other provisions of the Labour Code (including those relating to section 213) to be revised. This undertaking would require financial and technical assistance from the ILO if it were to be completed rapidly.

The Worker members observed that Burundi had ratified the Convention in 1993 and that the Committee of Experts had been making observations on this country since 1999, observations which concerned, on the one hand, the fact that the Government did not regularly send reports and, on the other hand, the fact that it did not reply to questions concerning the following points: (1) the legal and practical obstacles to the exercise of the right to organize by magistrates; (2) the right of minors under the age of 18 to organize freely and without conditions; (3) the right of organizations to elect their representatives in full freedom and to organize their activities freely. On this last point, the Worker members recalled that unfortunately interference in the internal affairs of trade unions represented a permanent temptation for many Governments. However, by virtue of the Convention, trade unions were free to determine their statutes and procedures and although doubts might eventually arise as to the legality of these statutes or procedures, it pertained to the judicial instances to decide, and never to the Government. The inconsistency between section 271 of the Labour Code and the Convention hardly disguised the real intentions of the Burundi authorities to control the trade union movement. These intentions were nevertheless showing through in the current paralysis of the National Labour Council. The Worker members therefore requested that, in its conclusions, the Committee invite the Government to urgently rectify these problems which had been revealed a long time ago, to guarantee in practice the exercise of freedom of association without obstacles and to communicate officially the measures taken in this sense.

The Employer members noted that this was the first time that the Committee discussed this case after Burundi's ratification of the Convention in 1993. With regard to the right to organize of magistrates, it was necessary to clarify whether magistrates were public employees, which was not the case in all countries. The Employer members were surprised that the Committee of Experts did not examine the issue of the right of minors to organize within the broader context of Conventions Nos. 138 and 182, also ratified by Burundi. With regard to section 275(3) of the Labour Code which excludes persons sentenced to more than six months' imprisonment with no suspension from holding trade union office, they stated that a unionist with a criminal record might in fact not be fit to hold office. Recalling the Committee of Experts' comment regarding the requirement established by the Labour Code to have worked for one year in an occupation to stand for trade union office, the Employer members recalled their position that the only legitimate criteria was that the individual was fit and qualified. Concerning the question of authorizing a strike, it was not clear whether the Committee of Experts criticized the legislation in force as it did not state whether a simple majority was considered as reasonable. Basic democratic principles would suggest that a substantial number of affected workers should have an opportunity to vote on action which in the short-term led to loss of wages and benefits.

The Government member of Cuba pointed to the information provided by the Government on the draft regulation under consideration on freedom of association for magistrates, as well as the willingness to modify certain sections of the Labour Code criticized by the Committee of Experts to bring them into conformity with the Convention. The speaker emphasized that the development of new legislation or the modification of the Labour Code should be the product of consultations, which could be difficult to successfully conclude. The request by the Government for technical assistance should be taken into account given the current revision of the Labour Code, the situation of public service workers and the development of regulations for freedom of association for magistrates.

An observer of the ICFTU indicated that the greatest difficulty for a government claiming to be democratic was to accept differences of opinion and contradiction among its partners, and to respond through negotiation, since to negotiate was to recognize a conflict of interests and to want to solve it democratically. The principle underlying Convention No. 87 was that freedom of association was indispensable to a democracy. Freedom of association meant freedom of organization, freedom to elect representative members of trade unions and freedom to affiliate. Therefore, it was inadmissible that the Minister of Labour and Social Security of the Republic of Burundi should attempt to replace the leaders and members of the Trade Union Confederation of Burundi (COSYBU) on the pretext that the mandate of its leaders had expired, to decide on how the organization should be administered, using as an argument an erroneous interpretation of Article 8, paragraph 1, of Convention No. 87. It was worth recalling that the legality in question under this Article was that which stemmed from respect of national legislation and trade union organization statutes, and by imprisoning the president and treasurer of COSYBU, it was the Government that was flouting legality. The speaker, therefore, invited the Committee to take urgent action in the face of this grave infringement of union freedoms.

The Government representative declared that his Government would certainly take into consideration all the comments made by the Committee, while adding that he made a rule of being open to dialogue. Regarding the incidents to which the ICFTU had referred, he reported that the appropriate legal bodies had been informed of the allegations concerning the imprisonment of the President and Treasurer of COSYBU. The Government was willing to strictly respect its international commitments, but it should not be forgotten that the country had just experienced ten years of war, on top of which an economic embargo that had practically amounted to a total blockade, could be added.

The Worker members stated that the discussion had shown the pertinence of the Committee of Experts' observation. The credibility of the Government was called into question, as it continued to proclaim its legality while at the same time trying to silence the trade union movement. The Worker members expected the Government to abstain in the future from any interference in the administration and activities of trade unions. The Worker members requested that the Committee, in its conclusions, asked the Government to provide a detailed report on the legislation concerned and its application in practice, in particular concerning trade union independence.

The Employer members stated that the Government should provide a comprehensive report on the outstanding issues, which would enable the Committee of Experts to make a full assessment of the situation.

The Committee took note of the statement made by the Government representative, as well as the discussion that took place thereafter. The Committee recalled that this case concerned, among others, the right to organize of magistrates and the right of employers' and workers' organizations to elect their representativ es in full freedom and to organize their administration and activities without interference from the public authorities.

The Committee noted the information provided by the Government according to which the Labour Code was undergoing a process of revision. It further noted that draft regulations on the right to organize of magistrates were being studied and an evaluation was being carried out by an ad hoc committee of the situation of all unions with respect to the labour legislation and the legisla-

tion on the public service. Finally, the Government requested the technical assistance of the Office in order to rapidly conclude the work on the revision of the Labour Code.

The Committee noted with concern the information provided about governmental interference in the internal activities of the Confederation of Burundi Trade Unions (COSYBU) and the detention of its president and treasurer in September of last year.

The Committee expressed the firm hope that the revision of the Labour Code would be completed in the near future and would include full consultation with the social partners. It urged the Government to take the necessary steps to ensure that workers' organizations could carry out their activities without interference by the public authorities. Noting the Government's request for technical assistance, the Committee hoped that, with the assistance of the Office, the Government would be in a position to supply a detailed report to the Committee of Experts on the concrete measures taken to bring its law and practice into full conformity with the Convention.

The Worker members wished to draw the Committee's attention to important information concerning some recent developments; in fact, since 2 June 2005, Pierre Claver Hayasandi had been prohibited from leaving the country, and his passport had been confiscated. Even though he had managed to reach Geneva, he did not know what awaited him on his return to Burundi. The Office should investigate this delicate case and make strict recommendations to the Government. It could also make recommendations with a view to the reinstatement of the 1 May holiday.

The Government member of Cuba requested information on the procedure followed, in so far as it was not common practice in the present Committee to accept new statements after the adoption of the conclusions.

The Chairperson indicated that there had been no change to the usual procedure, but that he had accepted the statement of the Worker members in view of its exceptional nature.

COLOMBIA (ratification: 1976). **A Government representative of Colombia** expressed acknowledgement of the valuable cooperation and support received from the ILO, and through it, from the countries which had collaborated in the cooperation programme. International cooperation needed to continue to be a fundamental tool in the relationship between the ILO and Colombia, as reflected in the good results of the Technical Cooperation Programme. His country had always analysed with respect the observations made by the Committee of Experts with a view to the progressive harmonization of the national legislation with the ILO Conventions that it had ratified.

With reference to the situation of violence in his country, he stated that it had been affecting society for a number of decades and that his Government, which shared the general concern, had set the goal of reducing violence. Unfortunately, this moment had not yet arrived and it had not been possible to overcome the problem, although he could announce a sustained trend of a decrease in violence. In 2002, nearly 29,000 homicides had been recorded; in 2004, there were 20,000, which amounted to a decrease of 30.61 per cent. In the specific case of labour union leaders, whereas in 2002, unfortunately 205 had been murdered, in 2004 the number of murdered trade unionists had been 89, representing a reduction of 56.58 per cent. If this trend for the reduction of violence continued, by the end of the present year, there would be 15,000 homicides, representing a reduction of nearly 50 per cent in relation to the year when the present Government took office.

The direct contacts mission which visited the country in 2000 had indicated that the Colombian State was not implementing in any form a policy to exterminate any group of society. It was illegal armed groups and drug traffickers who were responsible for the murders, kidnappings and threats against trade unionists, mayors, journalists, religious leaders, councellors, indigenous peoples, teachers, soldiers, judges, business people, traders and various personalities in national public life. In some cases, even though they were minimal, officials of the current State, acting on an individual basis, had committed abuses. In such cases, the Government had sought to clarify the facts and impose appropriate penalties. The violent death of even one person was enough for the Government to pursue its action to strengthen state measures to guarantee the life of its citizens including, very specially, trade union leaders and members.

The efforts made by the current Government to protect vulnerable groups were not confined to the democratic security policy, but also included the Protection Programme, under the responsibility of the Ministry of the Interior and Justice. He indicated in this respect that over 70 per cent of the nearly 40 million dollars from the national budget for the period 2002-04 had been allocated for the protection of trade union leaders.

According to the report of the National Prosecutor's Office for the period 2002-04 on cases currently under investigation for offences of homicide, in which the victim was associated with a labour union, there had been 36 preventive detentions, 21 charges, four sentences and 131 investigations, which amounted to significant progress in comparison with ten years ago.

To this needed to be added the effort made by the Government to respond, in an increasingly broad, detailed and appropriate manner, to the allegations made to the Committee on Freedom of Association, as recognized by trade union groups themselves. Between 1993 and 2003, these allegations had been related almost exclusively to the murder of trade unionists. Now, the new allegations covered other types of attitudes relating to the exercise of trade union rights, which constituted progress.

He said that it would be an enormous mistake not to acknowledge the problem, just as it would be an enormous mistake to ignore the efforts and achievements that were little by little being made by his country in this respect. He therefore considered that Colombia could be deemed to be a country of progress, even though certain problems persisted, which were in the process of being resolved. If a solution were to be found, three simultaneous elements were required, namely, time, resources and political will. And he reaffirmed the political will of the Government.

With regard to the efforts to combat impunity, he said that there were already detainees and four persons had been convicted. A new system of bringing criminal charges had recently been established in the country, with emphasis on oral procedures and which, combined with the strengthening of the National Prosecutor's Office, would ensure that investigations were more efficient and more effective.

He then referred to the process of legislative amendment, which was a time-taking process, and to the differences between the national legislation and Convention No. 87. He said that the process of legislative reform had taken time and had merited its acknowledgement by the Committee of Experts. At the beginning of the 1990s, a high number of amendments had been made to the legislation and the country had been acknowledged to be a case of notable progress, as indicated in the 1994 General Survey of the Committee of Experts. In its report in 2001, the Committee of Experts had noted with satisfaction the measures taken by Colombia, which had taken into account ten comments made by the Committee of Experts. Of those, there were now currently three, which was lower than average for the countries mentioned in the report.

He indicated in this respect that he challenged the comments relating to the prohibition upon federations and confederations calling strikes. The Government had explained that the Colombian system of freedom of association, the right to organize and collective bargaining was structured around enterprise unions, to which all the inherent attributions of freedom of association and the rights deriving from Convention No. 87 had been granted. His Government considered that this system was entirely valid, was not in violation of Convention No. 87 and permitted better levels of negotiation and social dialogue. His country did not admit that such a limitation constituted a denial of freedom of association and the right to organize.

Secondly, the Committee of Experts had made comments concerning the prohibition of strikes in services the interruption of which could endanger the life, safety or health of the whole or part of the population, and the possibility to dismiss trade union leaders who had intervened or participated in an illegal strike. He recalled that the right to strike was enshrined in the Constitution of his country, with the sole exception of essential public services. Under the Colombian legal system, the concept of public service related to those services provided by the State directly or through private entities, regularly or continuously, to cater for the needs of the population and in which the public interest was implicit.

With regard to the possibility envisaged in the law to dismiss workers who participated in collective stoppages which had been declared unlawful, he emphasized that the legislation established requirements and procedures that had to be complied with by workers and employers before calling a strike. Whenever reference was made to an unlawful strike, this did not constitute any limitation on the right to strike, but referred to situations in which the clearly established requirements had not been complied with and which could not therefore receive legal recognition, as they did not *stricto sensu* fit the concept of a strike.

He added that all the efforts referred to had to be accompanied by the generation of more jobs. In this respect, he indicated that the growth rate of the economy in recent years had been around 4 per cent, which had resulted in the creation of more jobs and a decrease in the unemployment rate over the past two years.

He emphasized the role played by the ILO in promoting social dialogue and expressed gratitude to the Office for its contribution in this field. He called upon trade union leaders and employers to join together in endeavouring to take advantage of the legal areas available to them under the Constitution and to leave aside all types of pressure, both internal and external, intended to polarize relations between them. He added that it was not desirable for a multiplicity of organizations which were not representative of workers to be ruining the reputation of Colombia.

In conclusion, he called for social dialogue to become a crucial instrument through which the ILO and the countries which had demonstrated their concern at the situation in Colombia could contribute in a positive manner to the continuation of the Technical Cooperation Programme approved by the Governing Body in March 2005. He recalled that his country needed time and resources to make progress and he hoped that, encouraged by the results achieved, the international community would provide assistance through the ILO.

The Employer members thanked the Government representative of Colombia for the information provided. They pointed out that the case of Colombia was taking place in a context of civil war and all-pervasive violence which was affecting everyone throughout society, including

the Government, employers' organizations and trade unions. The Committee of Experts had indicated on numerous occasions that employer's organizations and trade unions could only operate effectively in a climate of peace and respect for fundamental human rights. However, the problems in Colombia were of a very deep-rooted societal nature. They were placed in perspective by the fact that the financing provided by the drug cartels to the FARC and the paramilitary was even higher than the national budget. The Committee was therefore faced with a conundrum: there could not be any freedom of association in a climate of violence. However, this did not mean that freedom of association would end the violence. Even if the provisions of the labour law met the requirements of Convention No. 87, this was not going to solve the societal issues at stake. This was true for all the three issues relating to freedom of association and the right to strike which were currently being examined by the Conference Committee. Nevertheless, the Employer members emphasized that the violence in Colombia remained unacceptable and undermined the right to freedom of association. If such violence was to be ended, it was important for democratic institutions to be strengthened, and the Government was making efforts to this end.

They noted, in this context, that the issues raised by the Committee of Experts mainly related to the right to strike and that there was no need to deal with them in detail as the Employer's position in this regard was very well-known and had been clearly indicated in the context of the application of Convention No. 87 by Guatemala.

In conclusion, the Employer members believed that the Committee should draw the following conclusions on this case. Firstly, it was fundamental for freedom of association in the country that the Government did everything to end the violence. Secondly, the ILO technical cooperation programme, which had resulted in some progress, should be continued and enhanced. There was, however, a need for more information to be provided on the tangible results achieved through this Technical Cooperation Programme, which they would comment on further in their conclusion to the discussion of the case.

The Worker members indicated that in Colombia approximately 5 per cent of the active population was affiliated to a trade union and less than 1 per cent was covered by a collective agreement. This situation was the result of laws, measures and practices that were hostile to the right to organize. The percentages had been plummeting in recent years for the following reasons: firstly, the legal guarantees that permitted the exercise of freedom of association and collective bargaining were still not in conformity with Convention No. 87, as frequently emphasized by the Committee of Experts; secondly, the decisions of the three powers flouted the provisions of this Convention. Finally, in practice, a series of factors gave rise to the enormous difficulty of implementing the Convention.

They recalled that the Committee of Experts emphasized four issues in its report. These included the prohibition on the calling of strikes by federations and confederations; the prohibition of strikes in services which were not necessarily essential in the strict sense of the term, particularly as in case of the workers of ECOPETROL; the discretion of the Minister of Social Protection to refer a dispute to arbitration when a strike exceeded a period longer than one year; and the procedures for registering trade unions and the excessive use made by the authorities of their powers to evaluate subscriptions. They reminded the Government firmly of the need to put into practice its proposal made to the Conference Committee the previous year, namely to discuss this matter with the ILO to find a solution. However, another year had gone by and nothing had been done. They further recalled that the Committee had asked the Government in its conclusions of 2004 to supply information on the points to which it had not replied in its report.

The Worker members recalled in the first place the statements made by the Worker members at the Committee's previous session according to which the rights of workers, in particular trade union rights, which were guaranteed by the national legislation were not respected in the context of the merger, liquidation or restructuring of public or private services. Workers' organizations were generally informed of the restructuring on the day it took place. Workers and trade union leaders were dismissed summarily and there was no prior consultation with the unions. The new entities created after such mergers or restructuring usually hired the same persons, but without collective agreements, which were not renewed, and based on arrangements under which the implementation of the provisions of Convention No. 87 was impossible, as the recruitment of workers was carried out by temporary employment agencies or more often through *associated labour cooperatives*. And yet, it was an enshrined ILO principle, contained in Recommendation No. 193, that cooperatives should not be established or used for the purposes of undermining labour legislation, establishing disguised employment relations or violating the rights of workers through the establishment of pseudo-cooperatives. A large number of enterprises and institutions had undergone this process, including TELECOM, Bancafé and other enterprises related to the social security system, including hospitals. What made the situation even more serious was that it did not consist of a few isolated events. The combination of these practices amounted to an intent to eliminate freedom of association and the related rights. In a clearly planned manner and in response to agreements signed with the World Bank and the IMF, the same scenario was repeated time and again: trade unions were not consulted, measures were adopted on a de facto basis and the powers were used to achieve this end, based on a total denial of trade union rights.

The Worker members added that policies to promote flexible labour rights in recent years had led to a sharp increase in unemployment and employment in the informal economy. To address this situation, the CGT had sought authorization at its congress to proceed with the direct affiliation of workers, but this had been categorically denied. The Worker members emphasized the aggravation of violence, with 174 cases of murders or death threats against trade union leaders between January and April 2004, as well as searches of union premises, arbitrary detentions and kidnappings. This figure had risen to 214 over the same period in 2005, to which the deaths of at least another three trade union leaders should be added, bringing the total number of murders this year to 19. The arbitrary detention of trade unionists, which was on the rise, demonstrated that trade union activities were being criminalized while the murderers of trade unionists remained free. Although there were programmes to protect trade unionists, they needed to be combined with action to identify the perpetrators of threats against unionists. The Worker members denounced the silence of the Government on these cases and the lack of action to investigate them and punish those responsible.

The Worker members also referred to the solidarity missions that had been undertaken by ORIT and the international occupational federations which had tried to visit Colombia, without success, as entry into the country had been refused. They therefore requested explanations from the Government on this subject. Other missions had been able to visit the Colombian authorities, and meet the President, who had confirmed the willingness to enter into dialogue, but who, paradoxically, had insisted on the need for more participative trade unions which were less demanding. Yet, the very essence of trade unions was to ensure the protection of workers' rights through the organization of their activities and the formulation of their programmes of action, which were principally based on the advancement of their claims. They also expressed astonishment that the authorities should give voice to criteria concerning the type of trade union movement that they wished to see, which constituted interference in matters that were normally the sole responsibility of trade unions.

In conclusion, the Worker members emphasized the gravity and continued deterioration in the situation with regard to freedom of association and the right to organize in Colombia. The problems raised by the Committee of Experts in relation to the incompatibility of national law and practice with the provisions of the Convention and the persistence of a climate of violence were aggravated by specific events which demonstrated that the authorities did not support social dialogue and did not really wish to have trade unions, or only trade unions which were essentially participative. Such a situation was the antithesis of decent work and a denial of international law. It could only give rise to higher levels of under employment, unemployment, social exclusion, poverty and violence. And it had to be recognized that violence, in all its forms, and without wishing to justify it in any way, was deeply rooted in the absence of social justice. Freedom of association was a pillar of decent work and social justice. Laws and practices which ran counter to it would only sow the seeds of injustice and strengthen the vicious circle of violence.

A Worker member of Colombia said that trade unionists in his country were concerned by the actions of the Government and the employers to diminish the influence of ILO standards and its supervisory bodies. With regard to violations of trade union rights in his country, he said that the three trade union federations had provided information to the ILO Governing Body and the Committee on Freedom of Association. Although the Constitution of Colombia provided that duly ratified international labour Conventions formed part of internal law, the destruction of Colombian trade unionism was continuing. He referred to various events which violated trade union rights: (1) the dismissal of 3,400 workers from Banco Cafetero with a view to putting an end to the trade union and collective bargaining; (2) the declaration of the strike by workers at ECOPETROL as being unlawful and the subsequent dismissal of 247 workers; and (3) the dismissal of workers from state institutions (such as TELECOM, the Social Insurance Institute, hospitals, etc.) in which trade unions were in operation and collective labour agreements had been negotiated, only for them to be hired on temporary contracts for the provision of services, administrative or civil law contracts, or through cooperatives or other arrangements.

With regard to the violation of human rights, he added that trade union leaders and activists in the CUT continued to suffer various types of aggression. In 2004, 17 leaders and 71 trade union members had been assassinated, while in 2005, two leaders and 17 members had been murdered. This showed the continued policy to exterminate trade union members of CUT. The sector which had been most affected by acts of violence was education and, to a lesser extent, health workers. Nevertheless, death threats were on the increase for all trade unionists, as could be seen in the municipal enterprises of Cali. Finally, he indicated that the situation in Colombia continued to be very serious and called for the State to be urged to punish acts that violated freedom of association and the right to organize and for the necessary measures to be taken to prevent anti-union activities. He called upon the Government to give effect to the recommendations made by the ILO supervisory bodies, particularly those of the Committee on Freedom of Association. He urged the Government to strengthen the programme of protection for trade union leaders and requested the ILO to maintain and improve the Technical Cooperation Programme with Colombia. He also

urged the ILO to organize a tripartite mission to Colombia as soon as possible. Finally, he called for the case of Colombia to be included in a special paragraph of the Committee's report.

Another Worker member of Colombia said that for years both the Committee of Experts and the Conference Committee had been urging the Government to take measures to bring the labour legislation and practice into full conformity with the Conventions on freedom of association. The discrepancies concerned the following provisions: the prohibition of the right to strike for federations and confederations (section 417 (i) of the Labour Code); the prohibition on strikes in non-essential service sectors (section 450 of the Labour Code); the power of the Minister of Social Protection to submit a dispute to arbitration in the event a strike lasting longer than a certain period (section 448, paragraph 4, of the Labour Code); the dismissal of trade union leaders for participating in strikes (section 450 of the Labour Code); declaring a strike illegal by the administrative rather than by the judicial or independent authorities; the denial of the right to collective bargaining for public servants and at the branch level; and the difficulties in the process of trade union registration.

He considered that the above facts were evidence of the persistence of violations of the right to freedom of association despite the Government of Colombia's repeated commitments to take measures to ensure that workers enjoyed the right to freedom of association and collective bargaining. The political and legal arguments to justify restrictions on freedom of association put forward by the Government and employers were evidence of a strategy to eliminate trade unionism in Colombia, the motto of which appeared to be "labour relations without trade unions or collective bargaining".

He stated that it was obvious that the creation of trade unions was being restricted. During the 1990s, an average of 88 trade unions had been established every year, compared with 104 in 2000 and 2001, 11 in 2003 and 6 in 2004. Some 40,000 trade union affiliates had been lost in the public and private sectors during the two-and-a-half year period of President Uribe's Government. Out of a total working population of 18 million people, fewer than 80,000 workers a year were covered by collective agreements. Employers used bribes to sign agreements with non-unionized workers and the Government simulated the liquidation of enterprises with a view to eliminating unions, collective bargaining and the immunity of union leaders. There were other acts that violated freedom of association, such as the case of the Agrarian Fund, TELECOM, Bancafé and Adpostal. The direct withdrawal by the administrative authorities of the legal authorization for trade unions to operate at the request of employers was an anti-union practice by the Government and the employers which supported it.

The prohibition of the right to strike was another violation in Colombia as in the case of the strike by the USO trade union in ECOPETROL, the purpose of which was to defend the national heritage and national sovereignty, but which was declared illegal by the Government, leading to the dismissal of 248 workers, including 26 trade union leaders, and the failure to comply with the court ruling previously agreed to by the parties. He therefore called for the case to be included in a special paragraph of the Committee's report.

Another Worker member of Colombia expressed his disappointment at the contrast between the expressions of good will provided by the Government representative and the situation in practice, particularly since the possibility of the way ever being open for trade union activities in his country was increasingly distant. Speaking of freedom of association in Colombia was like speaking of something exotic, because this fundamental right that was inherent to democracy was denied. He said that the ritual of the Conference Committee, which had now been repeated for over 20 years in this case, had not resulted in a way being found to resolve a conflict affecting an economically active population of 22 million people, of whom 4 million were without employment, 10 million were in the informal economy and the great majority had no stable work.

Trade unionism in his country was brutally affected on two sides: firstly, the practice of grave violations of Conventions Nos. 87, 98, 151 and 154, inter alia, affected the stability of trade unionism through murders, forced exiles, threats and intimidation. He referred to the incident in Arauca where three trade union leaders had been assassinated. He drew the Committee's attention to the fact that, for the neo-liberals and advocates of capitalist globalization, the best trade union was one which did not exist.

Moreover, the imposition of labour cooperatives, as practised in the private and public sectors, temporary contracts, subcontracting, the hiring of parallel staff on civil contracts and the constant challenges to an appropriate relationship between capital and labour all provided grounds demonstrating the urgency of reactivating the Ministry of Labour, which had now been merged with the Ministry of Health under the title of Ministry of Social Protection, and which had been converted into a new menace for trade unionism. It could not be understood that in his country there was no longer a Ministry of Labour to guarantee proper relations between capital and labour. For example, situations had occurred in which the Minister of Communication herself had convened workers in hotels to place them under pressure so that they would accept voluntary retirement plans, thereby denying collective bargaining.

He affirmed that his country needed a Ministry of Labour that was serious, dynamic, respectful of national and international standards, with the strengthening of labour inspection to prevent unlawful measures against workers.

He expressed deep concern with regard to freedom of association and the workers employed by TELECOM, whose enterprise had not only been militarized, but who had been dismissed and their trade union abolished, and whose entitlement to retirement pensions had even been denied by the instructions of the Ministry of the Interior. Around 2,000 workers were at risk of losing the benefits of over 25 years' service for the State. The new TELECOM refused to comply with the orders issued by judges in his country who favoured the workers, especially mothers who were heads of families and the disabled. He called for the Labour Code, the Constitution and ILO Conventions and Recommendations to be complied with. Finally, he said that the workers and trade unions in his country were calling for assistance so that they could merely continue to exist.

The Government member of Luxembourg, speaking on behalf of the European Union (EU) and for the Government members of Bosnia and Herzegovina, Bulgaria, Croatia, The former Yugoslav Republic of Macedonia, Norway, Romania, Serbia and Montenegro, Switzerland, Turkey and Ukraine , supported Colombia's efforts to bring about justice, social advancement and national reconciliation and to fight against impunity and human rights violations. In this context, she welcomed the recent ratification by Colombia of the Worst Forms of Child Labour Convention, 1999 (No. 182). However, she pointed out that the situation of trade union rights in Colombia had been the subject of comments by the Committee of Experts for many years and had been before the Conference Committee a number of times. It had also been the subject of numerous complaints examined by the Committee on Freedom of Association. She indicated that while the EU recognized the Government's efforts to increase protective measures aimed at ensuring the security of trade union leaders and trade union premises, it nevertheless expressed grave concern at the continuous high levels of violence and the climate of impunity, in which such acts of violence continued to occur. As the United Nations Commission of Human Rights had recently noted, trade unionists continued to be among the most targeted groups. She stated that the EU strongly condemned the murders and kidnappings of trade unionists and other vulnerable groups, mainly perpetrated in 2004 by illegal armed groups. The EU expected the Government to secure the right to life and security and to address the issue of impunity, which continued to be a major obstacle to the exercise of trade union rights in Colombia. She called upon the Government to make full use of the advisory services and technical assistance of the ILO in order to strengthen democracy and enhance the rule of law in the country, in accordance with the intention expressed at the highest level of the Colombian State during previous meetings of the Government Body.

Finally, the speaker stated that the EU regretted that the lack of progress with regard to certain legislation impeded the full exercise and development of trade union activities. The EU remained concerned, among other matters, at the prohibition of strike action in a wide range of sectors which were not essential services, but which were nevertheless defined as such under Colombian law. The speaker emphasized the importance of social dialogue and called on the Government of Colombia to take resolute action to bring its national law and practice into line with the requirements of the Convention.

The Worker member of France referred to a meeting held on 16 September 2004 between the President of Colombia, Mr. Uribe, and a trade union delegation headed by the General Secretaries of the ICFTU and the WCL, Mr. Guy Ryder and Mr. Willis Thys, in which she had participated representing her trade union organization *Force ouvrière*. During this meeting, President Uribe had indicated that, in his opinion, Colombian trade unionism was too assertive and not sufficiently participative, or in other words trade unions did not have an entrepreneurial attitude. According to the President, Colombian trade unionism had to change because trade unions were using archaic methods which were bound to disappear in the modern world. In this regard, she indicated that President Uribe's attitude was a matter of grave concern. Indeed, the principle of non-interference by the public authorities in freedom of association was the basis of Convention No. 87. However, it seemed that Mr. Uribe, in contrast, considered that it was normal for a President to define the nature of trade unionism in his country. This attitude did not seem to him to be a violation of Convention No. 87.

By way of illustration, she cited the following passages of a letter sent by the President of Colombia to the President of the enterprise ECOPETROL: "By the present letter, I would like to express warm thanks and congratulations to you as President of ECOPETROL and to all the directors and workers of the enterprise for having completed the process of negotiation with USO … This process, with the full support of the law and constitutional guarantees, is an example for the whole country. In Colombia we need to create a culture of participative rather than assertive trade unionism. "

The fact that the Convention No 87 was violated by the President himself explained the present situation in Colombia, particularly with regard to the adoption of legislative provisions and legal procedures. These were systematically intended to bring an end to a certain type of trade unionism, namely "assertive" trade unionism. This was the case with the policy to promote a particular type of cooperative, which not only denied power to workers in the enterprise, but were also accompanied by the prohibition of the right to organize. It was also the case with

the policy to promote "union contracts", which were intended to transform trade unions into temporary work agencies and to bring an end rapidly to their role of representing workers. It was also the case of all the economic reforms which had seriously weakened or put an end to the right of collective bargaining, such as the pensions reform. Unfortunately, this policy had already borne fruit. Between 2001 and 2004, the number of trade unions created annually had dropped from 140 to six. The numbers spoke for themselves. This policy of the denigration of free trade unions was accompanied by precise vocabulary used in the public speeches by President Uribe. Indeed, he systematically tried to associate free trade unions, or "assertive" unions, with rebellion and guerrilla warfare.

With regard to the assassination on 4 August 2004 of three trade unionists by the armed forces in the region of Arauca, President Uribe had indicated during the meeting on 16 September 2004 that the victims had been members of the guerrilla forces. It even appeared that the Public Prosecutor's Office had recognized that they were trade unionists. The will of the President to bring an end to free trade unionism explained the general climate of violence towards trade unions. Furthermore, this policy was supported by the employers. In this regard, the speaker indicated that during the meeting on 16 September 2004 with the Vice-President of the National Association of Industries (ANDI), Mr. Echavarria, he had expressed the same point of view as President Uribe, indicating that Colombian trade unions were too "assertive" and not sufficiently "participative". This showed that in Colombia the political and economic powers only accepted social dialogue on condition that the social partners were obedient and discreet. They were not prepared to breathe life into the basic principles of democracy.

The intimidation of Colombian trade unionists was so serious that it even went beyond the borders of Colombia. Trade unionists who had also participated in the meeting of 16 September 2004 had been identified by the Government and were now being prevented from carrying out their international trade union activities freely. On 3 November 2004, the trade unionists Victor Baez, Secretary-General of ORIT-ICFTU, Rodolfo Benitez, Secretary-General of UNI America, Antonio Rodriguez, Secretary-General of ITF America, and Cameron Duncan, Secretary-General of ISP America, had been turned back at Bogotá airport. It could therefore be concluded that their names were on a blacklist. This situation was of grave concern. The speaker added that she had not returned to Colombia since September 2004 and feared to do so. As she had participated in the meeting with President Uribe, she supposed that her name was also on a blacklist. The intimidation had nothing to do with the war that was being waged in Colombia. The mere fact of being a free trade unionist supporting free trade unionism in Colombia raised fears for her safety.

Everyone was entitled to their personal opinion on what trade unions should be in their country. Some might even desire in their innermost selves that trade unions were less assertive. However, it was recognized that interference by the public authorities in trade union activities was a violation of Convention No. 87. The definition of what trade unions should be was a task that was the responsibility of the workers and the workers alone. Any vision to the contrary could lead, as in the case of Colombia and elsewhere, to the worst abuses and atrocities. In conclusion, she called on the Committee to convey this message with as much clarity and firmness as possible to the Government of Colombia.

The Government member of the United States said that, in its observation, the Committee of Experts had noted with grave concern the persistent climate of violence in Colombia and the situation of impunity that contributed to it, which prevented the free and effective exercise of trade union rights guaranteed in Convention No. 87. Her Government shared this concern and she pointed out that, although the number of murders had declined, the level of violence and threats of violence was still too high, while the number of convictions of the perpetrators of these acts was unacceptably low.

She added that freedom of association was critical if Colombia were to move successfully towards peace, social justice, reconciliation and democracy. While acknowledging the steps that the Government had taken, she emphasized that the Committee of Experts and the Committee on Freedom of Association had often recalled that workers' and employers' organizations could only exercise their activities effectively in a climate free of violence and the threat of violence. She, therefore, urged the Government to continue to take full advantage of the ILO's Technical Cooperation Programme for Colombia to reinforce protection measures for trade unionists. She called upon the Government to make greater efforts to investigate and prosecute those responsible for the violence that had claimed so many lives. Finally, she encouraged the Government to move forward with the labour law reforms recommended by the Committee of Experts so as to bring the country's laws fully in line with the provisions of the Convention.

The Worker member of Chile referred to various violations of Convention No. 87. The strike that had been called in April 2004 by the trade union USO had been declared illegal by the Minister of Social Protection under the pretext that the oil industry was an essential public service. Declaring the strike illegal had led to the dismissal of 247 union members, under section 450 of the Labour Code. In the case of 106 of these workers, whose reintegration had been ordered by a voluntary arbitration tribunal, a new trial had been initiated. Furthermore, over 1,000 disciplinary procedures had been set in motion to punish workers for exercising their right to strike. He also referred to the administrative decision which had led to the closure of Bancafé and the hospitals and clinics of state social enterprises. He emphasized that such arbitrary action without consultation had led to the destruction of two large union organizations and the violation of labour rights and collective agreements.

He said that union persecution was demonstrated by the discovery in August 2004 of "Operation Dragon", when a lieutenant colonel of the Colombian army, military registry No. 7217167, was arrested and found in possession of documents on the activities of SINTRAEMCALI and information on operation dragon plans for the extra-judicial assassination of the president of the union, Luis Hernandez Monroy, its legal adviser Berenice Celeyta and the leader Alexander Lopez, among others. It was also planned to infiltrate the union and create another enterprise-controlled union.

He added that 270 rural workers belonging to the rural workers' federation FENSUAGRO had been imprisoned and concluded by saying that violations of freedom of association in Colombia had increased in gravity and by asserting the right of workers in full freedom to establish organizations, elect their representatives, determine their programmes and save their own lives.

The Government member of Canada thanked the Government representative of Colombia for the additional information provided. However, he said that, despite the Government's efforts to improve security, and despite its acknowledgement in the London and Cartagena Declarations of the need to protect and guarantee the right to life and freedom of expression, the situation remained very serious. Trade unionists continued to disappear and continued to be threatened and assassinated. They were also facing other forms of violence, including, harassment, abductions and forced exile, as well as illegal searches and arbitrary detentions. Unfortunately, the perpetrators of these crimes were rarely brought to justice and his Government would look out for any positive results of the measures recently taken by the Government to end impunity. He urged the Government to take additional and concrete steps to end impunity in the country, to ensure that adequate resources were provided for the protection of trade unionists, and to work with the ILO through its Technical Cooperation Programme to pursue constructive social dialogue as a means of achieving social stability, respect for freedom of association and collective bargaining rights.

The Worker member of Venezuela said that the Committee had been examining the case of Colombia for many years and that each year the situation grew worse for the workers of the country. This year once again it was necessary to take note of very serious violations. For example, ECOPETROL had dismissed 247 trade unionists because they had opposed the policy of privatization and greater flexibility in the enterprise. TELECOM had been closed and mass dismissals had been undertaken in the Banco Cafetero. The postal administration and audiovisual companies had also been closed. These measures had been taken with the clear intention of making employment more flexible and less regular, through the imposition of so-called workers' cooperatives with the view to abolishing collective agreements and destroying trade unions. She also referred to acts of violence against trade union leaders and members. Between 1 January 2005 and the month of April, 16 unionized workers had been murdered, 123 had suffered death threats, 12 had been the victims of attempts upon their life, four had been kidnapped, 40 had been held under arbitrary detention and six had been forcibly displaced. The violence was reducing the level of unionization, as the workers were afraid to establish or join trade unions. She also referred to a plan to eliminate the trade union leaders of SINTRAEMCALI for having opposed the policy of greater flexibility and deregulation that was being imposed upon enterprises in the sector. Finally, she said that the Government needed to be called upon to guarantee the rights of organization, collective bargaining and strike and to put an end to the climate of violence against trade union leaders and members, and to the impunity enjoyed by those responsible for such violence. The Government should also be urged to take the necessary measures to reform the legislation and bring it into conformity with the Conventions on freedom of association and collective bargaining.

The Employer member of Colombia said that he had requested the floor because of a remark by the Worker member of France since she had given a false account of a meeting of the group of trade unionists which had visited the country in September 2004. He therefore wished the Committee to hear directly from the actors involved. He said that Colombia was experiencing a very difficult situation, a long-standing situation of generalized violence and that Colombian enterprises wished to build an inclusive society in a constructive and positive manner. The entrepreneurial sector was contributing to this and was even providing additional resources. For example, 3.34 per cent of the income from sales were allocated to activities of a social nature. Employers promoted family compensation funds. Economic, social and political indicators, as well as action to combat drug trafficking, showed that progress was possible at the institutional level. This was where the private sector wanted resources to be managed in an effective and transparent manner. The recent policies to restructure public entities had been supported by the employers. He stated that he was a member of the Board of the Colombian Social Security Institute, which was of tripartite composition. He indicated that the Institute was losing 250 million dollars a year and that it was clear that dialogue was needed within the Board to find

a solution. The position of the union had been intransigent and it had refused any change. It had to be taken into consideration that in a public entity, not only the workers were to be taken into account, but also the millions of insured persons. In relation to the reference to pensions, he said that there were no funds and that currently an estimated 12.5 per cent of the budget went on pensions. In other words, the pay-as-you-go system had collapsed. He asserted that, as a result, there was no policy specifically targeting the workers of the Pensions Institute, but a need to restructure the State. He indicated that 50 state enterprises had been undergoing renovation in various ways, which reflected the restructuring of the public sector in which employers and workers had been invited to participate. However, he said that the workers had never attended the meetings. The Dialogue Commission, which should operate every month and offered a space for dialogue, was not being used as the attitude of the unions was confrontational and not constructive. He said that both he and the National Association of Industries (ANDI) wished to build, through social dialogue and technical cooperation, a society with a better distribution of wealth. Statements by ANDI on the labour chapter of the free trade agreement had appeared in a Colombian newspaper. ANDI had indicated that, with or without the free trade agreement, it was necessary to move forward to change the cooperative system, the legal definition of the concept of essential public services and to modify the collective labour system in areas in which rights were being used in an abusive manner.

The Government member of Peru emphasized the efforts made by the Government of Colombia to reduce the violence and congratulated the Government members who had acknowledged this, in particular the Government representative who spoke on behalf of the European Union. He stated that his country had also gone through a process of internal violence which had been the result of terrorist movements, and he was aware that these actions affected various social sectors, including the trade union movement. He indicated that it was necessary to avoid excesses in the fight against violence. He requested this forum to acknowledge the efforts made by the Government and the people of Colombia and to ask the international community to continue to support this process, which was of particular value for the security of the countries in the region. He hoped that the Government, employers and workers could, through social dialogue and with the technical support of the ILO, create a space for tripartite dialogue similar to that existing in his country. In conclusion, he emphasized that in a climate of violence there could be no real democracy, and without democracy there could not be real respect for workers' rights.

The Worker member of the United Kingdom called for an end to the politicization which was weakening the authority of the Conference Committee. He reaffirmed that the comprehensive campaign to destroy the trade union movement in Colombia was extremely grave, with 94 more murders of trade unionists in 2004, which was more than in the rest of the world combined. Since 2002, there had been a 65 per cent increase in the total number of violations of the human rights of trade unionists, in the form of murders, disappearances, death threats, arbitrary detention and forcible displacement, and an 800 per cent increase in violations against women trade unionists. Yet, some members of the Conference Committee were still claiming that the situation was improving. He added that trade unionists were even harassed when they travelled outside Colombia and that the current regime was refusing to implement the United Nations recommendation demanding an end to the holding of military intelligence files on trade unionists.

He said that it was incredible that a government could arbitrarily detain dozens of trade unionists each year, yet remain unable to break the impunity with which state forces and their paramilitary allies murdered trade unionists. Moreover, detained trade unionists were commonly accused of rebellion and, even though they were eventually released for lack of evidence, the accusation alone served to place them on the death list of the paramilitaries. It had been said by the Employers' group of the Governing Body, in the case of the failure of Myanmar to comply with its obligations under Convention No. 29, that the prevailing impunity was an indication of its tolerance of the gross violation of forced labour, and that any State which lacked the means to punish such crimes was in violation of the principles defended by the ILO. It was absolutely clear that the very same principles should apply to cases of murder in Colombia. He said that delegations from the trade union movement in his country visited Colombia regularly and had been provided by the Vice-President with a list of 13 cases in which it was claimed that the perpetrators had been sentenced and imprisoned. Yet, even in these 13 cases, out of the total of 791 murders of trade unionists between 1999 and 2004, in at least three cases the information provided had been inaccurate or economical with the truth. Indeed, the Government representative had now referred to only four convictions. Focusing on three specific cases, he outlined the inconsistencies in the information provided by the Government and undertook to provide the Office with the related documentation. He said that he could only conclude that, in attempting to suggest that the issue of impunity was being dealt with, the Government was not providing accurate information. He further cited a putative tripartite agreement referred to by the Government of Colombia in a recent discussion in the Governing Body as proof of the progress reached in terms of social dialogue, which had, in fact, been repudiated by the trade unions. He had also received information that the Government had revested to the National Treasury $83,000 unspent from the ILO fund – which the Governing Body had not been told. He expressed concern that the Conference Committee was being prevented from reaching appropriate decisions regarding the case of Colombia, not only by the political and economic interests involved, but also by the lack of verifiable and accurate information. Yet, the ILO's supervisory bodies had the right to expect member States to provide truthful information, which was the underlying reason why a tripartite high-level mission to Colombia was required.

He urged the Committee to adopt conclusions which reflected the continuing deterioration in the situation and that the continued violations of Conventions Nos. 87 and 98 were indeed destroying the Colombian trade union movement. If the Committee failed to do so, it would be encouraging further repression, rather than fulfilling its essential role of defending the fundamental right of all workers whatsoever to join and establish organizations of their own choosing for the defence of their interests, including through free collective bargaining.

The Government member of Brazil indicated that his Government was following with great attention developments in Colombia with respect to freedom of association and had taken due note of the statement made by the Government representative. His Government considered that the Conference Committee should support the measures that had been taken with a view to encouraging and strengthening social dialogue in Colombia. It should also take into account the results achieved by the Technical Cooperation Programme concluded between the Government of Colombia and the ILO. He hoped that the Government of Colombia would follow up the measures that had been proposed to improve labour relations in the country.

The Government member of Mexico thanked the Government representative of Colombia for the information provided, which demonstrated the Government's constructive attitude and its cooperation to guarantee the trade union rights provided for in Convention No. 87. The results described might not be up to the expectations of the Committee, but it should be recognized that they indicated that progress was gradually being made. The situation made it difficult to punish the perpetrators of violent acts against trade unionists and violence was affecting all sectors of society. She encouraged the Government, employers and workers of Colombia to strengthen their dialogue and cooperation so as to continue implementing the special Technical Cooperation Programme for the country.

The Government member of China said that the information provided by the Government representative showed that Colombia was indeed making efforts to protect trade union rights. Action was therefore being taken and progress was being made. However, although a gradual improvement was being achieved in the effort to solve the problem, all sides agreed that there was still a long way to go. She noted that the ILO and the Government were engaged in cooperation and hoped that it would be effective in achieving a solution to the problem. She called upon all sides to adopt a practical attitude to enhancing the implementation of the Convention in Colombia and to achieve a settlement of the important issues at stake.

A Government representative said that his comments in reply to the previous speakers could be divided into three parts: (1) there was agreement on important points; (2) there were differences of information; and (3) there were differences of opinion. With regard to the areas of agreement, he felt that employers, workers, most governments and the Government of Colombia all agreed that the ILO programme of technical cooperation had been functioning and that it should continue to do so. He asserted that they should agree to implement the Governing Body's decision of March 2005 and to seek the necessary resources. He pointed out that there had been agreement in so far as governments, as well as employers and workers, had all made reference to violence, and had indicated that the violence was the result of subversive groups and the drug trafficking that had placed the country in this situation. They had also all agreed that even one death was unacceptable. They agreed on the fact that this unacceptable violence, which was inexplicable due to its complexity, made union activities difficult. He added that it was also a difficult situation for employers who ran the risk of being kidnapped and assassinated. There was a situation of generalized violence and the labour situation had to be understood in this context. They had also agreed on the need to combat impunity.

With regard to the second point, differences of information, he recalled the assertion that Bancafé was a solid enterprise. This, however, was wrong, as the Government had already provided it with 612 million dollars, of which 55 million were intended for pensions. Moreover, they were not in agreement on statistics. The workers had said that unemployment had increased, while the Government had indicated that unemployment in 2001 was 20 per cent and had fallen to 12 per cent last month. Government figures showed a clear fall in unemployment. He also referred to other indicators and said that he was offering the data supplied by the Government to the workers so they could examine them, noting that the data had been compiled by independent entities. Nor was there agreement that, as claimed by the workers, the number of collective agreements was falling, as 491 collective agreements had been concluded in 2000, 433 in 2001 and over 400 in 2004. In other words, the average number of collective agreements concluded had not changed. There had not been agreement on the statement that the health care system was not functioning, as last year had witnessed the greatest increase in health coverage for the underprivileged sector of the population. He regretted to hear statements claiming that justice was rarely impartial. He pointed out that many judges were union members and he could not

accept the assertion that they were being manipulated. With regard to TELECOM, he said that the Government had no means to support it and that TELECOM did not have sufficient capital. He recalled that many European countries had been obliged to privatize public enterprises and that the President of Colombia had not taken a decision to liquidate TELECOM, but had decided to maintain the enterprise under efficient management. Reference had been made to the dismissal of workers, but nothing had been said about the 70 million dollars provided in compensation and other benefits. It had been said that credit was not available for farmers, but the amount of funds available for microcredit had increased to 2.1 billion dollars. The Government was said to have prohibited the access of trade union members, but Mr. Carlos Rodriguez, who was in the room, did not mention that he had called from the airport because of the difficulties encountered and that after a few hours his group had been able to go through, had been received by the Government and that their visas had even been extended to 30 days. One group of workers had decided to return to their respective countries, but that was a voluntary decision. As for the death of trade union members, he indicated that the workers had not mentioned that the Arauca investigation had been transferred from a military to a civilian court.

Finally, the speaker said that he could not accept the fact that a tripartite forum used adjectives with reference to interventions and that Mr. Uribe had been called a fascist and a liar, or the State an assassin. This was not acceptable behaviour in the ILO for employers or for workers. The discussion should be of a predominantly technical nature and he was concerned about such statements, which were loaded with hate and political interest. He refused to respond to such accusations, except to deny them.

On behalf of his Government, he called upon employers and workers to understand that the situation of the Colombian people was difficult, but that progress was being made. There had been some encouraging results, which showed not that the problems had been resolved, but that efforts were continuously being made. He indicated that, earlier in the day, he had held a meeting with the Chairperson of the Committee on Freedom of Association and that he had invited him to come to Colombia and meet with the various sectors of Colombian society and all the actors involved in the issue of impunity. He emphasized that both problems and achievements should be recognized. It was necessary to be careful, because there was a risk that, in seeking to punish Colombia, decisions might be taken which could then be used for political purposes, which would not benefit the people of Colombia. He called for the Technical Cooperation Programme to be continued so as to strengthen social dialogue and help reduce violence.

Another Government representative (Vice-Minister of Social Protection) stated the importance of collaboration and cooperation between all instances of the Organization and the Government of Colombia. The Government had invited the Chairperson of the Committee on Freedom of Association to visit the country and meet with the Executive Branch, judges, supervisory bodies, workers' and employers' organizations and to get in touch with public opinion. His Government would provide all the necessary information to explain and find a solution to the problems. Collaboration was necessary in order to ensure greater transparency.

The speaker stated that his Government was ready to extend the invitation to the spokespersons for the Worker and Employer members of this Committee, if their visit would contribute to the better understanding of the situation and to finding solutions.

The Worker members took note of the Government's proposals for a visit to take place in Colombia to take full cognizance of the actual situation in the country. They agreed that the problems of the country went well beyond those mentioned by the Committee of Experts in its observation, as witnessed by the obstacles encountered by workers' organizations when they sought to have the most fundamental rights of their members respected.

The Worker members suggested that the Conference Committee decide in favour of a high-level tripartite mission to Colombia, which would include among its members the two Vice-Chairpersons of the Conference Committee and whose mandate would be the application of the Convention and technical cooperation.

The Employer members observed that the problem of violence was central to this difficult case and putting an end to it was essential for the resolution of the case. They noted that the Government was facing difficulties in addressing this problem comprehensively.

The Employer members took note of the proposal made by the Government representative to invite the Chairperson of the Committee on Freedom of Association and the Vice-Chairpersons of the Conference Committee to visit the country. They saw this as a positive step that should be commended. They wanted to draw attention, however, to the need to recognize that the mandate and purpose of the Committee on Freedom of Association was different from that of the Conference Committee. The mandate of the Conference Committee was limited to the implementation of the Convention in law and in practice. The Committee on Freedom of Association had a broader mandate which was not limited to the terms of the Convention.

The Employer members concluded by noting that the visit would include contacts with the social partners and monitoring bodies, and would place emphasis on the implementation of the Convention in law and in practice with particular focus on the ILO special Technical Cooperation Programme for Colombia.

The Committee took note of the oral information provided by the Minister of Social Protection and the discussion that followed. The Committee observed with great concern that the pending problems 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 enjoyed by the perpetrators. The Committee observed that the acts of violence also affected other sectors and groups including the employers, in particular through abductions. The Committee noted that the Committee on Freedom of Association had examined serious complaints concerning murders and acts of violence against trade unionists. The Committee condemned once again in the strongest terms all these acts of violence in the context of the dramatic situation of violence experienced by the country and indicated to the Government that it had the obligation to take all necessary measures urgently in order to put an end to violence and guarantee the security of persons.

The Committee took note of the Government's statements according to which the number of murders of trade unionists and acts of violence had decreased and the authorities had adopted measures for the protection of trade unionists and trade union premises. The Committee also noted the information contained in the report of the Attorney-General on indictments, detentions and sentences in relation to murders as well as on the new system of incrimination to increase the effectiveness of the investigations in the framework of the fight against impunity.

The Committee recalled that the organizations of workers and employers could exercise their activities in a free and meaningful manner only in a climate that was free from violence and once again urged the Government to guarantee the right to life and security, and to reinforce urgently the necessary institutions to put an end to the inadmissible situation of impunity which constituted a great obstacle to the exercise of the rights guaranteed by the Convention. The Committee requested the reinforcement of the protection measures for trade unionists and of the ILO Technical Cooperation Programme. The Committee observed more generally that the climate which reigned in the country endangered the exercise of trade union activities and other human rights and that this situation was unacceptable. The Committee noted that the Government had invited the Chairperson of the Committee on Freedom of Association to meet with the social actors and the competent authorities in Colombia.

With regard to the requested legal reforms, the Committee took note of the Government's statements on the legal questions raised by the Committee of Experts. The Committee took note of the Government's statements according to which time was needed to move ahead in the process of adjusting the labour legislation and the tripartite labour negotiation.

The Committee took note of the information and allegations of the Worker members in relation to: the failure to respect trade union rights in the context of a large number of restructurings, privatizations, or mergers, particularly in the pubic sector among others; mass dismissals; other anti-union dismissals; the recourse to cooperatives which constituted hidden employment relationships and deprived workers of freedom of association and collective bargaining; the increasing recourse to collective accords with non-unionized workers and the slowness, complexity, malfunctioning, and partiality of judicial processes. The Committee requested the Government to communicate information to the Committee of Experts on all the above points.

The Committee requested the Government to send a detailed report to the Committee of Experts, so that it could examine the developments at its next meeting, including the reply to the comments presented by trade union organizations with regard to the acts of violence, to obstacles to the registration of trade unions and to the provisions mentioned by the Committee of Experts. The Committee requested the Government to report on the number of cases of murders which had come to an end before the judicial instances and in which it had been possible to identify those responsible and punish those guilty so that the serious situation of impunity could be contained.

The Committee expressed the firm hope that in the very near future real progress would be observed in particular in order to overcome all obstacles to the full exercise of freedom of association with a view to allowing trade union organizations to exercise the rights guaranteed by the Convention in a climate of full security, free from threats and fear. The Committee underlined the importance of having these objectives met through social dialogue and agreement and recalled that the technical assistance of the Office was at the Government's disposal. The Committee requested the Government and the social actors to reactivate social dialogue without delay. The Committee urged the Government to take measures in this respect urgently.

The Committee, noting that the Government had extended its invitation to the Chairperson of the Committee on Freedom of Association and the Employer and Worker Vice-Chairpersons of the Committee on the Application of Standards, decided that a high-level tripartite visit should take place led by the Chairperson of the Committee on Freedom of Association accompanied by the

spokespersons of the Employer and Worker groups of the Committee. The visit that should take place would include meetings with the Government, the organizations of workers and employers, the competent organs of Colombia in the area of investigation and supervision, and would place particular emphasis on all questions relative to the application of Convention No. 87 in law and in practice and to the ILO special Technical Cooperation programme for Colombia.

GUATEMALA (ratification: 1952). **A Government representative** (Minister of Labour and Social Security) declared his firm conviction that the mechanisms of control on the application of international standards that the ILO had put in place created an important mechanism for cooperation for the country. The observations of the Committee of Experts were objective, sincere and useful in order to strengthen the institutional regime, the governance and the democracy of Guatemala. The correct utilization of the observations of the Committee of Experts permitted the Government and the social partners to position themselves so that they do not lose sight of the true sense of international labour legislation.

The speaker recalled that Guatemala has faced significant obstacles in its history of confrontation and ideological intolerance. The advances that have been presented in the observations of the Committee of Experts seem small, but in Guatemala constituted true progress if one takes into account the profound problems that have to be confronted by means of effective social dialogue. In order to continue advancing, there was a need to count on the support of the Committee, the Conference, the Employers, and principally the trade unions.

In relation to the observations of the Committee of Experts, the speaker enthusiastically expressed the recognition of the sincere political will of the Government to collaborate with the ILO during the direct contacts mission conducted in 2004 and the positive assessment of the commitments made by the Government. With this sentiment the Government representative stated that his Government has promoted the integration and the function of the Tripartite Commission of International Affairs, which has met and worked in uninterrupted form from 2004 to the present and has obtained advances in the consultation and agreement for the creation of a mechanism of "immediate intervention" in order to examine the complaints within the competence of the Committee on Freedom of Association and the observations on the application of international conventions, that will begin to function soon. The complaints that are not sent directly to the ILO, except in the instance of problems of national interpretation, can be resolved in the country. Likewise, the Government analysed with the employers and trade unions the necessary legal reforms to overcome the problems that they had with the reforms of 2003, in particular the existence in the national penal legislation of provisions against freedom of association principles. The Government looked to address the aspects indicated by the Committee of Experts in relation to ILO Conventions Nos. 87 and 98, the eligibility requirements for becoming a trade union leader, the legal criteria to establish the necessary votes to call a strike and the legal definition of essential services in relation to the exercise of the right to strike. In this respect, the Tripartite Commission has arrived at a consensus to undertake the legal reforms necessary that permit adaptation of the Labour Code to the relevant international standards on discrimination in employment and occupation. In this sense, the Government has presented a proposal to Congress for its approval. Many of the problems identified by the Committee of Experts have been resolved through laws that have amended problematic provisions, as in the case of Government Decree 700/2003.

In relation to the commitments made before the direct contacts mission, the Government representative stated that his Government has met all of those and noted concrete advances in the approval of initiatives for legal reform that the Tripartite Commission had accepted and requested the assistance of the Office, in order to organize the first national seminar on labour rights and freedom of association.

With respect to the competence of labour inspection regarding trade union rights of civil servants, the labour inspection is competent to hear complaints of violations of trade union rights of public employees and act as a mediator, as has been affirmed in various rulings of the Tribunal of Conflict of Jurisdiction of the Supreme Court of Guatemala. The mechanism to deal with this was actually being used to obtain an alternative solution to collective conflicts between public sector workers and their employers.

With regard to the creation of trade unions in industry, the speaker noted that it was only a problem of interpretation of the applicable legislation, and that section 215 of the Labour Code, that did not violate any principle of freedom of association by providing that in order to form and industry trade union, at the branch level, workers can establish unions at the enterprise level so long as they were all of a similar nature. If a union movement did not have a sufficient number of members to establish an industry trade union they could then establish an enterprise union where they could group with a variety of enterprises of the same nature, and where they needed only 20 workers. If today no such union has been established, this was because the trade union movement was not as yet sufficiently developed.

With respect to the imbalance between trade unions and solidarist associations, the speaker noted the operational deficiencies in tabulating the real number of active trade unions and their affiliates. The Government has worked to overcome these deficiencies in a project to systemize the labour register, but it would take time to complete this project due to the lack of funds. The speaker requested the support of the Office in finalizing this project. The indicator of the number of solidarist associations and their affiliates was a result of a unilateral declaration of these associations although there were no objective elements to confirms that there was in practice violation of trade union rights.

The speaker recognized the existence of certain institutional weaknesses in Guatemala for this type of crime. The acts of violence have diminished considerably and the Government supported the interventions of the authorities to complete their investigations quickly and effectively. The speaker noted that the Government was considering a protection mechanism recommended by the direct contacts mission in 2004. In closing, the speaker observed that the Committee of Experts had recognized the efforts of the Government by listing the country among those who had made progress. He requested that the case of Guatemala should not be mentioned in a special paragraph since this would not contribute to the strengthening of national institutions.

The Worker members indicated that, although the information presented by the Government of Guatemala tended to show progress, the reality refuted these assertions. The changes mentioned by the Committee of Experts in its report should be greeted with caution, taking into account the new facts which reinforced the concerns raised by the many elements that demonstrated the persistence of the violation of Convention No. 87 in Guatemala. While, according to the report of the Committee of Experts, the labour inspectorate would have the power to impose sanctions in case of violation of trade union rights, in fact the Constitutional Court had restricted this power in August 2004 and the labour inspectorate was often not on the side of the workers during social conflicts. On this point, further information on the staff of the labour inspectorate, the sanctions imposed in case of freedom of association violations and their effective application would be necessary. The Worker members underlined that Act No. 35 of 1996, known as the anti-strike act, still prohibited workers in public services from striking under penalty of imprisonment. This was sufficient to demonstrate that the restrictions of the Guatemalan workers' rights had not yet been lifted.

The Worker members protested against the assertion of the Government that "civil society" organizations tended to show little respect for the institutional means for addressing labour disputes, an assertion which tended, in their view, to discredit the social partners when these claimed the application of the rights and procedures to which they themselves were submitted.

The Worker members underlined that the rule imposing a requirement to be of Guatemalan nationality and working in the enterprise or sector concerned in order to be elected as trade union leader, remained in force although it had been found contrary to Convention No. 87, just like the rule imposing a requirement of 50 per cent plus one of the workers in the sector in order to be able to establish an industry trade union, a fact which created interminable delays or even refusals of trade unions' registration. This situation was in contrast to the assertions of the Government which claimed that the situation had gotten back to normal and attributed the length of the delays to the workers, on the grounds that they "had failed to present documents", an assertion which demonstrated by the way that, in reality, the situation had not yet returned to normal. Moreover, with regard to the «maquila» sector, the Government had mentioned the existence of two trade union organizations, which were really few in relation to the number of enterprises in this sector.

The Worker members also underlined that the confusion which endured on the subject of registration of trade union organizations in the taxation register, on which the Committee on Freedom of Association had already pronounced itself, appeared to allow the carrying out of controls over trade unions at any time. Moreover, the obstacles in the area of collective agreements remained numerous in practice: pressure on trade unionists, arbitrary dismissals of trade unionists, etc., as well as problems already raised with regard to the judicial power such as corruption, influence peddling, lack of vocational training, partiality, unexpected interventions by the Constitutional Court paralysing the action of the Labour Ministry. The Worker members noted a certain incoherence in this respect between the Guatemalan authorities, which had recognized the existence of a structural problem in the administration of justice as a whole, and the comments of the Committee of Experts which gave the impression that the changes made would guarantee an immediate handling of the problems relative to freedom of association. They also raised the incoherence between the announcement of the acquittal of Mr. Rigoberto Dueñas and the new charges brought against him by justice due to an appeal lodged in the Appeals Court, despite the conclusions of the Committee on Freedom of Association, the direct contacts mission and the messages of support by employers rallied in the Coordination Committee of agricultural, commercial, industrial and financial associations (CACIF).

The Worker members stated that the principle "in dubio, pro operario", according to which the most favourable legal rule should apply to workers in case of doubt, was largely refuted in practice as it was more common to decide a case on the basis of often biased legal precedents in contempt of the legislative prerogatives of Congress. They denounced the tendency to systematically take away labour conflicts from the competence of the Labour Ministry in order to bring them

before the penal courts so as to prosecute and reprimand trade union leaders by reason of their social action.

The Worker members denounced the persistence of several facts: (i) the climate of violence and the acts which impeded the free exercise of freedom of association as illustrated by the numbers provided by the Government: 42 acts of violence in 2002-03 for example; (ii) the impunity which surrounded the acts of violence committed against trade unionists; and (iii) the persistence of threats and harassment against trade union leaders as demonstrated by the recent repression of the demonstration against the adoption of the free trade treaty, which had been adopted without consultations with the social partners despite its decisive impact on employment. They also denounced the acts of unauthorized entry into the trade union premises of several trade unions on 9, 10 and 11 May 2005, which had not given rise to any investigation, as well as the violence faced by workers in the informal economy, like Julio Rolando Raquel, secretary-general of a trade union, murdered at the end of 2004 without any legal proceedings having been instituted against the perpetrators of this act, an example which was unfortunately part of a very long list.

Finally, the Worker members differentiated themselves in relation to the assessment of the Committee of Experts which was too optimistic in their view, considering that: one could not talk of progress as long as trade unionists were being murdered, harassed or threatened; repression was being aggravated; so many cases (12) remained pending before the Committee on Freedom of Association; so many problems of application of Conventions Nos. 87 and 98 remained in practice.

The Employer members thanked the Government for providing complete and comprehensive information and noted that the ILO's 2004 direct contact mission was successful. They welcomed that the Government extended the mandate of the mission to Convention No. 87. The number of issues dealt with by the Committee of Experts had decreased but a number of problems remained. The Government worked towards solving them through the National Tripartite Committee. It was a central principle of the Convention that freedom of association could only be realized in an atmosphere free from violence and intimidation. The cases of violence against trade unionists, including cases of murder, were entirely unacceptable. While the Government established a Special Public Prosecutor, the results achieved were mixed and there was no information available to determine whether the measures taken were adequate. The Labour Code's requirement that trade union leaders be of Guatemalan origin was not in accordance with the Convention. Regarding the need to have "50 per cent plus one" of those working in an enterprise as a requirement to form an industry trade union, the Employer members stated that that percentage was too high. However, it was unclear on how the rule worked in practice in terms of the ability of smaller unions to engage collective bargaining. As to the right to strike, the position of the Employer members was well known. Due to the different situations from country to country, no single approach could exist in respect to the quorum required to call for a strike. Similarly, concerning essential services in which compulsory arbitration could be imposed, no «one-size- fits-all» approach was possible, as a given service may be essential in one country, but not in another, depending on the respective levels of development. In conclusion, the remaining problems went beyond questions of interpretation and the Government needed to do more to ensure the application of the Convention in law and practice. Further ILO assistance would facilitate the resolution of the outstanding issues.

The Worker member of Guatemala noted that while it was true that the situation in his country was examined in the past because of the persistent failure of the Government to apply ratified ILO Conventions, it was necessary to pursue, perseverance was required to ensure that pending issues were settled. Fifty years after ratifying Convention No. 87, Guatemala continued to prevent the forming of new trade unions in the country, when not seeking to eliminate those that already existed, as had been the case in the National Center of books and didactic texts «José de Ipiña Ibarra» of the Ministry of Education (CENALTEX) company or in certain communes of Retahuleu, Tecun Human etc.

The speaker mentioned hurdles put in the way of trade unions in the country, even after they had been recognized and legalized by the Ministry of Labour: Leaders threatened, intimidated, persecuted or dismissed. Although, after the direct contact mission's visit the Government decided to free trade unionist Rigoberto Duenas, none of the charges against him actually being sustainable, a high court decided to take legal action against him, completely ignoring the information provided to the Committee of Experts. Secondly, the Committee of Experts received information according to which «the Labour Inspectorate was granted certain jurisdiction in the system of sanctions provided in case of non-respect of trade union freedoms», once it was ascertained that such sanctions had in fact been taken. The Constitutional Court had declare this jurisdiction to be unconstitutional, thereby creating a gap in the applicable law as a result of the disappearance of the jurisdictional body authorized to impose fines.

The speaker pointed out that the workers were the target of various acts of aggression – 122 were recorded in 2004, 68 to date in 2005, of which 12 in recent weeks: The judiciary had shown little diligence – 90 per cent of cases were filed and forgotten. Though in many previous cases, investigations had been opened, as had been the case following the death of trade unionist Julio Raquel, whose own wife has identified the culprits, the Public Prosecutor had not been diligent in any respect. This demonstrated an absence of judicial capacity and an absence of political will by the Government to act

The speaker mentioned that the Government had put obstacles to the opening of the Office of the UN High Commissioner for Human Rights, which demonstrated the lack of will on behalf of the Government to put in place the conditions required for the effective application fo human rights and freedom of association in the country.

The Labour Code clearly provided for the reintegration within 24 hours of a worker who had been dismissed for having formed a trade union, which showed that the problem at the centre of violations of these rights lay in the lack of will by the State to have them respected.- Thus workers had to wait light years for a court to pass verdict on their case, while others charged with other offences were provided with immunity from prosecution by the labour tribunals.

The clauses in section 390 and 430 of the Guatemalan Penal Code considered as penal all labour conflicts involving the workers. At the same time, when a worker pressed charges for flagrant abuses of his rights by an employer, the competent authorities remained silent. If, on the other hand, an employer pressed false charges against a worker, as was the case with the Maria de Lourdes agricultural enterprise, measures were immediately taken against the workers. Many men and women workers in this enterprise had been dismissed for having helped to form a trade union.

In the last two years, Government policy on workers' demonstrations consisted in accusing union leaders of terrorism. The President of the Republic had publicly threatened to imprison leaders at demonstrations. Several cases had confirmed this stance. A demonstration by the pilots' union had led to the imprisonment of 30 union leaders; a demonstration by the street traders' union had led to the imprisonment of 11 union leaders; another demonstration had led to the death of a child; another ended with the eviction of farmers in the Retahuleu district, with several deaths and many incarcerations. During demonstrations against the free trade agreement, thanks to the solidarity shown by the Prosecution for Human Rights, it had been possible to free all the leaders after the police had surrounded the offices where they were meeting and putting them in jail.

In conclusion, the speaker appealed to the solidarity of government and workers around the world, as well as to the ILO, to give Guatemalans the opportunity to live in dignity and obtain justice.

The Employer member of Guatemala expressed satisfaction with the progress noted by the report of the Committee of Experts and by the present Committee itself as being due to the merit of the national authorities and the employers. Progress on Conventions No. 98 and 129 had been clearly emphasized, and there had been positive comments on Convention No. 87. The direct contact mission of May 20045 noted a reduction in violence as well as a real will to submit various issues related to legal reform to tripartite discussion. The Congress of the Republic could then incorporate the national tripartite agreements into national legislation.

In Guatemala, the current climate was favourable to positive and concrete steps being taken to bring national legislation into conformity with international labour Conventions. The Constitutional Court had even recently recognized the competence of the judicial system to take sanctions against non-respect of freedom of association principles. This did not mean to say tha a legal void had existed prior to this regarding the imposition of sanctions, but that the courts could henceforth impose them.

In his opinion, some trade union organizations were taking part in tripartite dialogue while others preferred using the complaints procedure at national level. Events were currently leaning towards some legal issues – which, nevertheless, did not concern constitutional reform of the regulation of the right to strike, on which Convention No. 87 said nothing – being resolved by social dialogue. The ILO should show confidence in the process currently underway in Guatemala. In any case, the exercise of trade union rights had to conform to the law. No illegal practices could be allowed under the cover of freedom association.

The Government member of Norway, speaking also on behalf of the Governments of Denmark, Finland, Iceland and Sweden, noted the information supplied to the direct contact mission by the Special Public Prosecutor's Office, indicating a significant decrease in physical violence, while the number of cases involving threats and coercion had increased considerably. According to the Government, all cases relating to murder and other offences were still at the stage of investigation. This situation was of grave concern. Criminal proceedings were extremely slow and impunity was the norm in cases concerning trade unionists. The Nordic countries emphasized that trade union rights could only be exercised in an atmosphere which is free from violence and coercion. As requested by the Committee of Experts, the Government should be asked to provide information on any offences against trade unionists reported to the Special Prosecutor's Office. It was hoped that the Government would make every effort to ensure full respect for trade union members' human rights and that concrete progress on the above-mentioned point could be noted in the near future.

The Worker member of Panama denounced the violence and aggression shown by the Guatemalan authorities towards the trade union movement. He said that, in a letter addressed to the Vice-President of the Republic of Guatemala, he had condemned 122 acts of aggression committed in 2004 and 68 recorded to date in 2005 (of which 12 had taken place in recent weeks). In Guatemala, illegal armed

groups and secret wings of the security services (CIACS) were acting in concert with thee security forces and were partly linked to organized crime and certain employers' organisations. The Prosecutor for Human Rights had condemned both the impunity that CIACS enjoyed and its collusion with the military intelligence services and organized crime. The UN Verification Mission to Guatemala had also declared the situation alarming. CIACS had been blamed in complaints lodged concerning human rights abuses, but no judicial proceedings had been initiated to allow investigations to be opened on these crimes and to find the guilty parties.

As regarded the situation concerning trade unionist Rigoberto Duenas, the speaker was confident that a final solution would soon be found to obtain his release. The Government of Guatemala seemed not to have the political will to address illegal acts against freedom of association and it had to be requested to provide information of complaints that had been lodged.

The Worker member of Costa Rica stated that a purely juridical analysis could not explain the Guatemalan problem. As regarded the trade union situation, the Government had shown itself to be unable to deal with complaints concerning illegal dismissals or violation of collective agreements. Joining other speakers in condemning the situation, he referred to the rigid attitude of the legal system which passed laws contrary to workers' rights and which benefited solidarist associations. The speaker also recalled that legal procedures related to the Mi Terra and El Tesoro estates, to the municipality of Livington and the El Anco estate had been ongoing for many years without producing concrete results. The workers members finally expressed his solidarity with unionist Rigoberto Duenas.

The Government member of El Salvador expressed her understanding of the situation in Guatemala and referred to the statement made by the Government representative. The efforts made by the Government of Guatemala to overcome the difficulties highlighted in the Committee of Experts' observations should be praised. The Office should support such efforts.

The Worker member of Norway recalled that the Committee had asked the Government to rectify breaches of the Convention for many years, and yet, workers in Guatemala continued to be victims of serious violations of labour rights, including the right to strike. It was disturbing to see that the direct contact mission found that threats and use of coercion against workers were increasing considerably. The Government's promises to remedy anti-union practices were thus put in question. The fact that only one per cent of workers in Guatemala were organized was due to the climate of fear that prevailed in the country. Unionists risked losing their jobs and even their life. When a demonstration took place following the Government's approval of the free trade agreement with the United States, which had been concluded without consulting civil society, the armed police and soldiers surrounded the office of a trade union which took part in the demonstration. In May 2005, unknown perpetrators broke into the offices of several trade union organizations. Only information about the organizations was stolen, while valuable equipment was left untouched. Such incidents increased the fear among trade unionists, preventing them from carrying out their democratic trade union rights. The Committee of Experts still listed severe restrictions of freedom of association contrary to the Convention, including section 241 of the Labour Code, regarding the number of workers needed at a workplace to be allowed to call a strike. The same applied to the imposition of compulsory arbitration in cases of public sector strikes of services which are not essential according to the ILO. Despite many promises by the Government to amend the labour laws and the pledges made to the direct contact mission, few measures had been taken. No legal strikes took place in 2004 and the harassment of workers continued, both in the private and public sector. Only if the Labour Code and section 390 of the Penal Code were changed, would the Government's commitment be credible. Finally, the ILO should consider more serious measures to change the situation.

The Government representative reaffirmed the will to continue the efforts recognized by the Committee of Experts and the direct contact mission. His Government intended to continue the fight against corruption. The situation regarding trade unionist Rigoberto Dueñas was being examined by the penal justice system and was not being treated as a case of trade union persecution. The delegation at the present session of the Conference was testimony to the openness to dialogue of his Government since it also included a magistrate of the Supreme Court of Justice and various members of the Congress of the Republic.

The Worker members stated that, considering the elements contained in the Committee of Experts' report together with the situation prevailing in the country, it was unthinkable to conclude that progress had been made in this case. In their view, all the elements mentioned in the discussion showed that the problems persisted and to some extent even worsened.

The Worker members therefore asked that the Committee, in its conclusions, ask the Government to provide a detailed report containing precise answers to all the questions raised by the Committee of Experts regarding the application of Convention No. 87. The Government should also be asked to take, as a matter of urgency, all necessary measures to guarantee the exercise of freedom of association, adopting legislation and ensuring practice in accordance with the Convention.

While recognizing that the technical assistance demanded by the Government could be useful, the Worker members asked that the Government would be requested to provide, in its next report: (1) an assessment of the measures taken by the national tripartite committee, the Special Prosecutor's Office and the labour inspectorate; (2) statistical information indicating the number of registered trade unions and solidarist associations, as well as (3) information on the follow-up measures taken to the related conclusions of the Committee of Freedom of Association.

The Employer members concluded that, while the situation was improving, it was not yet perfect. The Committee of Experts should undertake a full assessment of the situation and the information requested by the Workers members would be useful for that purpose.

The Committee took note of the oral information provided 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, excessive delays in criminal proceedings and the impunity which often prevailed, as well as restrictions in law or in practice to the establishment, functioning and free exercise of the activities of trade unions, as well as penal sanctions for such activities. The Committee took note of the comments presented to the Committee of Experts by various trade union organizations. The Committee also took note of the results of a direct contacts mission carried out in May 2004 and the commitments undertaken by the Government.

The Committee took note of the statements of the Government representative according to which Guatemala was supporting all the actions of the competent authorities in order to conclude the criminal investigations on acts of violence against trade unionists in a prompt and effective manner. The Committee took note that, according to the Government, certain questions raised by the Committee of Experts constituted problems of legal interpretation which could be overcome through the application of the legal rule which was most favourable to the workers. In particular, according to the Government, the problem relative to Decree No. 700-2003 on essential services had been overcome by virtue of subsequent laws.

The Committee underlined that trade union rights could only be exercised in a climate that is free from violence and threats of any kind and requested the Government to make all efforts to guarantee the exercise of trade union rights in a climate of full security for trade unionists and to improve the administrating of justice and avoid impunity. The Committee requested the Government to take the necessary measures to bring the legislation and practice into full conformity with the provisions of the Convention, and to communicate a complete report containing all pending questions, to the Committee of Experts this year. The Committee requested the Government to send concrete information on the number of inspections, the sanctions imposed in cases of violations of trade union rights in all sectors including the *maquila*, attaching statistics and numbers of trade unions and solidarist associations, as well as on the result of the criminal investigations of the Special Public Prosecutor's Office. The Committee expressed the hope that in the very near future it would be in a position to observe progress in relation to the pending problems and recalled that the technical assistance of the ILO was at the disposal of the Government.

MYANMAR (ratification: 1955). **A government representative** stated that in Myanmar, workers were always regarded as one of the major driving forces for development. Their essential role was always recognized, their social welfare was always looked after and their rights were always protected in accordance with the law by successive Myanmar governments. Both the State Constitutions of 1947 and 1974 had contained relevant provisions with regard to the role of workers in Myanmar society and their rights. He recalled that there had been labour unions under the parliamentary democracy, which had lasted from 1948 to 1962, and workers' organizations under the socialist economic system, which had lasted from 1962 to 1988. It was well known that the second Constitution of 1974 had ceased to exist in 1988 in accordance with the wishes of the people.

The current Myanmar Government had been striving to establish a modern, developed and democratic state in accordance with the aspirations of its people. In this respect, Myanmar had adopted a seven-step Road Map, the first step of which was the reconvening of the National Convention. This process, which had started in 1993 and had been interrupted in 1996, was to lay down the basic principles for drafting a new state Constitution. During its sessions between 1993 and 1996, the National Convention had laid down basic principles, including basic principles concerning workers. The resumed session of the National Convention, which had started on 20 May 2004, had conducted clarifications and deliberations on basic principles for the social sector, including the rights of workers and their social welfare rights. The deliberations also had dealt with the basic principle of forming workers' organizations. In the process of drafting a new state Constitution, these basic principles would provide a framework for drafting detailed provisions relating to these aforementioned matters. At its most recent session, starting on 17 February 2005, the National Convention had adopted some detailed basic principles for the social sector to be contained in the Union legislative list. These basic principles, among other things, included matters related to the rights of workers, i.e. hours of work, rest periods, holidays, occupational safety, labour disputes, social security and labour organizations. The National Convention had also agreed that

laws to protect the rights of workers and to create job opportunities should also be enacted. The delegates attending the National Convention had also shared the view that an Occupational Safety Act and Occupational Hazard Act should be included in the Union legislative list. He concluded by stating that appropriate workers' organizations would emerge once Myanmar had its new Constitution.

The Worker members stated that it was more than embarrassing that this case was this year again before the Committee. Last year the Committee had decided to include the conclusions once again in a special paragraph on continued failure to apply the Convention. It appeared from the report of the Committee of Experts that the Government of Myanmar was not at all prepared to adopt any of the changes requested and had not sent any of the requested information, particularly on the concrete means adopted to ensure improved conformity with the Convention.

They recalled that the legislation and military decrees that this Committee had examined over the years were still in force and they prohibited trade union organization and allowed for the punishment of those who tried to establish any form of democratic organization. This legislation included Order No. 2/88, issued by the SLORC on 18 September 1988, the date of the military coup, 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 or committing crime or not". Other repressive legislation included the 1908 Unlawful Association Act, which provided for imprisonment of no less than two years for members of unlawful associations or persons taking part in unlawful meetings, and Order No. 6/88, known as the "Law on the formation of associations and organizations", which required organizations to apply for permission to operate and provided that unauthorized organizations would not be permitted to be formed or continue to exist and pursue activities. This Order also provided for five years' imprisonment for persons who violated it, and up to three years' imprisonment for persons found guilty of being members of, or aiding and abetting or using the paraphernalia of unauthorized organizations.

The Worker members noted that the Government had reported once again that there were several associations of workers in the country. They recalled that the Committee on Freedom of Association had found that such associations were not a substitute for free and independent trade unions and that they had none of the attribute characteristics of free and independent workers' organizations. The legitimate trade union organization – the Federation of Trade Unions-Burma (FTUB) – was impeded from existing freely, and workers were not allowed to form and join unions of their choice. On the contrary, they were persecuted or arbitrarily arrested. Moreover, the Secretary-General of the FTUB, Mr. Maung Maung, had been repeatedly accused of terrorism before this Committee, even recently. The FTUB was obliged under existing law to operate in a clandestine manner, yet despite this obstacle it had succeeded in organizing workers on a large scale inside the country, both in the agricultural and in the industrial and service sector.

The Worker members recalled the case of Mr. Myo Aung Thant, who was condemned to life imprisonment for trade union activities, and of his wife Aye Ma, who, after having spent seven years in the terrible Insein Jail on similar charges, was now not even allowed to write to her husband. They informed the Committee that on 21 May, they had been informed by the Seafarers Union of Burma (SUB) that one of its leaders, Mr. Koe Moe Naung, had been arrested on 19 May at his residence in Ranong at the border between Thailand and Myanmar by two unidentified men, brought to the village-based Light Infantry Regiment 431 and tortured to death during interrogation. Mr. Koe Moe was a trade union leader who was organizing Burmese fishermen and migrant workers from Myanmar in the Ranong province.

Moreover, gatherings on the occasion of 1 May had been repressed, as well as other gatherings to protest against working conditions. For those who were not obliged to perform forced labour, the average salary in Myanmar was US$4-5 a month, and working time was 48 hours per week, plus 12 to 15 hours of overtime, which would be paid at US$ 0.02 per hour if only companies were able to pay. In fact, due to strict bank regulations made after the 2003 bank crisis, companies could not withdraw more than 200,000 Kyats (approximately US$200) per week. Under such conditions, most of the time salaries as well as overtime could not be paid.

The junta claimed that this situation was due to economic sanctions. This was not true. The economy was in the hands of the junta, who drained all the profits; already 49 per cent of the national budget and 30 per cent of the GDP was allocated to the military.

The Government repeatedly declared that Myanmar was a country in transition and that the issue of freedom of association was going to be examined by the National Convention, responsible for elaborating the new Constitution. For more than 16 years now, the military Government of Myanmar had been promising to adopt a new Constitution in which the issue of freedom of association would be addressed, but nothing had happened. The new National Convention had been deeply criticized as unrepresentative and undemocratic, not only by the democratic Burmese organizations and the National League for Democracy, but also by governments and parliaments from all over the world, including many in the region itself and by many members of the ASEAN.

In conclusion, in view of the above, the Worker members asked for a special paragraph on the continued failure to apply the Convention. They urged the Government of Myanmar to put into practice, immediately and without any further delay, the conclusions of the Committee on Freedom of Association and of the Committee of Experts.

The Employer members stated that the Government of Myanmar no longer had any credibility before this Committee. It had promised for more than a decade to resolve the problems in this case through the adoption of a new Constitution. The Committee of Experts had asked for detailed information, but none had been received. The case had been discussed since 1991 and had repeatedly been the object of a special paragraph as a case of continuous failure to implement the Convention. What was clear was that there were no free and independent trade unions in Myanmar. The Government did not deny this. All trade union activities constituted punishable offences under the law. The Committee of Experts and the Committee on Freedom of Association had consistently stated that workers' welfare associations were not substitutes for free and independent trade unions. The Employer members were not against such associations, but noted that these associations did not satisfy the requirements of Convention No. 87. They urged the Government to take a positive step in this case and to elaborate a Constitution and law that would allow workers and employers to enjoy freedom of association. The Employer members agreed with the Worker members that this case be included in a special paragraph.

A representative of the International Confederation of Free Trade Unions (ICFTU) stated that the Myanmar regime presented the physical release of Mr. Shwe Mahn as a step forward, but this person, as well as Messrs. Nai Min Kyi, Aye Myint and Myo Aung Thant should never have been arrested at all.

While the ILO and the international community called for democratic changes, the Myanmar regime referred to the so-called National Convention as a step forward, though the people of Myanmar considered it unrepresentative and undemocratic.

The speaker recalled that more than 150 workers of the Simmaliek dockyard had been killed in 1974 during a general strike organized in protest against the bad economic situation and against the setting up by the regime of the "Workers Councils". Moreover, in a meeting held in July 2004 in the Shwe Pyi Tha industrial zone, the current regime had established the "Workers Supervision Committee", in defiance of the right to organize freely without any interference from the Government or employers. This meeting was held after the 92nd Session of the ILC, which had adopted a special paragraph on the situation of denial of freedom of association in Myanmar. The speaker considered this as a proof that there was no political will to comply with the Convention. He also put forward a number of concrete examples where the military authorities had forcibly moved the 1 May gatherings to other locations, arrested trade union leaders and intervened in labour disputes, which had led to chaos, both for the workers and the employers.

The speaker observed that, though the Director-General of the Department of Labour and his office had been to a certain extent responsive to the needs of the workers in certain cases, he at the same time had been very abusive towards the ILO and the ICFTU in the course of the press conference of 15 March 2005, where he had accused the ILO of "arbitrary pressure put on Myanmar".

The speaker considered that, as compared to ten years ago, the workers of Myanmar had become much more aware of their basic rights, thanks to the ILO and the ICFTU. They had started practicing their rights either by going to the civil courts, to the Labour Department or to the ILO Liaison Office. This should be encouraged.

The speaker concluded by saying that freedom of association and the right of workers to establish independent trade unions was denied by the Myanmar regime, and he called upon the ILO and the Committee members to use all available means at their disposal to help the workers of Myanmar to gain their right to associate freely and independently, in accordance with ILO standards.

The Government member of Luxembourg, speaking on behalf of governments of Member States of the European Union, as well as of Bosnia and Herzegovina, Bulgaria, Croatia, The former Yugoslav Republic of Macedonia, Norway, Romania, Turkey, Serbia and Montenegro, Switzerland, and Ukraine stated that this Committee had discussed this case on many occasions and included its conclusions in a special paragraph of its report for several years, having listed the case as one of continued failure to implement the Convention.

The speaker pointed out that there had been no progress with respect to the adoption of a legislative framework allowing the establishment of free and independent organizations.

The European Union noted with particular regret that, despite the pressing demand of the Committee last year, the Myanmar authorities did not provide the required information on concrete measures adopted. She noted with concern that, in addition to the total absence of a legislative framework guaranteeing the right to organize, there existed legislation containing restrictions on freedom of association or provisions which could be applied in a manner that seriously impaired the right to organize.

The European Union urged the Myanmar authorities to take all the necessary measures to ensure that workers and employers could fully exercise the rights guaranteed by the Convention in a climate of full security and in the absence of threats or fears, and that no one could be sanctioned for contacts with workers' and employers' organizations or

with the ILO. The Myanmar authorities should provide a detailed reply on the serious matters raised in the Committee of Experts' report and by the ICFTU.

The Government member of Cuba stated that, taking into account the internal situation of Myanmar, which had been largely discussed in this Committee, cooperation, constructive dialogue and technical assistance were the most appropriate means which could facilitate for the Government of Myanmar the resolution of the complex problems related to Convention No.87.

The speaker requested the Government of Myanmar, also in the spirit of cooperation, to provide the Committee of Experts with detailed information on the application of the Convention, so that it could make a comprehensive analysis of the problems encountered and the solutions proposed.

The Government member of the United States stated that once again this year the Committee of Experts had noted a total lack of progress towards creating a legislative framework under which free and independent workers' organizations could be established in Myanmar. She referred to the Government's statement before the Committee last year that the national convention had held deliberations on basic principles for the social sector, including the rights of workers, which would provide such a framework. However, the National Convention did not include representatives of the democratic opposition and ethnic minority groups, and therefore any constitution, referendum or election emerging from the deliberation of this unrepresentative body would be seriously flawed and would not constitute meaningful steps toward national reconciliation and the establishment of democracy. The speaker pointed out that, as in the case of Convention No. 29, the Government had demonstrated its disregard for obligations that it freely assumed 50 years ago when these two Conventions were ratified. It was no surprise that citizens of Myanmar who believed in human rights and advocated the right of workers to organize confronted enormous risks, including arrest and imprisonment, such as a Nobel Peace laureate Aung San Suu Kyi, who had spent the majority of the past 17 years under detention and still remained under house arrest and was virtually incommunicado. She called upon the Myanmar authorities to immediately and unconditionally release Ms. Aung San Suu Kyi together with all other political prisoners.

The speaker emphasized that strong and independent workers' organizations could provide significant help to the authorities to eradicate forced labour if the Government were genuinely committed to doing so. However, ILO attempts to engage the Government on this matter had been rebuffed, and freedom from forced labour, like freedom of association, continued to be systematically violated, both in law and in practice. The Government should demonstrate, in this matter as in the matter of forced labour, that it was prepared to take action to meet its ILO obligations. As soon as the Government would do that, she was confident that the ILO would be ready to help.

Another Government representative stated that the National Convention brought together all political parties and ethnic groups of the country, including the 17 national groups that had ceased armed struggle and had joined the peace process. Of 1,086 delegates, 633 were of national ethnic groups. Workers, peasants and all other economic sectors were represented as well. Concerning allegations made against the Department of Labour, she affirmed that the rights and welfare of workers would be provided for by the Department until the new Constitution was in force. Her Government did not have information on allegations concerning specific workers who no longer resided in the territory of Myanmar.

The Worker members thanked the Employer members and the Governments that had supported their position on this case. It was clear from the Committee of Experts' report, from the information provided by the Worker members and the Secretary-General of the Federation of Trade Unions-Burma, and by the Employer members that the situation in Myanmar was getting worse and that Convention No. 87 was gravely violated. They noted that on 29 June, the Nobel Prize laureate Aung San Suu Kyi would celebrate her 60th birthday under house arrest. They asked the Committee to adopt once again a special paragraph on continuous failure to implement Convention No. 87 and urged the Government to urgently comply with the Convention and with the requests of this Committee and the Committee on Freedom of Association.

The Employer members thanked the Government member of Cuba for suggesting ILO technical assistance in this case. This might be an appropriate way forward. In this respect, they wished that two paragraphs from the conclusion of the Special Sitting on Myanmar and the Forced Labour Convention, 1930 (No. 29), be included in the conclusions to this case. The first paragraph could be adapted as follows: *The ILO's presence in Myanmar should be strengthened to enhance its capacity to carry out all its various functions, and the Government should issue the necessary visas without delay. These functions should include assistance to the Government to implement completely its obligations under Convention No. 87.* The other paragraph to be included would read: *The freedom of movement of the Liaison Officer a.i. as recognized by the Understanding and necessary to the discharge of his functions should be fully respected.*

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 over 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 deplored the fact that, despite these continued efforts of dialogue between this Committee and the Government, there was still absolutely no progress made in adopting a legislative framework that would allow for the establishment of free and independent trade union organizations. Moreover, the Committee noted with grave concern from the Committee of Experts' comments that the report supplied by the Government contained none of the information requested by this present Committee, relevant draft laws were not provided, nor did the Government reply to the comments made by the ICFTU. The Committee could only condemn the absence of any meaningful dialogue with the Government in this respect and trusted that its future reports would provide all requested information.

The Committee took note of the statement made by the Government, which referred once again to the need to await the promulgation of the Constitution before a legislative framework for the recognition of freedom of association could be established. The Government also indicated that the National Convention had agreed that laws to protect the rights of workers and to create job opportunities should also be enacted.

Recalling that fundamental divergences existed between the national legislation and practice and the Convention since the Government had ratified the Convention 50 years ago, the Committee once again urged the Government in the strongest terms to adopt immediately the necessary measures and mechanisms to guarantee to all workers and employers the right to establish and join organizations of their own choosing, as well the right of these organizations to exercise their activities and formulate their programmes, and to affiliate with federations, confederations and international organizations, without interference from the public authorities. It further urged the Government to repeal Orders Nos. 2/88 and 6/88, as well as the Unlawful Association Act, so that they could not be applied in a manner that would infringe upon the rights of workers' and employers' organizations.

The Committee was obliged once again to stress that respect for civil liberties was essential for the exercise of freedom of association and firmly expected the Government to take positive steps urgently, with full and genuine participation of all sectors of society regardless of their political views, to amend the legislation and the Constitution to ensure full conformity with the Convention. It further requested the Government to take all measures to ensure that workers and employers could exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. The Committee urged the Government to ensure the immediate release of all workers detained for attempting to exercise trade union activities and to ensure that no worker was sanctioned for having contact with a workers' organization. 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 serious matters raised by the ICFTU, for examination by the Committee of Experts this year.

The Committee recalled all of its conclusions in the case concerning the application of Convention No. 29 in Myanmar as regards the ILO's presence in the country. The Committee considered that, given that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association, the functions of the Liaison Officer should include assistance to the Government to fully implement its obligations under Convention No. 87.

The Committee firmly hoped that it would be in a position to note significant progress on all these matters at its next session.

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

The Workers members were of the opinion that if the tasks of the Liaison Officer were to include also a support to the Government of Myanmar for the implementation of Convention No. 87, the Liaison Office should be appropriately reinforced and adequate resources and means should be provided. This would be necessary so as not to weaken the already difficult work of the Liaison Officer on Convention No. 29. For this reason, the Worker members would have preferred the inclusion in the conclusion of the two paragraphs of the conclusions of the Special Sitting on Convention No. 29, concerning the need to strengthen the ILO Liaison Office. **The Employer members** associated themselves with the statement made by the Worker members.

Panama (ratification: 1958). **A Government representative** (Vice-Minister for Labour and Social Development) stated that his Government had yet to deal with several unresolved cases before the Committee on Freedom of Association (CFA) of violation of Conventions Nos. 87 and 98 – cases which it had inherited from previous governments. One of those, Case No. 1931, involved issues addressed in the comments of the Committee of Experts. Case No. 1931 had originated in a complaint against the Government of Panama sub-

mitted to the Committee on Freedom of Association by the International Organisation of Employers (IOE) and the National Council of Private Enterprise (CONEP) on 12 June 1997. In the complaint, the plaintiffs had claimed that the legislation in force restricted the rights of employers and their organizations, in violation of ILO Conventions Nos. 87 and 98, which formed part of the fundamental rights of workers. On the basis of the 318th Report of the Committee on Freedom of Association of the Governing Body, in its definitive report on Case No. 1931, it was evident that it had declared itself in favour of the requests of the IOE and CONEP, supporting the call for the reform of the Labour Code in the following areas: (a) the immediate closure of an enterprise in the event of a strike (paragraph 1 of articles 493 and 497 of the Labour Code). Employers complained that these provisions adversely affected the basic needs of enterprises, particularly as regards the maintenance of installations, accident prevention and the rights of employers and managerial staff to enter work premises and carry out their duties; (b) ensuring it was possible – it was considered an obligation – for workers to unilaterally submit collective disputes to arbitration (section 2 of article 452 of the Labour Code); (c) limiting the number of party representatives (delegates and advisers) in the collective bargaining process, which involved interference in the autonomy of free will, since that was an issue to be determined by the parties involved in that process (paragraph 3 of article 427 of the Labour Code); (d) the penalty of withdrawal from the collective agreement of a party and the failure to respond to a list of demands (paragraph 2 of article 510 of the Labour Code); (e) the payment of wages during ten days of strike. The Committee on Freedom of Association considered that the legislation should be amended so that payment of the wages corresponding to the days of strike would not be imposed by the legislation, but would be a matter subject to collective bargaining by the parties. The Committee on Freedom of Association had also requested that the withdrawal from conciliation by one of the parties would not give rise to disproportionate penalties and that the failure to respond to a list of demands would not result in unbalanced penalties.

Finally, still in relation to Case No. 1931, the ILO had reminded the Government that it stood ready to provide all the assistance necessary, so that Panamanian legislation could be brought more adequately into line with the ratified Conventions on freedom of association and collective bargaining.

The speaker said that his Government had been informing the ILO for a number of years that it would be impossible to carry out the Labour Code reforms requested by the Committee on Freedom of Association, due to the lack of consensus between the social partners (workers and employers), despite the efforts made in that regard by his Government. ILO technical cooperation had been used since 2002 to train the social partners on Conventions Nos. 87 and 98 with a view to increasing awareness of the scope of their provisions, however no significant progress had been made.

With regard to Case No. 1931, his Government pointed out the need for ILO technical advice, within the framework of international technical cooperation, in order to find consensual solutions that would enable national legislation to be brought into line with Conventions Nos. 87 and 98. His Government, in conjunction with the social partners, would shortly discuss when would be the most appropriate time to try to resolve the problem of Case No. 1931. It should be taken into account that the Government was in the midst of a process of state modernization and legislative reform.

The Government had furnished a good deal of information on the cases pending before the Committee on Freedom of Association. The speaker indicated that in the Labour Committee of the National Assembly proposals were under discussion involving the provisions mentioned by the Committee of Experts relating to the rights of civil servants and minimum services.

The Worker members recalled that, in 2003, this Committee had already had the opportunity to discuss this case due to the persistence of the observations of the Committee of Experts on the application of Convention No. 87 by Panama. The imposition of conditions on the establishment of trade union organizations, notably those for civil servants, the restriction of trade union activities in certain sectors or in relation to realities on the ground, and the restriction for certain sectors with regard to affiliation with a confederation: these were all elements of freedom of association which were in jeopardy. The report of the Committee of Experts had identified other questions to which no response had been received, such as problems of imposed arbitration; limits on the number of organizations by enterprise or by province; the imposition of a minimum number of members for the establishment of an employers' or workers' organization; the nationality requirement to serve on the executive organs of a trade union; the interpretation of the notion of essential services and interference in industrial disputes, especially strikes. The recognition by the Government of these problems and their appeal for ILO technical assistance were, in view of the declarations that had been made by the Government in 2003, but mild progress which had to be confirmed by a demonstration of concrete and real will to address the problems, which for the most part dated back to 1958, the year Panama ratified Convention No. 87. In spite of the resolution of certain problems in the application of this instrument, fundamental questions persisted which successive governments denied, either by claiming the superiority of domestic legislation or practice over provisions of the Convention, or by requesting technical assistance by the Office, along the lines of what had been done again by the Government representative today. In conclusion, the Worker members stated that the credibility of the Committee was in question and that it could no longer accept that, after all these years, it had still not received effective and concrete responses. In view of this, they reiterated their appeal to the Government to provide, at the next session of the Conference, a report indicating concrete measures taken with a view to bringing national law and practice into line with the Convention.

The Employer members stated that it was as if nothing had changed since this Committee had examined this case in 2003. The comments of the Employer members in 2003 could be exactly reproduced in extenso here. Further, all of the issues raised in 2003 were still of great concern. In particular, the fact that provisions of the Labour Code allowed for the closure of an enterprise during a strike was not an issue related to the right to strike, rather it was a massive interference in the running of an enterprise and in the collective bargaining process. They were surprised that the Committee of Experts had not addressed an issue raised in the 2003 discussion of this case, namely, the payment of wages during a strike. The requirement to pay wages during a strike was not appropriate and interfered with the process of collective bargaining and the management of an enterprise. In addition, the Government had indicated that it would welcome the technical assistance of the ILO. It would thus be in a position to provide a full report to the Committee of Experts next year, the preparation of which should include both social partners.

They concluded by noting that the last time this case had been discussed, the Government had claimed that no action could be taken because an election was imminent. This year, the Government had stated that progress had not been made because it was a new Government. There was no more room for excuses from the Government for not addressing these serious violations of the requirements of Convention No. 87.

The Employer member of Panama stated that following several years of excuses from the Government – the latest being the election campaign – for not bringing Panamanian legislation into line with Convention No. 87, the new Government found itself in a situation that it had inherited from the past. It was essential that, as of now, the Government respected the Conventions it had ratified, in this case Convention No. 87, placing emphasis on consultation with the social partners. Another matter of concern was the conditions imposed on the notion of consensus in the expression "consensual formula" as this could not justify the non-respect of obligations arising from Conventions Nos. 87 and 98. With confidence in the new Government, it was hoped that it would soon set a date for an ILO technical assistance mission, with a view to bringing Panamanian legislation into line with Convention No. 87.

The Worker member of Panama, indicating his full agreement with the report of the Committee of Experts with regard to the complaints made by the National Council of Organized Workers (CONATO), stated that it was at least suspicious that the employers of his country had intervened in this international forum for the application of Convention No. 87. These were the same employers who promoted and put into practice policies and measures which impeded the same Convention they were invoking. This had led to the situation in which the subcontracting of workers in his country had already turned into a new attack against trade union organization and collective bargaining and human rights, to the detriment of the dignity of Panamanian workers.

The speaker stated that the international community should be aware that every day, trade union organization was a clandestine activity, despite being recognized by the Constitution and in the law. In fact, today there had been lay-offs in an enterprise for the sole crime of wanting to organize to defend against abuses which some unscrupulous employers inflicted on workers.

In view of these examples, the speaker wished to state clearly that the workers of his country and the entire trade union movement were not ready to accept any labour reform which included a retreat from articles 491.1, 493.1 and 497. These were the only articles which guaranteed workers that employers would not violate or circumvent their right to organize, to collectively bargain and to strike.

He indicated his concern about the rightward drift of this international organization. Free enterprise should not be confused with freedom of association, as was the case in the Committee on Freedom of Association Case No. 1931, which had been filed by private enterprises in his country. He underlined the seriousness of stripping workers of their legitimate right to work, and thus their contribution to the growth of the enterprise through their personal effort, and he emphasized that the negation of the right to strike, to establish trade unions and to collectively bargain of public servants constituted a real outrage to the state workers which this Committee could not accept. He concluded with the hope that there would be prompt pronouncement of this Committee in this respect.

Following a point of order raised by the **Employer member of Panama** during the intervention of the **Worker member of Panama**, the **Chairperson** asked the speakers to limit their speeches to the case at hand.

The Worker member of Costa Rica, having expressed his full support for the statement made by the trade union representative of Panama, said that it was utterly paradoxical that in the Committee on

the Application of Standards – which should watch over the principles and values, both moral and legal, of freedom of association – someone should dare to maintain a position which ultimately aimed to weaken that very freedom of association. That is what really lay behind the actions of the Panamanian business sector, which with the excuse of invoking compliance with Convention No. 87, sought to open a discussion to "revise" the laws of its country, with a clear objective to revoke laws that protected the exercise of freedom of association and the right to strike. For such employers, it was impossible to accept the democratic principle that when the majority of workers in an enterprise, organized in the form of a trade union, decided to call a strike, that strike would take place and the enterprise must cease its activities. This was a guarantee under Panamanian law which the employers, invoking Convention No. 87, wished to annul.

The speaker said that that law should be defended absolutely by the present Committee. Those powerful groups should not be allowed to get away with what they wanted. The representative of the Government of Panama should himself be the first to defend the right to strike, enshrined in the country's laws. No one in the present Committee had the right to demand less freedom of association. That would be a contradiction in terms. He hoped that the present Committee would take a firm stand to prevent the restriction of freedom of association and the right to strike in Panama.

The Worker member of Paraguay expressed his agreement with the Committee of Expert's report concerning complaints presented by the National Council of Organized Workers (CONATO). Workers' rights continued to be violated in a situation in which groups of extremely powerful employers did not respect the national laws or ILO Conventions. They continued to strangle workers through their failure to pay salaries, bonuses or leave.

He pointed out that with respect to the protection of human rights and respect for labour legislation, governments in many cases ratified ILO Conventions just to forget later that they were in force. This led to the violation of these rights, including the right to strike and the right to collective bargaining provided by Conventions Nos. 87 and 98. It was important to take this fact into account and adopt appropriate measures to guarantee the application of the above Conventions in practice and respect for human rights, which was also respect for the life of workers and their families.

The Government member of the Dominican Republic endorsed the statement by the Government representative of Panama in that the Committee should recognize the efforts that the new Government had been making in relation to Convention No. 87 concerning freedom of association, through its request for technical assistance to solve the problems that had arisen, in consultation and dialogue with the social partners. The statements made by the Government representative therefore appeared to reflect the existence of a culture of dialogue.

The Government member of El Salvador considered that it was important to implement the request by the Government of Panama for technical assistance from the ILO Subregional Office so as to ensure a better application of the Convention, in the context of dialogue and consultation with the social partners, and to achieve agreement among them. She expressed solidarity with the Government of Panama in its ongoing efforts to solve these problems.

The Government representative, having considered the observations made by the Worker members and the Employer members, reiterated the content of his speech, expressing his confidence in tripartism, consensus and the observance of international law.

The Worker members stated that, in the absence of the reply and actions on the part of the Government regarding the shortcoming identified over a number of years, they reiterated their request to the Government to supply, to the next session of the Conference, a report indicating concrete measures taken with a view to bringing the national legislation and practice into conformity with the Convention, particularly with regard to the conditions governing the establishment of trade union organizations, restrictions of trade union activities in certain sectors or in relation to realities on the ground, as well as restrictions for certain sectors as regards the affiliation to a confederation. They also wished that the Government would reply to the problems which had existed for many years, like compulsory arbitration, the limitation of the number of organizations by enterprise or by province, the imposition of a minimum number of members required for the establishment of an organization of employers and workers, the nationality requirement to become a member of an organization's executive organs, the interpretation of the notion of essential services, and also the interference in labour disputes, particularly in the case of a strike. The Worker members also requested the Government to accept effective technical assistance of the ILO, with a view to assessing the situation and to searching the unequivocal solutions to the problems raised.

The Employer members noted that the Government had accepted meaningful ILO technical assistance in this matter. In this regard, this assistance should also include the evaluation of the Bill mentioned by the Government representative to ensure that it addressed all matters in this case. They also noted that the Government had indicated it would involve the social partners in the preparation of the next report to the Committee of Experts.

The Committee took note of the oral statement given by the Government representative and the discussion that followed. The Committee observed that for a number of years the Committee of Experts had highlighted serious problems regarding the application of the Convention both in national law and in practice. The problems in question related to the existence of legal obstacles to establishing workers' and employers' organizations, to the trade union monopoly imposed by law in public institutions, to the requirement that one must be Panamanian in order to form part of the executive board of a trade union, to the possibility of imposing compulsory arbitration in cases of collective disputes, to the ban on the affiliation of public service federations to union centrals that encompassed private sector organizations and to legislative interference in the activities of workers' and employers' organizations. The Committee had also asked the Government to submit to the Committee of Experts a copy of the draft law on export processing zones. The Committee took note of the comments made before the Committee of Experts by a workers' organization and an employers' organization.

The Committee took note of the statement by the Government representative, according to which technical assistance from the ILO was needed in order to find consensual solutions to the problems set out by the Committee of Experts in relation to Conventions Nos. 87 and 98.

The Committee regretted that the technical assistance it had proposed in its 2003 review of the case had not yet materialized and that no significant progress had been recorded as regards the application of the Convention, but it noted that the Government had agreed to accept a technical assistance mission and that it stood ready to resolve the pending problems through dialogue with the social partners.

The Committee strongly hoped that the Government would take the necessary steps, with ILO technical assistance and in close cooperation with the social partners, to ensure that workers' and employers' organizations could fully enjoy the rights and guarantees enshrined in the Convention without any interference from the public authorities.

The Committee condemned the lack of progress over recent years and urged the Government to submit to the Committee of Experts, before the next meeting, a report containing detailed and precise information on the measures taken, including copies of any draft laws that had been drawn up or new legislation that had been adopted. The Committee requested that the social partners be fully involved in the drafting of the said report and hoped to be able to examine all the information the following year. The Committee also hoped that in the very near future it would be able to see significant and specific progress and that the technical assistance mission would be able to examine the draft law referred to by the Government.

Russian Federation (ratification: 1956). **A Government representative** stated that important and complex questions should be examined in a retrospective manner. The Labour Code of the Russian Federation was adopted over two years ago. The work on the Code was carried out in an open and democratic manner, in close cooperation with the social partners. The Labour Code had set up new labour relations, which had been formed after the transition from a centrally-planned to a market economy. In conditions of the social and economic changes, the Government of the Russian Federation and representatives of workers' and employers' organizations had reached social consensus and agreed that the new Labour Code was a crucial document for the development of the country. For the first time, the Labour Code laid down the principle of tripartite cooperation and developed further the fundamental provisions of the Russian Constitution. The Code had been drafted with the help of ILO experts, who had prepared numerous recommendations, most of which had been accepted and incorporated. With the help of the ILO, new social dialogue institutions had been developed; they included tripartite and bipartite bodies and mechanisms. All this work had been carried out by the Tripartite Commission on Social and Labour Relations, by reaching mutually acceptable solutions. To supplement the Labour Code, additional legislative acts had been adopted in consultation with the social partners. Twenty-one sections of the Labour Code dealt with the issue of settlement of labour disputes. The Code also regulated other issues in the field of labour, such as wages, employment and social protection. Because labour relations were constantly changing due to varying economic conditions, the work to improve the Labour Code was an ongoing process. By the decision of the Government and the State Duma, a tripartite working group had been established to analyse the practice and to prepare draft amendments to the Code. The Government's aim, as demonstrated by the ratification of all eight fundamental Conventions of the ILO, was to embody international standards in the national legislation.

With respect to the observations of the Committee of Experts, and more particularly to the quorum required for a strike ballot, section 410 was in conformity with international law, in particular with article 8(1)(d) of the International Covenant on Economic, Social and Cultural Rights. At the same time, the question of reducing down to 50 per cent the number of delegates needed to decide on strike action was being presently discussed by the working group on the improvement of the Labour Code. Concerning restrictions imposed on the right to strike of certain categories of workers, the Labour Code provided for an exhaustive list of cases where a strike was prohibited. These included workers

employed in the sectors of the economy relating to defence and the security of the population. These restrictions were formulated on the basis of article 17 of the Constitution, which provided that the exercise of individual rights and freedoms should not violate the rights and freedoms of other persons. This approach was in conformity with article 8(1)(c) and (2) of the International Covenant on Economic, Social and Cultural Rights. On 1 February 2005, a new Law on State Civil Service had come into effect. This law had revoked the provision previously contained in section 11 of the Law on State Service, which had contained restrictions on the right to strike for state service employees. Section 410 of the Code, which provided for a requirement to indicate a possible duration of the strike, did not restrict in any way the right of workers to take strike action, as it did not provide for any time limits imposed on strikes. In fact, in order to extend the duration of strikes, no additional action was needed. After the entry into force of the Labour Code, and in particular section 413, restrictions on strike action provided for in other previously adopted legislative acts, which contradicted section 413 of the Code, no longer applied.

In respect of workers whose right to strike was restricted by the legislation in force, the Government representative pointed out that these workers enjoyed the right to organize and to settle their labour disputes in court. The current legislation provided for a limited list of undertakings where minimum services had to be ensured during a strike. These included organizations responsible for the safety and health of the population. Minimum services were determined in consultation with trade unions, and only if consensus was not reached, the executive body had the responsibility to draw up such a list, taking into account the interests, safety and health of the population. The workers had the right to appeal this decision in court. Furthermore, pointing out to the recent developments, he explained that four centres responsible for settling collective labour disputes had been set up in the Russian Federation. It was intended that their decisions as to establishing the lists of minimum services would be final.

He also explained the interpretation to be given to section 11 of the Labour Code and pointed out that this section did not refer to the restrictions as regards the application of labour legislation to such categories of workers as women, youth and workers with family responsibilities but, on the contrary, referred to the additional guarantees provided for by the Russian legislation. More specifically, it concerned the prohibition of work in unhealthy and dangerous conditions for pregnant women and persons under 18 years old.

Finally, he stressed that the issue of improving labour legislation was the sphere of competence of the social partners and that this work was carried out in the framework of bodies established on a tripartite basis and included examination of the application of labour standards in practice.

The Employer members noted that this was the first time that a case concerning this country was being discussed in the post-Cold War context. The issue of trade union monopoly which had been a long-standing problem in the country was no longer in question and a much broader right to organize was now available. As to the substance of the issue under discussion, the Employer members considered that, as the right to strike was not explicitly mentioned in the Convention, its application could be subject only to a general appreciation, although the Committee of Experts had made specific comments in this respect. In the Employer members' view, the Government should be commended for indicating that they were in the process of resolving the issues raised in the observation of the Committee of Experts. With regard to the requirement of organizing a ballot in order for a strike to be authorized, the Employer members considered that such a requirement was in line with the fundamental need to safeguard the democratic rights of trade union members. It was appropriate, therefore, that a strike ballot should involve the majority of the workers in a workplace. Although a requirement for all workers to vote would have been too high, the two-thirds requirement of the Labour Code did not seem excessive. The Employer members further wished to emphasize that the precedents of the Committee on Freedom of Association had no bearing on the question of whether a requirement to indicate the duration of a strike was in conformity with the Convention, given that the Committee on Freedom of Association was not limited to the language of the Convention. The same was true with regard to the question of essential services which should vary depending on the circumstances of each country. Where a general prohibition of strikes existed, however, appropriate alternatives involving recourse to a third party should be available to permit to overcome the impasse in negotiations.

The Worker members recalled that the case concerned the application of Articles 2 and 3 of Convention No. 87 which had been severely and negatively impacted by several provisions of the Labour Code of 1995 on which the Committee of Experts had widely commented. They had taken note of the modifications to this legislation which had been announced by the Government and would observe its effects in practice before pronouncing themselves in this respect.

The Worker members observed that: (1) although the right to strike was in fact enshrined in the Labour Code, in practice recourse to strike action was subject to conditions such as two-thirds of workers concerned being present at the general assembly and a quorum of 50 per cent of voters required, making strikes practically impossible at the sector or intersectoral level; (2) by requiring trade union organizations to stipulate the duration of the strike, the law prejudiced the rights of these organizations to carry out activities without interference from the public authorities; (3) the executive authorities of the State did not constitute an independent body which had the trust of all parties for deciding a dispute over the establishment of a minimal service, as the Convention foresaw; (4) the ban on strike action for all railway employees as well as for many other categories of state employees (public servants exercising authority in the name of the State) greatly exceeded the limits generally allowed for this restriction; (5) where strike action was prohibited it was essential that collective conflicts could be resolved by an independent body and not by the Government.

The Worker members also remarked that, generally speaking, these criticisms had already been made in 2003 and even in 2001 and the Conference Committee awaited not just a small step by the Government but a plausible demonstration of its genuine will to follow up quickly on the measures recommended by the Conference Committee and by the Committee of Experts.

The Worker member of the Russian Federation speaking on behalf of the Federation of Independent Trade Unions of Russia, the largest trade union in the country, recalled that trade union pluralism existed in the Russian Federation and that this fact explained different interpretations given to various legislative provisions. The right to strike was an inalienable right of workers and trade unions, which represented their social and economic interests. The strike was the most radical measure to which trade unions had recourse only in exceptional cases. The strike was not an end in itself but a response to flagrant and persistent violations of workers' rights and interests. If employers fully complied with the agreements concluded with trade unions through collective bargaining, and if the Government and the supervisory bodies rigorously controlled the application of labour and other legislation, workers would have no reason to have recourse to such an extreme measure to defend their interests. As the opposite was often taking place, labour legislation needed to contain provisions which would allow workers, without any excessive restrictions or prohibitions, to fully exercise their inalienable right to strike.

The Committee of Experts had presented its observations on the application of the Convention by the Russian Federation on more than one occasion. Two years ago, the Committee of Experts had made similar observations, to which the Government had not provided a response in a timely manner.

He agreed with the Committee of Experts, which considered that the list of professions where the right to strike was restricted was excessively broad. He also considered that the disputes which could lead to strike action should be settled by courts which were, by their nature and according to the Constitution, independent bodies, and not by the Government, as provided by the legislation. Moreover, the quorum required for a strike ballot might have been in fact lowered to a reasonable level. He further questioned the requirement to notify the duration of the strike, which should be allowed to last as long as its goals had not be reached and the dispute not resolved.

Other points, not raised by the Committee of Experts, but which were nevertheless problematic to trade unions, concerned the absence of a right granted to national sectoral trade unions to call a general strike on enterprises of a given sector. The strike was a prerogative of an enterprise trade union. That meant that workers of the same economic sector could not express their solidarity with other workers trying to solve an industrial dispute with their employer. In law as in practice, a strike at a large corporation belonging to the same owner but regrouping enterprises of various sectors of the economy would be impossible. That explained the fact that a large number of strikes in the country had been declared illegal. The speaker finally expressed his satisfaction with the fact that the Committee of Experts was constantly reminding the Government of its responsibility to bring legislation into conformity with the Conventions it had ratified. A complete application of international labour standards was beneficial to all – the Government, employers, and above all, to workers.

The Worker member of Romania said that this case had been examined by the Committee on Freedom of Association in 2003 and 2004. In this respect, it could be considered a flagrant violation of the Convention which was a fundamental ILO Convention.

Section 11 of the Labour Code of the Russian Federation envisaged restrictions on the right to strike for certain persons, including persons with two jobs, persons with family responsibilities, women, young persons and civil servants. The Government imposed other restrictions on the right to strike for holders of a contract under civil law, who were excluded from the scope of application of the Labour Code. These restrictions constituted a violation of Article 2 of the Convention, which provided that workers and employers, without distinction whatsoever, should have the right to establish and to join organizations of their own choosing.

Section 410 of the Labour Code required that at least two-thirds of the workers be present at the meeting in which the decision to call a strike was being decided and that the decision be adopted by at least half of the delegates present. Furthermore, section 410 of the Labour Code required workers' organizations to notify the Government of the planned duration of the strike, which constituted a violation of their right to organize without interference by the public authorities.

Section 412 of the Labour Code contained an exhaustive list of organizations and enterprises in which a minimum service had to be assured in the event of a strike. The disagreements concerning the estab-

lishment of a minimum service were regulated by an executive body of the Russian Federation under section 412 of the above Labour Code. However, in accordance with ILO practice, these disagreements had to be regulated by an independent body. By virtue of section 413 of the above Labour Code, the right to strike was prohibited for certain activities in the productive sector as well as for essential services, for which decisions concerning collective conflicts were taken by the Government. However, in the event of restrictions or limitations on the right to strike, which deprived workers of an important means of protection, workers should benefit from conciliation, mediation and arbitration measures.

Taking into consideration that this was the second time that this case was being discussed in this Committee, the Government should take all the necessary measures to bring its legislation into conformity with the Convention.

The Employer member of the Russian Federation stated that the work on the amendment of the Labour Code was presently under way and carried out by the special working group created by the State Duma. Several provisions had already been amended but sections 412 and 413 had not yet been discussed. Since the work on the amendment of the Labour Code was not yet concluded, it was premature to examine this piece of legislation. He finally pointed out that the Employer members considered that the provisions of the Convention did not contain any reference to the right to strike and therefore did not confer such a right.

Another Government representative (Deputy Minister of Health and Social Development) concluded by stating that her Government was prepared to cooperate further with the ILO on the issues discussed and to report on the progress made in this respect. She stressed once again that the efforts were being made to amend the Labour Code and that the work in this respect was carried out in consultation with the social partners.

The Employer members took note of the Government's last indication that it was committed to studying appropriate amendments to the legislation so as to bring it in line with the Convention. It was however often the case that governments set up commissions working on legislative reform over long periods of time. They therefore wished to ask the Government to ensure that the working group would constitute an effective process that would lead to concrete improvements of the situation in a short period of time.

The Worker members emphasized that the consistent practice of adopting a number of measures of a limited scope shortly before the Conference, did not reflect positively on the States concerned. They requested that, in its report, the Committee call on the Government to rapidly take measures to ensure that the provisions of the Labour Code, which had been criticized for such a long time, be finally brought into conformity with the Convention, and also to request the Government to provide information on the measures adopted in the next session of the Conference.

The Committee took note of the statement made by the Government representative and of the detailed discussion that followed. The Committee recalled that the comments made by the Committee of Experts referred to the rights of employers' and workers' organizations to organize their administration and activities without interference by the public authorities.

The Committee took note of the Government's statement, according to which the Labour Code had been the subject of extensive consultations with the social partners and that a tripartite working party of the Duma would examine the effectiveness of the provisions in the Labour Code with a view to possible modifications; the working party was currently discussing certain reforms to the provisions mentioned by the Committee of Experts.

The Committee requested the Government to take all measures necessary for the process under way to be carried out in an efficient and rapid manner in order to bring national legislation and practice into conformity with the Convention in the near future. The Committee requested the Government to send before the next meeting of the Committee of Experts a detailed report containing full information on progress made in this respect.

Swaziland (ratification: 1978). **A Government representative** said that his country was listed among the 25 countries whose delegates had been invited to supply information to the Conference Committee. In this respect, he expressed deep concern at the still unclear method of listing countries for discussion concerning the application of ratified Conventions adopted by the ILO. He recalled the statements made by certain delegates during the general discussion and called for a more fair and transparent system so that countries could be selected on the basis of scientific criteria that would render the process more just and clear to all delegations. In view of all the positive steps that had been taken to give effect to Convention No. 87, his Government had expected that at least a case of progress would have been recorded with respect to Swaziland.

He emphasized that, while Swaziland had appeared before the Committee on a number of occasions, the country had obviously taken significant steps to implement the Convention in practice, in consultation with the social partners and with the assistance of the ILO. As such, Swaziland had been able to build the necessary confidence with regard to freedom of association and the right to organize. However, he indicated that most of the allegations made in the Committee of Experts' observation were based on incorrect facts and a mistaken assessment of the situation, and should therefore be challenged.

Firstly, with respect to the comments of the Committee of Experts relating to the alleged death of a trade unionist during a protest march organized by Swazi labour federations on the occasion of a meeting of the Commonwealth countries in Mbabane in August 2003, he admitted that there had been an instance where violence had ensued during the protest, but he strongly denied that a trade unionist had died on that occasion. He explained that an agreement had been reached between the authorities and the organizers of the action with respect to the designated areas where it could be held, due to security reasons related to the presence of the Heads of State attending the Commonwealth meeting. Although the protest action had started peacefully, a confrontation had occurred when an attempt had been made to leave the designated area. However, he affirmed that no trade unionist had died and no such death had been reported by the media or by the leadership of the trade unions. His Government aligned itself fully with the view expressed by the Committee of Experts that, whenever a trade unionist died in a protest action, a commission of inquiry should be set up, and he invited the ILO, ICFTU and SFTU to take part in such a commission so that the country's name could be cleared.

Secondly, with respect to the exclusion of prison service staff from the scope of the Industrial Relations Act, he indicated that the prison service consisted of 1,300 employees. He assured the Committee that his Government had not remained indifferent to the comments made by the Committee of Experts on this issue in the past and that it had undertaken a critical analysis of the prison service in order to assess how best compliance with the obligations under the Convention could be achieved. Nevertheless, his Government had come to the conclusion that, in the context of Swaziland, as in the case of many other small developing countries, the prison service should in fact be considered as an "armed force" and did not therefore fall within the scope of the Act, in the same way as the police service and the army. Moreover, it should be noted that the staff in the prison service had not been disadvantaged in respect of wages and conditions of employment, especially when compared to other civil servants belonging to the Swaziland National Association of Civil Servants (SNACS), the Swaziland National Association of Teachers (SNAT) and the Swaziland National Nurses Association (SNA), because the outcome of the negotiations undertaken by these associations had to be applied to the entire civil service.

Thirdly, with respect to the application of section 40(13) of the Industrial Relations Act respecting charges against trade union leaders, he indicated that this section had been amended by the Industrial Relations Amendment Act, No. 8, of 2000, with the full participation of the social partners and in consultation with the ILO. Legal charges against trade union leaders could now only be brought in cases of criminal activities, and malicious and grossly negligent acts. This should therefore no longer be an issue and he wondered why it was still being raised by the Committee of Experts.

Fourthly, turning to the points raised in the Committee of Experts' observation with respect to the process and outcome of the drafting of the Constitution, he stated that the process had benefited from assistance from the Commonwealth and the European Union, and that the draft text would be reviewed by both Houses of Parliament in August 2005. He firmly believed that the draft Constitution would comply with the country's international obligations under the Convention. Part IV on fundamental rights and freedoms provided for: (a) freedom of conscience, expression and of peaceful assembly and association and movement; and (b) respect for the rights of workers. It was clear that a conscious decision had been taken to protect these rights in line with the Decent Work Agenda. The draft text of the Constitution would be made available to the Office and could be consulted on the Government's web site www.gov.sz .

Fifthly, he referred to the comments of the Committee of Experts on the length of time taken in attempting to settle a dispute before an organization could embark on a lawful strike action. He was pleased to report that his Government had relied on tripartite dialogue and ILO technical assistance to amend the Industrial Relations Act. The amendment would enter into force in August 2005. One of the highlights of the amendment was that it sought to cut drastically the dispute resolution period by encouraging the direct reporting of disputes to the Conciliation, Mediation and Arbitration Commission. He expressed the belief that reasonable flexibility should be afforded to the social partners to engage in meaningful dialogue and resolve their disputes amicably. If the tripartite partners still felt that the Act did not comply with the obligations concerning strike action, his Government would be pleased to work with them and the ILO to rectify the situation.

Finally, with respect to the allegations made concerning a Bill to regulate internal security, he stated that there was no record of such a Bill, although a proposal had been submitted in the past but had been abandoned four years ago. No such Bill was currently being discussed in Parliament.

In conclusion, he said that his Government was willing to work with the ILO to achieve the full compliance of its law and practice with the obligations under Convention No. 87.

The Worker members thanked the Government representative for his intervention and the information provided. The Committee was examining the case of Swaziland for the eighth time in 10 years. On several occasions, the Government had committed itself to achieve

progress. However, even though some progress had indeed been achieved, the situation was very different in practice. The adoption in 2000 of the Industrial Relations Act had appeared to be a positive step. However, despite the adoption of the Act, the Government was still making use of laws on the state of emergency against workers and their organizations, namely the Public Order Act, 1963, and section 12 of the Decree of 1973 on trade union rights, which had repealed the Declaration of Rights and was contrary to all civil freedoms. Since 1973, the current Government of Swaziland had been running the country through the use of force, impunity, the lack of social dialogue, denial of the authority of the law, ignoring dissidents, brutality against citizens engaged in peaceful demonstrations and failure to respect the judicial authorities.

Once again, the Committee of Experts had referred to several serious violations of Convention No. 87. In the first place, the national legislation did not afford prison personnel the right to organize. In this respect, the Committee of Experts recalled that, under the terms of Article 2 of the Convention, workers, without distinction whatsoever, had the right to establish and join organizations of their own choosing without previous authorization. Once again, the Government had indicated that it planned to include the prison services within the scope of the Industrial Relations Act. Nevertheless, in view of its record, it was difficult to believe that it would keep its promise.

Secondly, the Committee of Experts had once again raised the issue of the length of the compulsory procedure for the settlement of disputes envisaged before strike action could be taken, which was too long and particularly intricate. A procedure of this nature was in violation of Article 3 of the Convention and was intended to discourage any strike action. It was clear that such provisions were unacceptable as they were in violation of fundamental human freedoms. The Government had once again indicated that it was planning to reduce the length of the procedure. However, once more, in view of its record, it was difficult to believe that it would keep its promises.

In the third place, with regard to the possibility envisaged in the Industrial Relations Act to take civil action against federations, trade unions and individuals who participated in protest actions, the Worker members said that such a procedure was a violation of their rights and might expose them to costs which would have the effect of dissuading them from exercising their trade union rights. In this respect, the Government had indicated that the issue of legal action had not arisen. However, it had not provided information on the application of the law in this regard.

Fourthly, the Committee of Experts had once again indicated that the Public Order Act, 1963, and section 12 of the 1973 Decree, abolishing trade union rights, still appeared to be in force. It had requested the Government to keep it informed of the procedure for the drafting of a national Constitution which would accord with international standards and would guarantee respect for trade union rights, and repeal the above Decree. However, the Government had not provided information on this subject.

In the fifth place, according to the information provided to the Office by the ICFTU, the police had dispersed a demonstration in August 2003, making use of violence, and a trade unionist had been killed. In this respect, the Committee of Experts had recalled that freedom of assembly was one of the fundamental trade union rights and that the authorities should refrain from any action likely to restrict this right. It had also called for the holding of an independent judicial inquiry into the case of a participant in the union demonstration who had been killed during the demonstration. It was to be hoped that the Government representative would propose the holding of such an inquiry.

The Committee of Experts had also requested the Government in its observation concerning Convention No. 98 to adopt specific provisions setting out sufficiently effective and dissuasive sanctions to protect workers' organizations against acts of interference by employers or their organizations.

With a view to ensuring the implementation of Convention No. 87, the legislation prohibiting the right to organize of prison staff, the procedure for the settlement of disputes and the 1973 Decree on the rights of organizations needed to be amended or repealed. The fundamental problem in the case of Swaziland was the 1973 Decree on the rights of organizations. This problem was all the more important as the process of the adoption of the Constitution seemed to have been suspended.

In conclusion, the Worker members requested the Government to allow civil society and trade union federations to participate in the drafting of the new Constitution. Furthermore, the draft Constitution should be submitted to the Committee of Experts or, in view of the tight deadline, it would be desirable for an ILO mission to visit the country to provide advice on the draft text. This would make it possible to establish a framework for social dialogue.

The Employer members, after thanking the Government representative for the information provided, emphasized that free speech was a fundamental element of freedom of association. They therefore urged the Government to ensure that the restrictions that were currently placed on free speech were lifted. Referring to the process of the development of the Constitution, which had been under way for several years now, they noted that Decree No. 4 discouraged group submissions, thereby undermining any proper process of consultation. It was of great importance that the provisions of the Constitution were aligned with the obligations set out in the Convention. For this purpose, it would be very valuable if the draft of the Constitution could be analysed by the Committee of Experts and therefore the Government should provide the text of the Constitution once it had been finalized. The paradox in the present case was that the basis for social dialogue appeared to be in place but not used in practice. The Employer members, therefore, urged the Government to build on this platform with the technical assistance of the ILO.

The Worker member of Swaziland responded to the statement by the Government representative, by stating that in Swaziland there was a disregard for the rule of law, extravagance in the face of poverty, a major HIV/AIDS problem, lack of democracy, officially-sponsored violence and poor governance. There was also an attempt to vilify the spokespersons of organizations which had access to the international media.

Swaziland had been ruled by emergency decree for 33 years, there were no political parties, all power was invested in the head of state, and there was no separation of powers.

There had been gross violations of Convention Nos. 87 and 98, arrests of labour leaders and even the death of a young girl at a demonstration. Amnesty International had also reported deaths in prison cells. It was only under great pressure that the Government had acceded to the new Labour Law in 2000. However, there had been no significant improvement in practice, implementation or enforcement. The country had a record of ratifying human rights related conventions and treaties, but was one of the worst violators of these instruments.

The speaker noted that this was the eighth time that Swaziland had appeared before the Conference Committee since 1996 for flagrant disregard and violation of Conventions Nos. 87 and 98 that it had ratified in 1978. The Conference Committee and the Committee of Experts had urged that Swaziland conform with the letter of these Conventions by allowing the police and prison staff to form and join associations of their choice; shortening the process for allowing a lawful strike; addressing section 40(13) of the Industrial Relations Act, making unions liable for losses suffered, if the loss happened during a legal protest; and refraining from use of the public order decrees of 1963 and 1973. The Government was also called on to lay the Security Bill before the Committee of Experts before it passed into law. However, the spirit of the Bill had been incorporated into the Constitution Bill to be shortly adopted by Parliament. The Constitution Bill limited freedom of expression and association, as well as denying a role to political parties in the governance of the country. All powers would be vested in the King.

The speaker therefore demanded that the Government allow police and prison staff freedom of association and collective bargaining rights; shorten the dispute process; remove the liability clause from the Industrial Relations Act, 2000; repeal sections 11, 12 and 13 of the 1973 Decree; repeal the 1963 Public Order Act; repeal section 4 of Decree No. 2 of 1996; engage in social dialogue and allow civil society to participate before finalizing the Constitution Bill; lay the Constitution document before the Committee of Experts to ensure conformity with Conventions; and provide a progress report to the Governing Body in November 2005.

The speaker stated that the people of Swaziland looked to the Committee to deliver human rights, social justice and human dignity.

The Government member of Namibia thanked the Government representative for the information supplied on the comments of the Committee of Experts. It was noteworthy that positive steps have been taken by the Government of Swaziland to give effect to the comments of the Committee of Experts and to adopt legislative amendments that would be in conformity with the provisions of the Convention. The speaker commended the Government for its willingness to cooperate with the social partners and the ILO on this specific subject.

The Government member of Nigeria recalled that the Government representative of Swaziland had in his response informed the Conference Committee that his country was prepared to set up a commission of inquiry, if there were sufficient facts that a trade unionist had lost his life during the noted protest. This was enough evidence that the Government of Swaziland was prepared to work with the ILO in implementing the provisions of the Convention, and with regard to the protection of the lives of trade unionists in that country. Based on the intervention of the Government representative it was clear that there was not only the political will for implementation of the provisions of the Convention, but also to listen to the ILO on issues that pertained to the fundamental rights of trade unionists. The speaker requested that the Conference Committee encourage the Government in its continued efforts to amend and improve other areas that had yet to be worked on.

The Government member of Cuba highlighted the measures taken by the Government and invited it to report whether prison staff enjoyed the right to freely associate in trade unions, bearing in mind that if they were armed forces or police personnel they could be excluded from the application of the Convention. Finally, the speaker pointed out that the Government could take advantage of ILO technical assistance.

The Government member of South Africa welcomed the Government of Swaziland's proposed and apparent improvements mentioned by the Government representative. The speaker stated that the Government had requested technical assistance and further noted that it should be provided to the Government. He called on the Government to engage in social dialogue with its social partners.

The Government representative thanked all speakers for their

contributions, which would be taken into consideration as far as they related to the Convention. The future Constitution was in line with Swaziland's international obligations. He reiterated that the Internal Security Bill was no longer pursued and that the Government was encouraged by the assistance provided by the ILO and other countries with a view to promoting social dialogue. They would continue to work towards full application of the Convention.

The Worker members stated that this Committee turned back to the violations of freedom of association in Swaziland almost in every session and that as long as the Committee of Experts would indicate that these serious violations remained, the Committee would not have a choice but to discuss the case once again, and insist that the Government bring its legislation and practice into conformity with the Convention. They recalled that what was expected of the Government was to modify the law prohibiting the right to organize for prison staff; reform the procedure required for strike action to be taken, which was too long and onerous; abrogate the Decree of 1973, which suppressed trade union rights. They also considered that the draft new Constitution should be submitted to consultations with the social partners, or analysed by the Committee of Experts, with regard to its conformity with international labour standards before its adoption.

The Worker members envisaged the dispatch of a high-level mission with the participation of experts, a mission which could bring to light information on the death of a person during the protest of 2003. They specified that a refusal to accept such a mission would justify, in their view, the inclusion of this case in a special paragraph of the report, as a case of continued failure to implement the Convention.

The Employer members recalled that it was of fundamental importance that the Government fully implement social dialogue and address the discrepancies between the Convention and its law and practice as noted in the observation of the Committee of Experts. The Employer members had the impression that the Government had not been totally transparent in terms of the information provided to the Conference Committee and the Committee of Experts and emphasized in this respect the need for the Government to provide a detailed report to the Committee of Experts on the action taken in respect of the discrepancies noted with regard to the implementation of the Convention. The Employer members associated themselves with the proposal made by the Worker members for a high-level mission aimed at establishing a social dialogue framework in the country and examining the possible impact of the new Constitution on the implementation of the Convention in law and in practice. They doubted that the Government representative had authority to agree to a mission today, but urged the Government to agree to such a high-level mission before next year.

The Committee took note of the statement made by the Government representative, as well as the discussion that followed. The Committee recalled that this case had been discussed on numerous occasions over the past ten years. The Committee observed that the comments of the Committee of Experts referred to the right to organize of prison staff and various aspects of the right of employers' and workers' organizations to organize their activities without government interference.

The Committee noted the statement made by the Government that no deaths had occurred during the protest action referred to in the Committee of Experts' report. With regard to the right to organize of prison staff, the Government had indicated that it was reviewing the matter and hoped that it would soon be resolved. With regard to the constitutional process, the Government had stated that Parliament was currently debating the question and the Constitution would be made available to the Committee of Experts once it was promulgated. Finally, the Government had stated that the internal security Bill had been abandoned four years ago and was no longer an issue.

The Committee noted with regret that the 1963 Public Order Act and the 1973 Decree on the rights of organization, upon which the Committee of Experts had been commenting for many years, were still in force and invoked by the Government. Moreover, the Committee noted the serious concerns raised in respect of the Decree which prohibited any involvement by civil society in the drafting process of the new Constitution and its content.

The Committee recalled that social dialogue was a fundamental aspect of the full implementation of the Convention. It urged the Government to hold full and meaningful consultations with the most representative employers' and workers' organizations, and civil society as a whole, on the draft Constitution and to ensure that none of its articles would have the effect of contravening the Convention, and that its adoption would result in the effective repeal of the 1973 Decree and of Decrees Nos. 11, 12 and 13 adopted under the terms of that Decree. It further requested the Government to take the necessary measures to eliminate the remaining discrepancies between the law and practice and the Convention. The Committee requested the Government to provide detailed information in its next report to the Committee of Experts on all the measures taken in this regard and to provide a copy of the Constitution so that the Committee of Experts could examine its conformity with the Convention. The Committee also urged the Government to accept a high-level mission to establish a meaningful framework for social dialogue and to review once again the impact of the Constitution on the rights embodied in the Convention.

Turkey (ratification: 1993). **A Government representative** recalled, in the first place, that this year the Committee of Experts had expressed satisfaction and interest at a number of the measures taken by his country for the implementation of Convention No. 87. In this respect, several legislative amendments had been formulated with the active participation of the social partners. The Committee of Experts had also raised a number of points on which it had requested further information on the implementation of the Convention, to which he wished to respond.

With regard to the "trial period" required for public servants and the scope of Act No. 4688, he indicated that the Act had been amended, based on social dialogue, by Act No. 5198. At a recent meeting of the Tripartite Consultation Board, it had been decided that work would be continued on the new draft, including the removal of the trial period and enlarging the scope of the Act with regard to the categories entitled to the right to organize. He added that the allegation that public employees, who were increasingly recruited under fixed-term contracts, were excluded from the scope of Act No. 4688, was misleading. Fixed-term employees had the same union rights as their counterparts in the private sector. Furthermore, it was intended to remove some of the restrictions now contained in section 15 of the Act so as to limit exceptions to positions of trust in so far as possible.

On the subject of the criteria used by the Ministry of Labour to determine the branch of activity into which an establishment fell, and criticism that this might hinder the right of workers to join unions of their choice, he wished to make a clarification. With a view to preventing disputes, Act No. 2821 envisaged careful demarcation of branches of activity, taking into account international standards. In the exceptional case of an inter-union dispute as to demarcation, the Ministry of Labour was responsible for making a determination at the request of the parties, and its decision could be appealed to the courts. The determination of branches of activity in his country was based on objective criteria with a view to maintaining a sound and effective collective bargaining system in which workers were free to join any union established in the respective branch of activity. With reference to the case of Dok Gem-Is, he indicated that a jurisdictional dispute had led to a transfer of competence between two unions, with the workers remaining free to join other unions in the branch or to establish a new union.

In response to the request for information by the Committee of Experts on the proposed merger of certain branches, he indicated that the purpose was once again to rationalize the organizational structure in accordance with international standards and to remove unnecessary overlapping. For example, sugar and food, as well as road, railway, sea and air transport, which were listed as separate branches under the existing system, would be merged, based on objective criteria, such as the organizational structure of international trade union secretariats. Past indictments had no adverse impact on the right to organize of workers, who are once again free to join organizations of their own choosing. The proposed modification, which was intended to combine a few branches with a view to clarifying the nature and scope of industrial unions, had been classified by the Committee of Experts as "not in itself incompatible with the Convention".

With regard to the comment by the Committee of Experts that several provisions of Acts Nos. 2821, 2822 and 4688 unduly regulated internal union matters and might therefore give rise to undue interference by the public authorities, he emphasized that the procedures envisaged did not hinder the independence of organizations, but were intended to serve as guidelines for the democratic functions of unions, transparency in their activities and the protection of the rights of their members.

Turning to the observation by the Committee of Experts that section 10 of Act No. 4688 empowered the Ministry and union members to apply to the courts for the removal of union officers who were in breach of the provisions on union elections, he said that the final decision lay with the courts and the provisions were in practice invoked most frequently by trade union members. The purpose was again to protect the rights of union members and safeguard union democracy. Nevertheless, the Tripartite Consultation Board had decided to examine the matter further.

Turning to the comment of the Committee of Experts that the restriction set out in Act No. 4688 had been maintained concerning the suspension of the term of a union officer during her or his candidacy in local or general elections and would be terminated in the event of failure in such elections, he said that the criticism was based on a misunderstanding. The duties of such officers were, in practice, terminated in the event that they were elected, rather than if they failed to be elected. The relevant provision was based on a constitutional provision and the Committee of Academics was seeking an appropriate solution.

With reference to the comment by the Committee of Experts that section 35 of Act No. 4688 made no mention of strike action in the public sector, he indicated that workers engaged under employment contracts in the public sector enjoyed the same right to strike as workers in the private sector. Nevertheless, he recalled that the right of public servants to strike under the terms of the Convention had not been resolved in the context of the ILO. Even so, in accordance with the views of the Committee of Experts that the right to strike in the public sector should only be limited in the case of public servants engaged in the administration of the State, the Government was launching a reform intended to define "public servants" in the narrow sense and to distinguish them

carefully from other public employees. Taking into account the comments of the Committee of Experts, the issue of the right to strike of other public employees would be addressed, although a constitutional amendment would be required. He undertook to keep the ILO informed of progress in this regard.

Concerning the restrictions contained in Act No. 2822 on the right to strike, he emphasized that the draft Bill to amend section 29 of Act No. 2822 had made significant progress in deleting certain occupations or services in which strike action was not currently allowed, including lignite-fed power plants, banking and public notary services and urban land, road, rail and sea transport. The removal of the restriction on the right to strike in the production, refining and distribution of natural gas, town gas and petroleum was also being debated by the Committee of Academics. In this case, the right to strike had been given priority and expanded through its extension to workers in establishments where it had formerly been prohibited.

With reference to limitations on strike picketing, he said that the removal of certain restrictions, such as the prohibition on providing places of shelter for picketers in front of and around the plants concerned, was included in the Government's reform agenda.

Turning to the comment by the Committee of Experts that there was an excessively long waiting period before a strike could be called, he indicated that the time periods envisaged were maximum ceilings intended to provide some flexibility for the parties. The draft legislation envisaged a simpler and more flexible mediation process which would shorten the period for a union to call a strike.

On the subject of the prohibition of strikes for political purposes, workplace occupations, general and sympathy strikes, he noted that these restrictions emanated from article 54 of the Constitution. He added that the lawfulness of some of the categories of industrial action referred to by the Committee of Experts, including secondary boycotts, general strikes and workplace occupations, was controversial among academics and was not shared by all legal systems.

Referring to the comment that Act No. 2822 provided for heavy sanctions for participation in unlawful strikes, he indicated that the records did not include information on any trade unionists indicted for such activities. However, work was being carried out by the Committee of Academics on this issue, which would be taken up by the Tripartite Consultation Board. With regard to the application of section 312 of the Penal Code to trade unionists in the legitimate exercise of their activities, he said that section 59 of Act No. 2821 clearly specified the penal sanctions applicable for contraventions of the Act. So far, the Ministry of Labour was not aware of any trials or indictments of trade unionists under this provision. The issue of how collective agreements could be concluded in establishments covered by strike bans was still a disputed issue.

On the subject of the lawsuit against DISK, he indicated that the requirement of ten years' active employment to be able to establish a union, as set out in the Constitution, had been repealed by a constitutional amendment. The Committee of Academics had also decided to amend Act No. 2821 in this respect. He indicated that no lawsuit had been brought against DISK officers by the Ministry on those grounds, but only for their removal from office due to the failure to meet the requirement concerning active employment.

In conclusion, he re-emphasized that, as noted with satisfaction by the Committee of Experts, his country had made significant progress in bringing its legislation into conformity with ILO standards. In this connection, he welcomed the ILO's pioneering role in contributing to his country's effort to accede to the European Union. The comments of the Committee of Experts had therefore bringing its efforts in guiding its labour legislation into line with European Union standards and Turkey was determined to maintain its sincere efforts to achieve that goal.

The Worker members thanked the Government for the detailed information provided which should be examined by the Committee of Experts. The context of this case was a positive one. Turkey had undertaken serious reform efforts and had made significant progress in respect to international and European standards regarding human rights and the rule of law. While most of the positive changes occurred in legislation and a gap remained between the law and its implementation in practice, the Government had a remarkable record, which gave rise to expectations. The Worker members recognized the work done by the Government regarding the issues under discussion in the Committee, but stressed that much more needed to be done. One could not ignore the shortcomings with regard to the application of Convention No. 87. Violation of basic trade union rights had a long and appalling record in Turkey. Many of the violations in law were the heritage of the military rule of the 1980s and the ILO had criticized the situation in Turkey many times in the past 25 years, even before the country had ratified Conventions Nos. 87 and 98. The Worker members regretted that the Government followed a delaying tactic with regard to addressing the serious shortcomings in the trade union and industrial relations legislation. That was striking, as the Government had been able to act very quickly on other issues in the past two years, for instance regarding the implementation of the European *aquis* in the field of social policy or the reforms to bring the army under democratic control. It was therefore difficult to accept that the Government was unable for decades to amend the legislation in question on points which were clear and on which the ILO had sent many technical assistance missions. The Worker members explained this as an indication of a lack of political will on the part of the Government and the low priority given to this issue so far.

The Worker members stressed that the fact that this case had not been before the Committee since 1997 did not mean that all issues had been resolved. In its report, the Committee of Experts had expressed satisfaction only in connection with just just one specific point, i.e. the repeal of a provision imposing compulsory arbitration in export processing zones. Recalling that the Committee of Experts also noted with interest six planned amendments to Acts Nos. 2821 and 2822, the Worker members insisted that these were, in fact, only potential improvements, as the draft bills concerned had not yet been adopted. It was unusual that the Committee of Experts would draw such firm conclusions on the basis of draft legislation. Attention should also be paid to the fact that, according to the Committee of Experts, some deficient provisions had been repealed but reintroduced elsewhere. In addition, the Committee of Experts continued to raise concerns over a number of issues: (1) the right to organize of certain categories of public servants; (2) the determination by the Government of the branches of industry which were the basis for organizing industrial-level unions; (3) several provisions pertaining to the internal functioning of unions; (4) the removal of trade union executive bodies in case of non-respect of government requirements regarding the internal functioning of trade unions; and (5) the right to strike in the public service and outside the public sector.

The far-reaching restrictions of the right to organize, including the right to strike, of public employees were a very serious issue. A key problem was the definition of public employee, which was much wider than provided for under the Convention, which allowed restrictions of the right to strike only for public employees who exercised authority in the name of the State and for those working in essential services in the strict sense of the term. The studies regarding the definition of public employee announced by the Government would, of course, take time, but they should not be turned into another excuse to continue long-standing violations of fundamental trade union freedoms. The Worker members urged the Government to confirm that it intended to amend the legislation in question in the near future in order to bring it into line with the Convention.

The issue of definition of branches was highly important for workers to exercise their right to form and join unions of their own choosing. On the basis of the present legislation, workers could simply have their union taken away from them. In this regard, the Worker members regretted that the Government had not commented on the conclusions and recommendations of the Governing Body regarding Case No. 2126 of the Committee on Freedom of Association to which the Committee of Experts had referred in its report.

There were very many ways in which the public authorities could interfere in the internal affairs of trade unions on the basis of the legislation in force which contained many unnecessary and detailed prescriptions of how trade unions should operate. These provisions brought to mind the years of military dictatorship, when trade unions were seen as dangerous and subversive organizations. The national Constitution written by the regime at that time contained numerous anti-trade union provisions. Most of them had been repealed, but, regrettably, many survived in the legislation, which was based on these constitutional provisions. Against this background, the Government's argument that these legislative provisions were intended to further the democratic functioning of trade unions was rejected as absurd. The Worker members urged the Government to amend as quickly as possible the legislation in question. They also urged for an end to the practice of public prosecutors in Turkey to open cases against trade unions which allegedly had violated these laws, including the lawsuit against DISK under section 54 of the Trade Unions Act mentioned by the Committee of Experts. Fortunately, DISK had recently been acquitted.

The Worker members also stressed that the problems in Turkey regarding the application of the Convention were not restricted to legal matters but also concerned violations in practice. Such violations occurred regularly, as evidenced by the many observations by trade union organizations and the cases of the Committee on Freedom of Association to which the Committee of Experts had referred in its observation. As a small but telling example, the Worker members stated that Turkish workers could change union membership only through an act of a public notary for a fee of 40 euros. This practice should be abolished as soon as possible. Further, with reference to the Committee of Experts' comments regarding restrictions on freedom of association in the four south-eastern provinces of the country, the Worker members highlighted a lawsuit under way against EGITIM-SEN, a teacher's union, for alleged breaches of the Constitution and the Trade Unions Act which might very well lead to closure of the union. The Committee of Experts should look into this matter and the Conference Committee should discuss the issue after they had given their opinion.

In conclusion, there were certain improvements, which were welcomed. However, these improvements were modest and practically all of them still had to materialize in so far as they were only contained in draft legislation. The Government had been extremely slow in addressing the deficiencies in trade union and industrial relations legislation, which was a matter of political priority and will. The Worker members urged the Government to make a firm commitment that it would indeed act without delay, and in the way recommended and requested by the Committee of Experts. They also requested the Government to do what-

ever was in its competence to end the opening of new court cases based on anti-union articles of the Constitution which had already been repealed, and still existing legislation based upon these, but now under review. The Committee should highlight both progress and backwardness of Turkish trade union and industrial relations legislation and encourage the Government to bring this legislation into line with the Convention, with the same determination as that displayed in the reforms made in other areas in the process of Turkey's bid for EU membership.

The Employer members thanked the Government for the information it had provided, some of which was new and would have to be examined by the Committee of Experts before the Employer members could comment on it, due to its complexity. The report of the Committee of Experts provided some positive indications with regard to this case. In paragraph 38 of its report, the Committee of Experts had listed Turkey among the countries where progress had been achieved, thus expressing its satisfaction at the adoption of certain measures by this country. Moreover, in its observation the Committee of Experts had noted with interest certain other measures which were in the process of adoption with regard to ten significant points. Several provisions had been enacted and others considered. A Committee of Academics had been set up to prepare draft legislation.

Nevertheless, the Committee of Experts had clearly noted difficulties in relation to other points. In this respect, the Employer members emphasized that although the Government had been taking significant steps to bring its law into conformity with the Convention, it was important to take further steps in this direction. They noted as a positive sign the fact that the Government seemed to have the political will and to clearly understand the steps needed to remedy the situation. The outstanding issues were detailed and complex as shown both by the observation of the Committee of Experts and the Government's response. The Conference Committee did not have the ability to resolve these issues directly and needed the assistance of the Committee of Experts in this respect. The Employer members considered that the level of nuance and detail involved in the full implementation of the Convention was astounding and wondered whether this reflected appropriately the initial purpose of the Convention.

The Employer members concluded by noting that this was a continued case of progress in the implementation of the Convention, as indeed the Committee of Experts had also noted, and that the Government should provide details in its report to the Committee of Experts so as to explain the situation in the country and enable the Conference Committee to return to this case in the future.

The Worker member of Turkey stated that noteworthy improvements had been made in bringing the law into conformity with the Convention. Certain remaining obstacles to the full implementation of the Convention were going to be removed with the adoption of the two draft bills, while the social partners had been involved in consultations to harmonize the labour legislation in accordance with ILO and EU standards. Nevertheless, certain concerns remained. While originally the Government had amended section 37 of the Trade Unions Act No. 2821 – which concerned the suspension of trade union mandates in case trade union officers ran for office in local or general elections and the termination of their mandates upon election – later on the amendment had been withdrawn and section 37 remained unchanged in the draft bill. In addition to this, Act No. 3984 prohibited trade unions from establishing their own television and radio channels despite the fact that the audio and visual media were the most effective methods to ensure that the voices of trade unionists were heard. Furthermore, in 2003, a strike at the Pasabahce Glassware Factory had been postponed twice on the basis of section 33 of Act No. 2822 which provided for a 60-day postponement in case of threat to public health and national security. The speaker expressed doubts about whether a strike at a glassware factory could constitute a threat to national security. In addition to this, a new effective system for the resolution of collective disputes was necessary given that under the current system, the right to strike could not be exercised before the expiration of a five-month period which included a mediation stage beginning 30 days after the opening of negotiations. As for the case of EGITIM-SEN mentioned by the Worker members in their opening statement, he wished to specify that it was necessary to wait for the comments of the Committee of Experts on this matter, which concerned the national Constitution and the independence of the judiciary, before any discussion could take place on whether there was a violation of the Convention. The speaker concluded by urging the Government to adopt the legislative amendments as soon as possible in accordance with its stated commitment.

The Employer member of Turkey stated that over the last 20 years improvements had been made in Turkey, as recognized by the Committee of Experts. The Ministry of Labour and Social Security and the social partners had signed a Protocol in 2001 with a view to modernizing the labour legislation. A Committee of Academics had been established to prepare a draft Trade Unions Act, and a draft Collective Labour Agreement, Strike and Lockout Act. While the drafts prepared balanced the interests of the social partners, the Committee of Experts had found that some aspects were incompatible with ILO criteria. Unfortunately, the texts on which the Committee of Experts had commented were not the latest version of the drafts. As they stood at present, the texts did no longer contain a strike prohibition for banks and public notaries; the prohibition of unions' television and radio stations; the conditions of being of Turkish nationality and having at least ten years of employment for eligibility to stand for trade union office; the possibility that Governors send observers to the general assemblies of trade unions; the requirement to obtain permission to invite foreign trade unionists to Turkey or to travel abroad. The Committee of Academics established by the social partners and the Government had always taken the comments of the Committee of Experts into account. The Conference Committee should request the Government to supply the latest version of the draft legislation. Section 312 of the Penal Code had been amended and did no longer relate to trade union activities. In conclusion, the situation in Turkey was not serious. There was a tripartite agreement to further develop the current draft legislation and it was expected that a major reform of collective labour law would be approved during the coming legislative period.

The Government member of Cuba stated that the explanations offered by the Government were meant to clarify certain issues raised by the Committee of Experts and recalled with satisfaction the amendments made to Act No. 4688 and important modifications to Acts Nos. 2821 and 2822. The Government had provided further examples of collaboration when it submitted new legislative projects for consultation.

The Worker member of Pakistan took note of the positive developments in Turkey with regard to the fundamental right to freedom of association, to the effect that the Government had prepared draft bills to modify Acts Nos. 2821 and 2822 in order to bring its law and practice into conformity with the comments made by the Committee of Experts in its observation. The speaker emphasized that the Government needed to do more in order to fully bring its legislation in line with the Convention and urged the Government to rectify the situation as soon as possible.

The Government representative thanked the members of the Committee for their valuable contributions to the discussion. Over the past 20 years there had been discussions and criticisms made about the legislation of Turkey and he noted with satisfaction that these criticisms had been allayed during the last five years as the Committee of Experts had indicated. With regard to concerns expressed about the pace of the legislative reform, he wished to assure the Committee that the current Government was determined to bring about change. A three-member Committee of Academics, all experts in their field, had been established to take up the revision of the laws on freedom of association and collective bargaining. The Committee of Academics had finalized its proposals which would be discussed among the social partners from 16 to 18 June 2005 in order to be given final form. The proposals would then be taken up for tripartite consultations in September 2005. The legislative process was based entirely on tripartite social dialogue.

As for the specific issues raised during the discussion, the speaker pointed out that the reason why the adoption of the draft bills amending Acts Nos. 2821 and 2822 had been deferred was that, in the meantime, new laws had been adopted, namely, the Associations Act and the Penal Code, the provisions of which had to be studied carefully in order to harmonize them with the text of the two draft bills. For instance, the new Associations Act had repealed the previous requirement that a Government observer be present during the general assemblies of associations. The Penal Code provided for sanctions against acts of anti-union discrimination which went as far as imprisonment. However, the process of examination and harmonization of the texts required time. The Committee of Academics would give due consideration to this issue upon its return to Turkey.

With regard to the issue of suspension of trade union mandates in case of participation in elections at the local or national levels, the speaker specified that trade union leaders could return to their trade union posts in case they lost the local or general elections. In case they were elected, the Committee of Academics had initially proposed that trade union leaders could maintain both posts (in the trade union and in Parliament) except for officers of public service unions who could maintain only one post. However, when the Committee of Academics had completed the draft, it became clear that the provision was incompatible with the national Constitution and therefore had to be lifted. The Committee of Academics was contemplating ways to remedy this situation.

As for the comments made by the Worker members with regard to the need to appear before a notary in order to join or resign from a trade union, the speaker indicated that this provision had been introduced in 1971 in order to avoid inter-union disputes on the recognition of representativeness for collective bargaining purposes. However, the Committee of Academics was aware of the difficulties that this provision raised and its modification or repeal was possible. With respect to the mediation process, the speaker specified that it lasted for 15 days and applied in case there was no agreement between the parties after 30 days of negotiations. The Committee of Academics was planning to eliminate one step in the procedure for the resolution of disputes in order to streamline it.

With regard to the case of EGITIM-SEN, the speaker noted that, as this case had not been examined by the Committee of Experts, it would be better to wait for comments before discussing it before the Conference Committee. Nevertheless, he wished to specify that this case related to the constitution of EGITIM-SEN, which provided as one of the trade union's purposes the provision of education in one's mother tongue. By "education" the provision of formal basic education was referred to and not the right to use one's own language freely in the

media or through the provision of private education, which was henceforth guaranteed in Turkey in conformity with EU criteria. Because of these provisions, the Governor's office, which was the competent authority for the registration of trade unions and for granting them legal personality, had requested the trade union to make corrections to its constitution. However, no changes had been made and the judicial authorities had become involved. The Supreme Court had rendered a decision to dissolve the trade union as it had not brought its constitution into conformity with the law. The Ministry of Labour had maintained a flexible and tolerant stance with regard to this issue and had given the trade union extra time to correct its constitution. It would continue to do its utmost to see that EGITIM-SEN was revived and that the necessary changes were made to its constitution. The speaker further specified that the administrative authorities did not have the power to dissolve trade unions and that this competence rested exclusively with the courts.

The Worker members regretted again the practice of repealing certain provisions, while reintroducing them elsewhere, and the opening of court cases against trade unions based on legislation which the Government intended to repeal. In response to the Government's indication that all changes to labour legislation had been based on social dialogue, they stated that even where legislative measures would be taken based on tripartite consultation, it did not necessarily seem that they would be in line with the Conventions. It was up to the Committee of Experts. The Conference Committee should urge the Government to demonstrate its concrete political will to bring about change by adopting the proposed legislation in the very near future and to report on this achievement in its next report to the Committee of Experts.

The Employer members expressed appreciation for the detailed reply of the Government representative. They asked the Government to provide a complete report to the Committee of Experts on all the points raised and to include therein any draft legislation or proposals that might address the observations relating to the implementation of the Convention.

The Committee took note of the oral information provided by the Government representative and of the ensuing discussion. The Committee noted with interest that, according to the report of the Committee of Experts, a provision had been introduced into the legislation to bring it into greater conformity with the Convention in one specific area. Nonetheless, the Committee noted with concern that there was still a certain number of descrepancies between the legislation and the Convention regarding the rights of workers and employers without any distinction to form organizations that they deemed appropriate and to affiliate themselves with these organizations and to the right of workers' organizations to draw up their statutes and rules, to freely elect their representatives and organize their activities without interference by the authorities in the public and private sectors. The Committee noted that different workers' organizations had presented comments on the application of the Convention.

The Committee took note of the Government's statements according to which its objective was to eliminate the different divergences between the Act on public employees' trade unions, the Trade Unions Act and the Collective Labour Agreements, Strike and Lockout Act through draft laws. The Committee also took note of the explanations provided by the Government on the legislation in force.

The Committee expressed its concern at the legal action taken to dissolve DISK. The Committee urged the Government to take the steps necessary to withdraw the legal action taken and to take steps to avoid legal cases based on legislation that was in the process of being amended and which was not in conformity with the Convention.

The Committee also requested the Government to communicate all relevant information on the dissolution of EGITIM-SEN so that the Committee of Experts could examine this matter in full knowledge of the facts. While taking note with interest of the different draft laws under preparation to bring the law into conformity with the Convention, the Committee requested the Government to spare no efforts to ensure that such draft laws were rapidly adopted taking into account the comments of the Committee of Experts so that they could be examined on the occasion of the next report.

The Committee requested the Government to provide in its next report to the Committee of Experts detailed and complete information on all pending issues including all the topics raised by the Committee, the latest draft laws and whatever text was adopted, and expressed the hope that it could take note in the near future of major progress, specifically that the legislation and national practice would be brought into full conformity with the Convention.

Bolivarian Republic of Venezuela (ratification: 1982). **A Government representative** noted that once again his Government was appearing before the Committee to provide information on the situation with regard to the application of Convention No. 87, as it had repeatedly done since 1991, when Hugo Chavez took office as President and initiated sustained and rapid changes in the political, social and economic fields intended to combat poverty, injustice and exclusion and to promote forms of direct and indirect participation by the population in public affairs.

In the period between 1999 and 2004, some 410 trade union organizations had been established on average every year, compared with the period between 1994 and 1998 when the number of trade union organizations registered had only reached 229. Moreover, in 2003, a total of 535 collective agreements had been deposited, with the number rising to 834 in 2004. He said that these figures were available on the web site of the Ministry of Labour.

He maintained that, despite the clear intention of his Government to provide information, the Bolivarian Republic of Venezuela had once again been included in the list of cases to be examined by the Committee, which bore witness to the continuation of significant political interest which, far from seeking social progress, had more to do with the past era of privilege and prerogative.

He said that his Government had agreed to receive two direct contacts missions in only a few years, the first in May 2002 and the second in October 2004. With regard to the reform of the Basic Labour Act, the first draft formulated by the Ministry of Labour had taken on board all of the recommendations of the Committee of Experts, which dated from 1991. This draft text had already been approved at its first reading by the National Assembly and established a system of trade union elections which accorded the possibility for organizations to accept voluntarily the technical assistance and support of the National Electoral Board. This text had been supported by five trade union confederations (UNT, CTV, CUTV, CGT and CODESA) after a dialogue and consultation meeting convened by the Ministry of Labour in November 2004. He added that a more recent version of the draft text, which he described as being of a more progressive nature, increased the number of trade union leaders covered by trade union protection, strengthened the special protection measures and explicitly envisaged the re-election of trade union leaders, as had been occurring in practice.

In view of the great importance of the reform for the country as a whole, the National Assembly had informed the Supreme Court of Justice of the need to extend the period originally set to reform the legislation prior to December 2004. This was justified by the need to extend the consultations with the social partners, particularly at the request of employers' associations, and especially FEDECAMARAS which, since October 2004, and in letters sent by its President on 4 and 23 May this year, had requested the broadening of consultations. On 23 May 2005 a delegation of FEDECARAMAS which included among others Mr. Alexis Garridosoto, member of the employers' delegation to this 93rd Session of the Conference, had met with the President of the subcommittee for labour and trade union complaints of the National Parliament. The representatives of FEDEINDUSTRIA, CONFAGAN and EMPREVEN had also petitioned for the same reason. The request for broader consultations was based on the decision to undertake an overall reform of the labour legislation, instead of the piecemeal reform originally planned, which was to have been limited to aspects related to freedom of association and collective bargaining. He added that, while dialogue was going ahead, the National Assembly was also making progress in the reform of social security legislation, and particularly the laws respecting occupational safety and health and employment insurance. The Occupational Safety and Health Act had been adopted the previous day.

He indicated that, in relation to the alleged refusal to recognize the Executive Committee of the CTV, the Social Appeals Chamber of the Supreme Court of Justice had ruled in June 2004 that those who claimed to be the leaders of the Confederation were not trade union leaders and had ruled that the CTV did not fulfil the condition of being the majority or most representative trade union organization. The action leading to this judicial ruling had not been initiated by the Government, but by persons who considered themselves to be members of the Executive Committee of the CTV. In January 2005, the National Electoral Council had declared the CTV election to be void on the grounds of the absence of reports confirming the results as well as the issuing of reports by a non-existent electoral committee, among other electoral irregularities, as a result of which the Executive Committee was neither elected, legal nor statutory. Despite these rulings, the Ministry of Labour had convened the CTV as an institution. This was a de facto approach which had enabled it to attend various labour and social dialogue forums. Various minutes produced during the meetings and the corresponding invitations to social dialogue, confirmed this situation of openness by the Government in this regard.

He indicated that, on the subject of dialogue with the social partners, the report of the Committee of Experts showed its limitations by minimizing the impact of the consultations held on such subjects as minimum wages, stability of employment, labour reform and other sectoral matters. In previous years, these consultations, which the Government had never failed to carry out, had taken place in a context marked by polarization and the use of trade union representation as an instrument for the promotion of political partisan, including personal, projects which had nothing to do with the interests of the nation and the majority of the population.

It was clear that employers affiliated to FEDECAMARAS, for example, in the automobile, chemical, pharmaceutical and textile branches, were participating in the tripartite sectoral social dialogue forums.

Since October 2004, when it had obtained 70 per cent support in the popular vote, the Government had called upon those actors which where excluding themselves from social dialogue. Since that date, the conviction had grown that democratic social dialogue could not exclude any sector. He referred in detail to the various meetings held with employers' and workers' organizations over the past eight months,

including one concerning the composition of the delegation to the 93rd Session of the International Labour Conference. Even the President of FEDECAMARAS had been present at some of those meetings.

The numerous working meetings held with trade union organizations had been supplemented by consultations carried out by the Ministry of Labour in the context of the Andean Community and the ILO on combating child labour, labour migration and occupational safety and health, among other subjects.

With regard to the concerns expressed by the IOE and the ICFTU, he indicated that his Government had provided detailed information to both the Governing Body and the Committee on Freedom of Association and had indicated its position on the conclusions and recommendations adopted by the Committee on Freedom of Association, which in his view went beyond the scope of its competence and mandate, and in other cases contained inaccuracies or mistaken evaluations of the events which had occurred. In accordance with the recommendations of various regional groups, including that of Latin America and the Caribbean (GRULAC), he considered that it was necessary to avoid duplication in the use of ILO procedures, which gave rise to unnecessary costs and could lead to contradictory outcomes or conclusions. He therefore considered that the information requested was already available to the ILO.

In conclusion, he said that his Government had achieved sustained progress in the matters under examination and that it was therefore important to allow it and help it to continue its work, as it had been doing with all the social partners, in accordance with the recommendations made by the Committee of Experts. It was the responsibility of the Committee of Experts to verify and evaluate the progress achieved in the Bolivarian Republic of Venezuela over the rest of 2005.

The Employer members expressed appreciation of the presence of the Government representative and the moderate tone adopted in the discussion. The heart of the present case, in their view, concerned the application of Article 3 of the Convention, which provided that "workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes", and that "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof". However, the Employer members did not believe that the Government understood the meaning of this provision.

They recalled that the present case concerned the interference by the Government in the activities of representative organizations of employers and workers and, in particular, the national employers' organization FEDECAMARAS. The interference by the Government had even affected the work of the present Conference through its meddling in the composition of the Employers' group. Although the Government representative had expressed approval of the direct contacts mission, referred to also in the comments of the Committee of Experts, he had given no indication of any intention by the Government to strengthen bipartite or tripartite dialogue in the country. The CTV, a workers' organization and FEDECAMARAS, the sole national representative employers' organization, were both excluded from the social dialogue forum in the country and the Government was failing to respect the criteria of representativeness. With regard to the reforms to the labour legislation, the Employer members understood that, while some 50 laws had been adopted on workplace matters, none of them had been formulated in consultation with representative organizations of the social partners. The serious nature of the situation was illustrated by the fact that the former President of FEDECAMARAS had been placed under arrest and was now in exile. In view of the gravity of the situation, the IOE had found it necessary to intervene in the context of cases brought before the Committee on Freedom of Association. The Government representative claimed that the Government was prepared to provide further information and called for the progress achieved to be acknowledged. What the Employer members wished to see was concrete action demonstrating the will of the Government to comply with its obligations under the Convention. Expertise was clearly required if the situation was to be improved. The Employer members therefore proposed that the Government should consider inviting the Chairperson of the Committee on Freedom of Association to visit the country, verify the national situation and provide assistance in the modification of the employment legislation to bring it into conformity with the requirements of the Convention. Alternatively, the Government could accept the visit of a tripartite mission for the same purpose. The Employer members emphasized that the time for fact-finding was now over. Action was needed, and it was needed now.

The Worker members thanked the Government representative for the replies provided orally and those colleagues in the Workers' group who had refrained from intervening on the case in view of its geopolitical implications and the choices made concerning social matters and development.

The last discussion by the Committee of the case concerning the application of Convention No. 87 by the Bolivarian Republic of Venezuela had taken place in a climate of political and social instability, marked in particular by an attempted coup d'état, which had given rise to major tension in the world of work. The Workers' group had then taken note of the draft reform of the law that was intended to respond to the multiple issues relating to violations of the Convention raised previously. They had also expressed their concern relating to the cases examined by the Committee on Freedom of Association and had requested the Government not to interfere in the internal affairs of workers' and employers' organizations. In addition, they had requested the Government to recognize the Executive Committee of the Confederation of Workers of Venezuela (CTV). A return to dialogue with the social partners had therefore been requested.

With regard to the observation made by the Committee of Experts this year, it should be noted with interest that the direct contacts mission requested by the Conference Committee had taken place in October 2004, and had shown that the Government had submitted a Bill to amend the Basic Labour Act to the National Assembly, accompanied by a schedule for its adoption.

Once adopted, the Bill would resolve a series of important obstacles which had been hindering the application of Convention No. 87 for over ten years. The Committee of Experts had therefore included this case in the list of cases of progress, although it had not noted it "with interest". Although progress had been achieved in relation to the legislation, it had to be noted that, with respect to the refusal to recognize the Executive Committee of the CTV and also with regard to social dialogue with the social partners, no tangible and convincing progress had been made, despite the Government's commitment to give effect to the points raised in the discussion in 2004.

The Worker members called for the Convention to be given effect in law and in practice. They therefore hoped that in its next report the Government would provide detailed information on the progress achieved in this regard.

A Worker member of the Bolivarian Republic of Venezuela said that since 1999 the trade union movement in the Bolivarian Republic of Venezuela had been providing evidence to the ILO Conference that the Government of the Bolivarian Republic of Venezuela was systematically violating Conventions Nos. 87 and 98. For five consecutive years, the various ILO supervisory bodies had concluded, in special paragraphs and through two direct contacts missions, that the Bolivarian Republic of Venezuela did not afford the necessary guarantees for the exercise of freedom of association, and he considered that the Committee should be firm in this case. He recalled that the Committee on Freedom of Association had received over 50 complaints on this subject. Despite the repeated requests for the Government to remedy these violations, the Venezuelan authorities had ignored the recommendations of the ILO supervisory bodies. In his view, this was illustrated by several facts. The Government representative had given assurances to the Committee that trade union elections would not continue to be managed by the State, but this commitment had not been fulfilled. On the contrary, the National Electoral Council had declared the Executive Committee of the CTV illegal. The Government representative had assured the Committee that the CTV and its Executive Committee would be recognized, but had not given effect to this undertaking. He had also promised to renew social dialogue with all the social partners but, as noted by the direct contacts mission in 2004, this had not occurred. It had not even been possible to organize a tripartite meeting during the direct contacts mission. He called for the report of the mission to be distributed to the members of the Committee. In view of the repeated violations of Conventions, he requested the Committee to take appropriate measures to resolve the situation, which constituted a violation of freedom of association in the Bolivarian Republic of Venezuela, and to re-establish social dialogue. He concluded by saying that if the problems could be discussed by all the parties, this would benefit his country.

Another Worker member of the Bolivarian Republic of Venezuela said that the National Union of Venezuelan Workers (UNT) had been created in response to the position taken by those who had led the trade union movement for over 40 years and who had later formed an alliance with the employers, which had even led to a coup d'état in April 2002. She added that the dictatorship headed by the employers' leadership had been short-lived. The people had been mobilized, returning to Venezuela the leading role of participatory democracy. An ICFTU mission which had visited the country in August 2004 had witnessed the freedom and massive participation of the people in the referendum of confirmation.

She asserted that the UNT was a central organization that was independent of the Government, employers and political parties, and was composed of many former members of the CTV who had distanced themselves from that union following its alliance with FEDECAMARAS. She added that the UNT would hold elections to elect its leaders and its various bodies at the end of October this year. Asserting that it had been registered in accordance with all the requirements, she felt that the direct contacts mission which had visited her country in 2004 had shown bias and misinformation, as its report had referred to the UNT as being "recognized, despite having an unelected Executive Committee". She indicated that the legitimacy of the UNT came from its participation in the negotiation of collective agreements and in large enterprises in the public and private sectors, where it had taken over in most cases from the CTV. She made reference to the repeated statement in the Committee's report that the CTV was the most representative central organization based on the fact that it had represented 68.73 per cent of union members in 2001. She indicated, however, that these figures had surely been obtained from the data of the National Electoral Council and did not take into account the new trade union situation. She indicated that trade union elections were being organized in the normal manner and that the National Electoral Council only took action at the

demand of workers' organizations which so requested and that an example of this was provided by the elections of FETRACONSTRUCCION, a federation led by Manuel Cora who had just concluded his electoral campaign without the supervision of the National Electoral Council.

In relation to the legislative reforms, she indicated that in her country, in addition to the Basic Labour Act, several laws were being examined, including laws respecting occupational social security schemes, the working environment, housing, health and workers' participation in enterprise management.

She said that, following the coup d'état, four workers, other than the CTV leaders, had been convened on the Presidential Commission for National Dialogue and that she had participated in that dialogue. Together with employers from the pharmaceutical sector, who were members of FEDECAMARAS, and the Government, they had succeeded in formulating policies to balance employment and increase the production of generic drugs.

She added that the Venezuelan citizens and in particular the workers, had demanded that the Government put an end to impunity and that the organs of the state (Judiciary, Attorney General of the Republic) acted in accordance with the law in order to avoid hidden agents who acted against the interests of the Venezuelan people.

She emphasized that the UNT was working to consolidate dialogue, whereas the CTV and FEDECAMARAS were carrying out a boycott as part of their subversive plans, but that they had agreed to enter into dialogue now that the coup d'état had failed. The sabotage of the oil industry and the coup d'état had caused deaths, as well as economic and structural losses. She expressed her opposition to a complaint submitted by FEDECAMARAS and thanked the Worker members of Colombia, Cuba and the Bolivarian Republic of Venezuela, among others, for their support.

The Government member of Cuba thanked the Government representative for the information provided and said that the Government of the Bolivarian Republic of Venezuela had taken on the responsibility of reforming the labour legislation, as recommended by the Committee of Experts, and that these reforms had already been approved in their first reading. The increase in the number of collective agreements, the establishment of new trade unions and the free exercise of the right to strike were evidence that Convention No. 87 was being applied in the Bolivarian Republic of Venezuela.

He said that the Supreme Court of Justice had indicated that it was impossible to legally determine that the CTV was the most representative trade union, and that the National Electoral Council had voided the CTV's elections on the grounds of lack of transparency. Nevertheless, the Government had continued to invite it to tripartite dialogue forums, at both the national and international levels. FEDECAMARAS had also participated in the various dialogue forums.

The Government of the Bolivarian Republic of Venezuela had also accepted the two direct contacts missions, thus opening the door for technical cooperation. He recalled that the report of the Committee of Experts had noted the progress made. He asserted that this case was a clear indication that political criteria were continuing to prevail in the inclusion of the case of the Bolivarian Republic of Venezuela in the Committee's debates, as the country had already adopted the necessary measures to give effect to the Convention. He therefore considered that this case should no longer be included in the list of cases to be examined by the Conference Committee in future.

The Government member of the United States noted that, in reviewing this case again this year, the Committee of Experts had benefited greatly from the report of the direct contacts mission that had visited the Bolivarian Republic of Venezuela in October 2004. According to the mission's report, the Government had submitted a number of amendments to the Basic Labour Act which would have the effect of bringing it more closely into line with Convention No. 87. This was a welcome development and demonstrated the value of such missions and the important role they played in the ILO's supervisory system. Too often, governments viewed such missions as punitive in nature and refused to cooperate with them. As this case made clear, however, direct contacts missions were of a constructive nature, and governments would be well advised to receive them and cooperate fully with them when the supervisory bodies so recommended.

Unfortunately, the rest of the information in the report of the Committee of Experts was not so encouraging. The report referred to the violation of the right of the CTV to elect its representatives in full freedom and to organize its activities, discrimination by the authorities against the CTV's Executive Committee, and the Government's refusal to engage in meaningful social dialogue with the CTV and FEDECAMARAS. According to the Committee of Experts, practices such as these violated the freedom of choice of Venezuelan workers and employers. The Committee of Experts rightly pointed out that equality of treatment between organizations had to be ensured if the principle of free choice enshrined in the Convention was to be upheld.

The Government member of the Islamic Republic of Iran said that, following a series of crises in recent years, the reforms made by the Bolivarian Republic of Venezuela in the fields of the economy and legislation were an indication of its good intentions and of the determination of the Government to overcome the obstacles that it was facing. Undoubtedly, the economic and legislative reforms that were being carried out would create appropriate conditions for the achievement of democracy and the promotion of tripartism, the right to organize, freedom of association and collective bargaining. ILO technical cooperation and assistance would be an effective tool to accelerate the positive action taken by the Government with a view to removing the obstacles to the full application of Conventions Nos. 87 and 98.

The Government member of Panama said that he had listened very carefully to the Government representative of the Bolivarian Republic of Venezuela and that emphasis should be placed on the efforts made by the country to give effect to the provisions of Convention No. 87. He also emphasized the willingness of the Government to collaborate in providing information on the progress achieved, in the form of the Basic Labour Act, which was currently undergoing its first reading in Parliament. In his view, as a result of the outcome of the two direct contacts missions, it would now be sufficient to return to the usual mechanism of supplying reports to supervise the application of the Convention.

The Government member of Paraguay, speaking on behalf of MERCOSUR, said that the Government had shown positive signs of its willingness to give effect to the provisions of the Convention. He considered some of the signals of the extension of social dialogue to be encouraging, such as the inclusion of the CTV in the ILO delegation, the consultation of the CTV regarding the documents under discussion in the Andean region and the participation of the CTV in the national dialogue forums established to discuss these issues.

It was important to emphasize that the comments made in previous years by the Committee of Experts with a view to advancing legislative reform in respect of freedom of association had been included by the Government in the Bill which was being examined by the National Assembly, and which had been the subject of tripartite debate and consultation. He recalled that the Government had accepted visits by two direct contacts missions, which had observed the situation in the country and endorsed the Government's actions as being in harmony with ILO objectives, principles and standards.

The Government member of Egypt said that she had listened with interest to the Government representative, who had described the positive measures taken to improve the rights and freedoms of trade unions set out in the new draft Labour Code. She called on the Committee to take into consideration the efforts made by the Government and to provide it with the necessary technical support and assistance.

The Government member of China thanked the Government representative for the information provided and said that she had listened with great interest to the discussion concerning the implementation of the Convention. She noted that the Government had made remarkable achievements in reforming its legislation and in promoting social dialogue. These successes demonstrated the Government's willingness to cooperate with the social partners. The achievements of the Government needed to be acknowledged and she hoped that the ILO would provide technical support to assist developing countries such as the Bolivarian Republic of Venezuela to improve their social and labour situation.

The Government representative thanked most of those who had participated in the discussion for recognizing that his country had made progress in giving effect to its democratic commitment to achieve greater participation and inclusive social dialogue, with particular emphasis on the representativity of the major actors. Social dialogue was now no longer a monopoly for those who had been able to make their voices heard in the past. Organized workers and employers, who had not been heard for decades, were now participating in the development of public policies which took into account their needs and interests.

The two direct contacts missions sent by the ILO had given rise to a dynamic of meetings and forums in which all the social partners had participated, including representatives of FEDECAMARAS and the CTV, on subjects which included labour policy. Nevertheless, to those who were now calling for social dialogue, he wished to say that back home they were attending meetings in which such burning topics were being discussed as wages and food programmes for workers, labour reforms, labour immobility, etc. His Government, which sought coherence between promises and practice, invited the Executive Committee of the CTV, for example, to progress from words to action and to enter into collaboration and to ensure coherence between what they asserted and did in the country and what they denounced in Geneva. For example, it would have been important that Mr Cora appear at the social dialogue meetings convened by the Ministry of Labour, which he never attended, instead of using this scenario in order to misinform the public on what really happened. On the subject of trade union elections, he emphasized that the National Electoral Council, which had been so heavily criticized, was an independent and autonomous body which commanded the respect of the executive, legislative and judicial authorities, and of the Comptroller General's Office of the Republic and the other organs of popular power. In his country, there was no discrimination against trade unions and none of them received preferential treatment. It was necessary to overcome the conflictual political situation affecting the country. Nevertheless, his Government, which had recognized all the social partners, needed to take into account the fact that it governed in the interests of everyone and did not renounce its duty to govern for the majority, and particularly of those categories which had up to now been excluded from citizen's participation as well as the just distribution of the petroleum income and the rest of the country's wealth, thus overcoming the injustices of the post. Social dialogue

needed to be inclusive, participative and an agent of transformation.

The reform of the Basic Labour Act, which had been formulated with the technical assistance of the ILO Standards Department, was currently being examined by the National Assembly with the participation of FEDECAMARAS. This reform would have to be the subject of consultation with the workers and of their approval. Finally, he emphasized that his Government would continue to endeavour to follow up the recommendations made by the Office when these were relevant. It was all the more convinced that it was necessary to make progress in legislative reform towards a model of society which established a new value for the relationship between capital and labour in which labour would be appreciated from the point of view of solidarity and cooperation on the basis of the wealth it generated, so as to achieve the wealth's just distribution. This reform, which had been debated for two years, and which included the most recent standards on occupational safety and health within a context of social dialogue, was now nearly complete. It should not be forgotten that the previous legislation had required six years' discussion. His Government undertook to transmit to the Office in due time the outcome of a process which would benefit the great majority of workers in the Bolivarian Republic of Venezuela. He confirmed that the Government would remain within the regular supervisory mechanism through the presentation of the steps and progress made during the rest of the year, to the Committee of Experts.

The Employer members thanked the Government representative for his reply. They expressed a certain surprise at the moderation of the position expressed by the Worker members in the discussion of this case, particularly in view of the reference made by the Committee of Experts to the comments of the ICFTU and the IOE, as well as the detention order issued against the President of the CTV and the measures taken against leaders and members of employers' and workers' organizations. Such a situation would normally be condemned outright by the Workers' group, as a result of the violation of the fundamental principle of free and independent organizations. Yet, few complaints had been heard with regard to the failings of the consultation in process undertaken by the Government and its failure to implement Convention No. 87. The Employer members wished to put on record their condemnation of the arbitrary measures adopted against members of workers' and employers' organizations. Indeed, the current President of FEDECAMARAS could not leave the country without the permission of the authorities, which was a clear violation of the principles of freedom of association.

In view of the importance of the case, the Employer members wished to take the unusual step of proposing a set of conclusions for the Committee. They noted in this respect that changes and amendments to the conclusions proposed by the Chairperson always seemed to come from the Worker members. In a democratic body, they felt that the Employer members should be able to contribute in the same way. Their proposed conclusions were as follows:

> The Committee noted the oral information provided by the Government representative and the discussion that followed. The Committee noted with deep concern that the problems raised by the Committee of Experts referred to questions relating to the basic 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.
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> The Committee also noted the emphasis placed in the report of the direct contacts mission on the fact that for years the Executive Committee of the CTV had not been recognized in law by the Government and in practice had only been recognized for very limited purposes. The Committee noted that the current situation had prevented the Executive Committee from the normal exercise of its rights and had seriously prejudiced it. The Committee also noted that the CTV Executive Committee, which was the product of an election process, was only recognized in practice by the Government for very limited purposes, while having the Executive Body of the UNT central organization was recognized, despite not having an Executive Body adopted through an electoral process.
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> The Committee considered that the above situation, and in particular the excessive delay by the National Electoral Council, had gravely prejudiced the Executive Committee of the CTV and its member organizations, thereby violating the right of this organization to elect it representatives in full freedom and to organize its activities, as recognized in Article 3 of the Convention, as well as the principles of due process. The Committee once again urged the Government to recognize the Executive Committee of the CTV for all purposes immediately.
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> The Committee once again urged the Government to renew dialogue with the social partners. The Committee noted that, according to the report of the direct contacts mission, the executive bodies of the CTV and FEDECAMARAS had not participated in social dialogue in the broadest sense of the term, particularly in sectoral dialogue.
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> The Committee also noted that, according to the report of the direct contacts mission, in response to the availability for dialogue demonstrated unequivocally by the central and regional executive bodies of FEDERCAMARAS (the sole confederation of employers in the country and which was at the highest level of representativeness) and the Executive Committee of the CTV, the Minister of Labour had not given indications of wishing to promote or intensify bipartite or tripartite dialogue on a solid basis with these bodies: in practice, such dialogue had practically not existed for years and only took place in an episodic manner.
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> The Committee noted with regret that the information contained in the report of the direct contacts mission showed that representatives of the three minority workers' confederations did participate in social dialogue forums, alongside a workers' confederation which had a provisional executive board, and that on the employers side three less representative organizations participated which were not members of the employers' confederation FEDECAMARAS.
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> The Committee considered that strict criteria of representativeness were not respected in those sectoral dialogue forums and that the executive boards of the central organizations CTV and FEDECAMARAS were excluded from such forums, and therefore suffered discrimination.
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> The Committee further noted that, according to the report of the direct contacts mission, effective consultations between the Government and the executive bodies of the CTV and FEDECAMARAS on labour issues had been limited and had been of an exceptional nature. The Committee also urged the Government, without delay, to convene periodically the National Tripartite Commission and to examine in this context, together with the social partners, the laws and the order which had been adopted without tripartite consultation.
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> The Committee emphasized the importance of the Government and the most representative organizations of employers and workers engaging in in-depth dialogue on matters of common interest. The Committee requested the Government to keep it informed of any form of social dialogue with the CTV and FEDECAMARAS and their member organizations and to ensure equality of treatment between organizations.
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> The Committee deeply deplored the arrest of officials of employers' and workers' organizations and emphasized that the arrest of these officials for reasons linked to actions relating to legitimate demands was a serious restriction of their rights and a violation of freedom of association, and it requested the Government to respect this principle. The Committee urged the Government to terminate immediately the judicial proceedings against the President of FEDECAMARAS, Mr. Carlos Fernandez, and that the detention order against the President of the CTV, Mr. Carlos Ortega, be lifted. It requested the Government to provide information on the detention orders issued against six trade union leaders or members of UNAPETROL and that the restrictions on the movement of the current President fo FEDECARAMAS, Mrs Albis Munõz be lifted.
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> The Committee urged the Government to initiate contacts with the members of UNAPETROL in order to find a solution to the problem of registering the union. It also requested the Government to initiate negotiations with the most representative workers' confederations to find a solution to the dismissal of 18,000 workers from the PDVSA enterprise and to institute an independent investigation without delay into instances of alleged acts of violence against trade unionists.
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> The Committee requested the Government to give effect to the recommendations of the Committee on Freedom of Association so as to secure the full application of Convention No. 87. The Committee requested the Government to accept a high-level tripartite mission, which would include a meeting with the Government and with employers' and workers' organizations, placing particular emphasis on all matters relating to the application of Convention No. 87 in law and practice.

The Worker members, in response to the conclusions proposed by the Employer members, noted that it was not the usual practice of the Committee for a group to propose conclusions in place of the Chairperson. It was for the Chairperson alone to propose the conclusions and for the groups to make comments, as appropriate.

They said that the case of the Bolivarian Republic of Venezuela had been dealt with by the Committee on several occasions in recent years and that real and tangible progress, albeit insufficient, had been noted. They added that the Government was not solely responsible for the climate of division and antagonism that the country was experiencing, considering that it had made real efforts, even if much remained to be done, particularly with regard to social dialogue. They called upon the Government to continue to seek ILO technical assistance to resolve the issues raised in relation to the application of the Convention.

The Committee took note of the statement made by the Government representative and of the discussion that followed. The Committee observed with concern that the problems raised by the Committee of Experts, which also reflected the comments made by the International Confederation of Trade Unions (ICFTU) and the International Organization of Employers (IOE), included: legal restrictions upon the right of workers and employers to form organizations of their own choosing; the right of these organizations to draw up their rules and elect their officers freely and the right to organize their activities, without interference by the public authorities; the refusal to recognize the executive committee of the CTV; the exclusion of certain workers' and employers' organizations in social dialogue to the disadvantage of the Confederation of Workers of Venezuela (CTV) and FEDECAMARAS; the detention order of leaders, in particular Mr. Carlos Fernández; and restrictions of movement on Ms. Albis Muñoz. The Committee further noted the results of the direct contacts mission that took place in October 2004.

The Committee took note of the statement of the Government representative according to which a draft law adopted in the first reading of the National Assembly had been the subject of consultations and the Government expected its adoption in the near future. It also noted that the Government had included FEDECAMARAS and the CTV in the framework of inclusive dialogue without exclusion of any social partners. Moreover, the Government pointed out

that the National Electoral Council had declared the electoral process of the CTV null and void and that the Government had already replied to the Committee on Freedom of Association on the questions raised by the ICFTU and the IOE.

Noting that the Bill submitted to the National Assembly aimed at resolving problems of a legislative nature and mentioned by the Committee of Experts had still not been adopted in the second reading, the Committee requested the Government to take measures to accelerate its passing and to carry out full and meaningful consultations with the most representative workers' and employers' organizations. The Committee observed insufficiencies in the social dialogue and the need for progress to be made in this respect.

The Committee underlined the importance of full respect for Article 3 of the Convention and that the public authorities should not interfere in the elections and activities of workers' and employers' organizations. It took note of the Government's statement that recourse to the National Electoral Council was optional for occupational organizations and urged the Government to fully respect this commitment.

The Committee invited the Government to lift immediately the restrictions on the freedom of movement imposed on the leaders of FEDECAMARAS, Mr. Carlos Fernández and Ms. Albis Muñoz.

The Committee requested the Government to send a complete and detailed report to the Committee of Experts on all the pending questions for examination at its next meeting and hoped that it would be able to note the progress awaited and, concretely, that the national law and practice would be brought into full conformity with the Convention.

The Committee invited the Government to request a high-level technical assistance of the Office for the abovementioned objectives, with particular emphasis on questions concerning interference with the autonomy of workers' and employers' organizations.

The Employer members referred to their previous statements. In the face of the persistence of the problems which remained pending without being resolved, they could anticipate that it would be eventually necessary to discuss the situation in the Bolivarian Republic of Venezuela again the following year. The Employer members would prefer to send a high-level Governing Body tripartite mission to visit the country in order to find solutions conducive to the full application of the Convention and make progress in the sense of the conclusions which had been agreed upon.

The Government representative spoke on the obstacles that the Employer members' spokesperson had generated during the debate, interfering with the right of workers and governments, who certainly constituted the majority, to have their own opinion. Such obstacles affected the methods of work and the constructive spirit which had prevailed in the debate until then.

Moreover, he objected to the statement made by the Employer members' spokesperson that Venezuela should be included in the list of individual cases for examination by the Conference Committee the coming year, which demonstrated the negative predisposition of this spokesperson who wanted to turn the Conference Committee against his country.

With regard to the individual persons mentioned in the conclusions, these were found in the position of defendant through the autonomous and independent decisions of the Judiciary, in accordance with due process without any interference by the Government authorities. The Judicial proceedings had been instituted as a consequence of the presumed activities of the abovementioned persons, a small group of people, during the events of 2002 and 2003 against the national Constitution and laws. These persons had approved the decree for the dissolution of all public powers in the Government's seat, while the constitutionally legitimate President had been abducted in the midst of a coup d'état.

In any way, the Presidency of FEDECAMARAS had been designated by the Government as the main delegate of the Venezuelan Employers' delegation which had attended the present 93rd session of the Conference and had been able to get out of the country any time this had been necessary with the due judicial authorization, without any effect on her personal or professional life.

Moreover, the speaker was once again pleased to note the cooperation and high level technical assistance provided by the regional Office of the ILO in Lima. In this case, the technical assistance or cooperation in question, of a regional nature, should serve in order to follow up to the joint declaration of the five trade union confederations of November 2004, with regard to the regime of trade union elections.

The Government requested that this declaration be recorded in the provisional records.

Convention No. 95: Protection of Wages, 1949

Islamic Republic of Iran (ratification: 1972). **A Government representative** pointed out that since ratification of the Convention, this was the first time that the Conference Committee discussed its application by the Islamic Republic of Iran, which demonstrated the Government's continued commitment to fulfil its obligations concerning the protection of wages of the labour force, as well as its reporting obligations. The Government's economic policies and structures had not created a dynamic for job creation and unemployment was high. The Government, therefore, had intensified its efforts and had developed, with ILO assistance, an employment strategy. A better environment for enterprise creation and private investment needed to be established. Sectoral policies relating to minimum wages, productivity, training, social security, labour market regulation and tripartism and social dialogue formed a good foundation to build a functioning labour market. However, these polices could still be significantly improved and the Government was determined to rectify the situation. While the public sector played a dominant role, particularly in urban areas, a process of privatization was ongoing. Minimum wages were constantly revised in the light of inflation and enforced through labour inspection.

Over recent years, the textile industry had been facing serious problems due to a number of factors, such as globalization and competition. Some factories incurred heavy losses and were forced to cease operations. In turn, workers filed wage claims with the Ministry of Labour some of which could be settled by the Ministry through social dialogue. The Government had taken urgent measures, designed to redress the losses incurred on account of non-payment of wages. More than half of the workers affected had been compensated on the basis of early retirement legislation. The remaining workers had been paid three months pay for each year of service. In comparison, most countries only provided for up to one months' pay as severance payment. Other measures taken included: (1) some US$100,000 of financial credits for the implementation of structural adjustment in the textile industry; (2) US$230 million low interest loans in foreign currency for equipment renovation; (3) payment of unemployment benefits to job-seekers who had not been paid; and (4) measures to promote entrepreneurship. The Government would supply the necessary statistical information and documentation, as well as information on the results achieved, to the ILO within the next three months. Further, the Government would appreciate technical cooperation with respect to resolving the wage crisis.

The Employer members emphasized that during the last ten years the Conference Committee had examined in a regular manner the individual cases related to the grave situation of wage arrears and the inability of governments to deal with regular payments in line with Article 12, paragraph 1, of the Convention. As the Committee of Experts had noted in its General Survey of 2003, it had become a worrying and persistent phenomenon, particularly in countries making the transition to a market economy. The case of the Islamic Republic of Iran was different because it was not a country in transition and the problems affected a specific sector, the textile sector, where there was a consistent delay in wage payments.

The Committee of Experts had presented observations on this issue, with respect to the Islamic Republic of Iran, on two occasions, but this was the first time that the Committee had examined this case.

The Government provided information on the system of remedies for the legal protection of wages in the Islamic Republic of Iran and had provided information as to the actual situation of employment in certain textile factories. Despite this, the main problem was the lack of detailed information in order to understand the complete background and the level of compliance, in practice, with the Convention. In particular, it was important to consider statistical information that allowed an adequate evaluation of the real dimension of the problem, the number of workers affected, the amounts of wages due, and the inspections and sanctions imposed for lack of compliance.

The Employer members' organizations underlined, on repeated occasions, the importance of the Convention, which dealt with one of the essential questions of the labour relationship. The payment of wages profoundly affected the living conditions of workers, at times for prolonged periods. It could also have perverse effects on the functioning of the economy, incrementally leading to social instability, affecting the informal economy, and worsening the conditions of life, including situations of unfair competition. Despite this, there existed factors that could permit a better understanding of the causes of this situation. In certain situations, a specific sector could be confronted with the obligation to modernize the productive structure, with the consequent immediate implications for employment. On other occasions, the lack of liquidity for reasons of a circumstantial fall in demand impeded short-term capital, preventing the payment of wages. Nonetheless, nothing justified failing to pay wages. To alleviate the circumstances, legislation, through what was stipulated in Article 11 of the Convention, established a system of protection especially to deal with wage claims as opposed to other privileged creditors. In some cases the establishment of an inclusive system of collective security allowed crisis situations to be addressed.

With regard to the information provided by the Government, it was impossible to know the real dimension of the problem in the textile sector and other sectors that experienced or could have experienced delays in wage payments. The practical reality of the prevailing legal arrangements was also unknown. As a consequence, the Government needed to prepare more detailed information on these questions and indicate the socio-economic context, the difficulties faced by sectors affected by these delays or non-payment in order to better understand the circumstances in this situation, and it was also possible that some cases required technical assistance from the ILO.

The Worker members noted that the Government representative had not denied the serious shortcomings in the implementation of the Convention as indicated by the ICFTU and the WCL. Unfortunately, her answer had not provided a clear picture of the scale, nature and

extent of the problems identified in the observation of the Committee of Experts. Although the problems were especially visible in the textile sector, in reality they touched upon a broad range of economic activity in both the public and private sectors, from the oil and shoe industry to telecommunications and hospitals. The Worker members hoped that the information that the Government had promised to submit to the Committee of Experts would cover the full scale of the problem. The Worker members considered that it was unfortunate that the Government representative had not referred to the allegations of police brutality against protesting workers, workplace arrests, abductions and disappearances. The Government representative had also not clearly indicated the measures taken or envisaged so as to ensure the improved implementation of the Convention. Reference had only been made to the available instruments, not to their actual use or contribution to the protection of the workers concerned.

In conclusion, the Worker members had four points to make. Firstly, they supported the request made by the Committee of Experts for the provision of detailed information by the Government. Secondly, they suggested that the Committee of Experts recommend to the Government to give social dialogue an important place in the efforts to solve the problems identified. Thirdly, they noted that this was a case in which the Government could benefit from the technical assistance of the ILO. Fourthly, they observed that the effective protection of wages was very difficult, if not impossible, without free and independent trade unions. Therefore, the Government could be well advised to ratify Conventions Nos. 87 and 98 as soon as possible in order to create the best possible conditions for real trade union activity, also in the framework of resolving the problem at hand.

The Worker member of the Islamic Republic of Iran stated that abusive pay practices and non-payment of wages were affecting a considerable number of countries, including the Islamic Republic of Iran. The Committee of Expert's view that non-payment of wages was part of a vicious circle affecting the national economy as a whole had been highlighted. The workers affected by non-application of the Convention comprised four categories.

Firstly, the workers who are working in factories and units which are currently operating, but their wages are not being paid because of the so-called cash flow problem that units are facing.

Secondly, the workers of factories whose units are undergoing restructuring. Under this category, either the whole or a large percentage of them are covered by unemployment benefit. They receive 85 per cent of their salary on the basis of their last 24 months' average pay. The remaining 15 per cent is paid by the employer along with the other benefits as per the collective agreement signed by the trade union of that unit. In such cases, the unpaid wages comprise 15% per cent wage and other related annual benefits.

Thirdly, as per the early retirement provisions of the Hard and Hazardous Jobs Act, workers with 20 consecutive, or 25 non-consecutive, years of service in these jobs can retire. Under section 24, of the Labour Law a retiring worker is eligible for retirement benefits. After retirement, the worker receives a pension from social security organization, but the employer, on its part, delays the payment of retirement benefit, which also varies from a few months to a year, or sometimes longer.

Fourthly, under the Renovation and Restructuring Industries Act, a worker with 25 years of service can retire with 30 days' pay. The social security contribution for the remaining five years is equally shared by the employer and the Government. In this case, the employer must agree and consent to the retirement of the worker. This right is abused by the employer, who dictates his terms to the worker, and agrees to his retirement on the condition that the worker does not press for payment of the retirement benefit, waiting to receive it after a few months or up to two years.

The majority of the non-payment of wages takes place in the first two groups of workers.

The speaker stated that the situation was much more serious than presented by the Committee of Experts. Further, a clarification was necessary regarding unpaid unemployment benefits and pensions, which concerned workers of factories undergoing restructuring programmes. In these cases, workers received 85 per cent of their average salaries in the form of unemployment benefits and the remaining 15 per cent from the employer. Non-payment of benefits could occur because each stage of the restructuring programme had to be approved by the Supreme Labour Council, and the Social Security Organization abstained from the payment of unemployment benefits unless it had received a letter extending the programme from the Ministry of Labour. Where restructuring programmes did not exist, workers suffered because they could not receive unemployment benefits and could not avail themselves of other social security benefits, including health benefits.

The speaker gave a detailed account of many situations in which the non-payment of wages had serious consequences for the workers concerned and their families. Workers were no longer able to pay back their housing loans, financial difficulties led to the break up of families, and even several cases of suicide were known. Where factory units had cash flow problems, provincial authorities as well as the Ministry of Labour provided assistance. While appreciating the efforts made by the Government, the speaker called for a change in the Government's attitude regarding the issue of non-payment of wages. He urged an increased allocation of the budget to the Workers Support Fund, which was currently far from sufficient. Recalling that the Convention called for means to redress the injury caused, including through fair compensation for losses incurred on account of delayed payment, the Government should adopt legislation requiring the payment of interest if wages arrears exceeded three months. Further, a tripartite committee should be established to follow-up the matter and the ILO should provide technical assistance. It was hoped that the Government would provide the information requested by the Committee of Experts and that progress could be noted soon.

The Government member of Canada welcomed the Islamic Republic of Iran's cooperation with the Organization, including its hosting of several visiting ILO delegations, as well as the signature of a Memorandum of Understanding with the ILO. It urged the Government to strengthen its commitment by permitting the ILO to reopen its Office in Teheran.

However, application of the Convention continued to be very problematic. Abusive pay practices and the non-payment of wages affected the national economy in its entirety which could have disastrous social and financial consequences. Unpaid workers and their families were deprived of their means of subsistence. They needed to have an effective recourse. In addition, workers put their safety at risk when they took to the street to claim their rights. In addition, he noted that the Labour Code's legal remedies for the recovery of unpaid wages and the settlement of wage claims were appreciated, but confirmation that wages and all arrears were indeed paid was necessary.

The speaker urged the Government to take immediate and concrete measures to eliminate the problem of unpaid wages, especially in the textile sector. The Government should provide the Committee of Experts current and detailed data on the employment situation in the textile industry and possibly other sectors where regular payment of wages was an issue, to enable an analysis of the situation.

In conclusion, ILO Conventions had minimal impact when human rights were not respected in practice. The Government of Canada remained extremely preoccupied by the situation of human rights in the Islamic Republic of Iran, including problems such as the independence of the judiciary, arbitrary detention, freedom of expression, treatment of women and treatment of persons belonging to religious and ethnic minorities. Only when these basic human rights were respected would Iranian workers enjoy the full rights they were entitled to.

Another Government representative wished to provide information in connection with certain questions raised. After the Islamic revolution, 250,000 small and medium-sized enterprises had been established in the Islamic Republic of Iran. However, in recent years, many industries faced tremendous challenges due to the negative consequences of globalization, without being in a position to profit from its benefits due to insufficient policies and inappropriate managerial practices. Low productivity, lack of appropriate machinery and high production costs prevented Iranian industries from competing in the global markets and deprived the workers of a decent livelihood. For instance, in the textile sector, low productivity and dated machinery had plunged the industry into bankruptcy with the total number of workers laid off amounting to 35,000. In order to support the industry, the Government had provided amounts equivalent to US$72 million for the industry's adjustment; 112 million in contributions for exports; 230 million in the form of low interest rate bank loans for renovation of machinery and equipment. In addition to this, 140,000 laid-off persons were receiving unemployment benefits in 2004. The minimum wage was being determined every year on the basis of tripartite consultations and in connection with the annual inflation rate. For the year 2005, the minimum wage amounted to approximately US$140. A series of other allowances were also paid to workers, as well as children and housing allowances.

In conclusion, the speaker reiterated that the Government had done its utmost to end the crisis in connection with the different entitlements of workers. Many deferred allowances had been paid while the textile industries had been renovated and had resumed their activities. Unemployed people were receiving their benefits. With regard to workers' demonstrations for the payment of their wages, efforts were being made to avoid the intervention of military forces. The Government had devised macroeconomic plans and a series of key strategies to promote employment, targeting an 8 per cent rate of growth so as to decrease unemployment to 7 per cent. Moreover, vast efforts were made in the area of vocational training and microcredit. A new initiative entailed the co-payment of workers' salaries by the Government and the employer at a rate of 50 per cent for each side. The Government representative indicated that a statistically detailed report would be submitted on all the above issues to the Committee of Experts in the forthcoming months.

The Employer members emphasized the need to fully apply the Convention in law and in practice. They requested the Government to provide detailed information, in particular statistical data, to allow a full picture to be drawn on the delayed payment or the non-payment of wages in specific sectors, the number of workers affected and the amount of wages due. They also asked for information relative to the effective implementation of the legislation in force and the socio-economic context, as well as the difficulties faced by the sectors in which the delays or non-payment occurred. They reiterated that the Office should provide appropriate technical assistance to the Government.

The Worker members recalled the four points they had raised during their initial intervention and emphasized that the Government

should provide a detailed and specific reply to all points brought up during the discussion in its report to the Committee of Experts.

The Committee noted the oral explanations given by the Government representative and the ensuing discussion.

The Committee observed that the situation related to the application of the principle set out in Article 12, paragraph 1, of the Convention dealing with the payment of wages at regular intervals, particularly in the textile industry where a very high number of workers were reported to receive their wages with several months' delay. According to the comments of the ICFTU and the WCL, the situation prevailing throughout the country was dramatic and the growing unrest among Iranian workers was often met with violence on the part of the authorities.

The Committee took careful note of the information supplied by the Government representatives concerning the problems experienced by the national economy, such as the high unemployment rate, low productivity and inadequate private investment, and the efforts made by the Government for devising a new employment strategy, accelerating privatization and improving the business environment in the country. It noted, in particular, the information concerning the crisis in the textile industry in recent years which had led a large number of enterprises to file for bankruptcy or undergo restructuring.

The Committee also noted that, according to the indications provided by the Government, certain steps had been taken such as the implementation of a structural programme for the textile sector and the granting of loans for the modernization of textile factories and equipment. The Committee further noted the Government's indication that full statistical information would be submitted to the Office within three months.

The Committee stressed the importance that it attached to the Convention which related to a fundamental workers' right affecting their day-to-day life and that of their families. While mindful of the financial difficulties experienced by various sectors of the national economy, such as the textile sector, the Committee reminded the Government that the delayed payment of wages or the accumulation of wage arrears clearly contravened the letter and the spirit of the Convention and risked rendering the application of most of its other provisions meaningless.

The Committee reiterated that the problems of delayed payment or non-payment of wages called for sustained efforts, open and continuous dialogue with the social partners, and a wide range of measures, both at the legislative level and in practice, in order to ensure an effective supervision of national laws through labour inspection. The Government should provide information on the mechanisms in place to provide effective settlement of wage arrears. The Committee requested the Government to take all necessary measures to ensure that workers who claimed payment for unpaid wages were not the subject of abusive treatment and violence.

The Committee urged the Government to take all necessary steps to find viable solutions to the wage crisis faced by various sectors of economic activity, including but not limited to the textile industry, in accordance with the principles set forth in the Convention. It also asked the Government to prepare for the next session of the Committee of Experts a detailed report containing concrete information on the measures taken to ensure the application of the Convention in practice. Such information should include all relevant data including, for instance, the sectors, type of establishments and number of workers affected and the amount of accumulated wage arrears, the average length of the delay in the payment of wages, the number of inspections made, infringements observed and penalties imposed, workers' claims accepted and rejected and any time schedule for the settlement of outstanding wage arrears as well as a detailed description of the relevant legal remedies in the Labour Code and information on how these had been applied in the present circumstances.

The Committee expressed the hope that the Government would spare no effort to improve national laws and practices aiming at protecting wage earners from abusive pay conditions and that it would soon put an end to the persistent problems of non-payment of wages.

Finally, the Committee welcomed the Government's readiness to rectify the existing situation and to accept technical assistance from the Office.

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

Australia (ratification: 1973). **A Government representative** said that since 1998 the Committee of Experts had published a number of comments on Australia's federal workplace relations legislation and the implementation of the Convention, which had been the subject of ongoing dialogue between the Government and the Committee of Experts. Given the lengthy consideration by the Government of the issues raised by the Committee of Experts, it was disappointing that more progress had not been made towards resolving them. He added that the comments of the Committee of Experts related to detailed technical issues regarding the interpretation of Australia's federal workplace relations legislation and the scope of the Convention. The Committee of Experts considered that Article 4 imposed an unqualified obligation to promote collective bargaining at the expense of all other forms of bargaining. He said that his Government did not agree with that view. Article 4 required measures for the encouragement and promotion of collective bargaining to be taken "where necessary" and such measures were to be "appropriate to national conditions". He emphasized, in this regard, that collective bargaining had been the norm in Australia for more than a century and continued to be so. The Workplace Relations Act did not give primacy to individual bargaining over collective bargaining, but provided for additional machinery to facilitate individual bargaining as an alternative to collective bargaining where the parties so wished. Under the Act, individual agreement making, like collective agreement making, was at the top of an award safety net of minimum wages and conditions negotiated through a process involving collective bargaining. Access to individual bargaining provided the parties with another choice. He indicated that there was nothing in the Convention to suggest that this was inappropriate. The promotion of collective bargaining did not entail restricting the availability of individual bargaining. It should be noted in this respect that Australian employees were predominantly covered by collective agreements, with 20 per cent of all Australian employees relying on the award safety net, 40.9 per cent being covered by collective agreements, and 39.1 per cent being covered by individual agreements. He added that Australia's system of conciliation and arbitration had a well-established and substantial element of collective bargaining, supported by several features. Firstly, participation in the formal system set up by the Act was voluntary, which meant that workers, employers and their representative organizations were free to negotiate and make agreements outside the formal system. Secondly, the Australian industrial relations system had been and continued to be predominantly based on collective bargaining. Thirdly, the system continued to provide machinery for the negotiation of collective agreements. Fourthly, Australia had mature, sophisticated and well-resourced trade unions and employers' organizations able to inform members of their rights and obligations and to represent these members in collective bargaining or individual bargaining with equal facility. Finally, an employee who chose to bargain individually could arrange to be represented by a bargaining agent, such as a trade union, during negotiations. He concluded that, as collective bargaining was the historical norm in Australia, the availability of individual agreements as a choice among several forms of bargaining instruments could not reasonably be considered to contravene the Convention. Accordingly, in the language of Article 4 of the Convention, the Act was consistent with Australian "national conditions" and Australia was not in breach of the Convention.

He added that the ongoing criticism by the Committee of Experts of individual workplace agreements illustrated its particular interpretation of the Convention and its opposition to individual bargaining arrangements. In its observation, the Committee of Experts had considered that the provisions of the Workplace Relations Act concerning individual agreements and collective certified agreements might operate to create disincentives for workers to join trade unions. In making this observation, the Committee of Experts had mistakenly believed that collective bargaining could only take place with union involvement. Under the provisions of the Workplace Relations Act, collective bargaining could and did take place between employers and their employees, whether or not they were union members, and whether or not unions were involved. Many of the comments of the Committee of Experts in relation to individual agreements implied that the latter were inherently anti-union. Specifically, the Committee of Experts considered that the offer and acceptance of individual agreements was an act of anti-union discrimination, in breach of Article 1 of the Convention. He emphasized that this was not the case. The parties might choose to enter into individual agreements and be active members of a trade union. Individuals could also make use of a trade union as their bargaining agent in negotiating an individual agreement.

As reflected in Australia's various reports to the ILO, the Workplace Relations Act provided protection against acts of anti-union discrimination. Account needed to be taken of the overlap between freedom of association provisions and the provisions of section 170CK of the Workplace Relations Act, which prohibited termination of employment on the grounds of trade union membership. Although the Committee of Experts considered that termination due to refusal to negotiate an individual agreement was not covered by the freedom of association provisions, he emphasized that this was not the case. While there was no express reference to this situation in the Act, the freedom of association provisions prohibited discriminatory action on the grounds that an employee was entitled to the benefit of an industrial instrument. Terminating the employment of an employee for refusing to negotiate an individual agreement was a breach of these provisions, the remedies for which included reinstatement and the payment of compensation. The freedom of association provisions also provided protection against dismissal or otherwise being prejudiced for engaging in union activities, consistent with Article 1. In conclusion, the Workplace Relations Act provided protection against anti-union discrimination through extensive provisions in accordance with Article 1 of the Convention.

He added that certain comments made by the Committee of Experts took little account of the context in which developments had occurred.

One example was the reference made to the Container Terminals Case before the Australian Industrial Relations Commission (AIRC). The Committee of Experts had failed to explain that this was an unfair dismissal case involving a trade union official who had frequently absented himself from work. In this case, the AIRC had ordered the reinstatement of the employee in question. The Committee of Experts had also considered that the absence of protected action in pursuit of a multi-employer agreement amounted to anti-union discrimination. Once again, this was not the case. Agreements were not reached only as a result of industrial action. Where parties, including employers, could take protected action, they could still avail themselves of other remedies under the Workplace Relations Act if they considered they were discriminated against in relation to the negotiation of a multiple business agreement.

He reiterated that the Workplace Relations Act did not give primacy to individual bargaining over collective bargaining. It simply provided additional machinery to facilitate individual bargaining as an alternative to collective bargaining where that was what the parties wanted. His Government considered that individual workplace agreements played an important role in providing workplace flexibility and a greater range of agreement options for employers and employees. He called upon the Committee of Experts to reconsider its opposition to individual agreements in the light of the information provided and the arguments advanced concerning the interpretation of the Convention. He recognized that the matters raised by the Committee of Experts reflected the difficulties inherent in understanding the technical complexity of Australia's workplace relations framework, which was unique. His Government therefore stood ready to work with the ILO with a view to resolving outstanding issues by helping it understand Australia's industrial arrangements.

The Employer members thanked the Government representative for the information provided. They indicated that there were a number of aspects to the case. The first concerned what the Committee of Experts considered to be a lack of protection against the dismissal of certain categories of workers under section 170CK of the Workplace Relations Act, 1996. However, the Employer members considered that some of the comments made by the Committee of Experts on this issue needed to be further clarified before the matter could be pursued. They indicated that the heart of the case related to Article 4 of the Convention which, in the view of the Committee of Experts, appeared to overlap to a certain extent with Articles 1 and 2 of the Convention. However, it was the belief of the Employer members, based on the preparatory work for the Convention, that Articles 1, 2 and 3 of the Convention addressed the issue of the protection of the right to organize and protection against acts of anti-union discrimination, while Article 4 was more closely related to the promotion of voluntary negotiation. The terms of Article 4, 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", offered a dual flexibility. This was based on measures that were both "appropriate to national conditions" and which were to be adopted "where necessary". This requirement meant that there had to be effective recognition of the right to collective bargaining, but as long as such recognition existed, it did not exclude individual or other types of bargaining, nor did it specify the level at which bargaining should take place. This provision was designed to be adapted to a broad variety of national situations in which bargaining took place at different levels and in different forms. In the view of the Employer members, the Committee of Experts was endeavouring, through its reading of Article 4, to impose a very narrow meaning on what was essentially a very flexible clause.

The Worker members thanked the Government representative for the information provided. The case of Australia was very clear.

In the first place, the Committee of Experts had noted that the Workplace Relations Act, 1996, did not seem to offer sufficient protection from acts of anti-union discrimination against workers who refused to negotiate an Australian workplace agreement and insisted that their conditions of work should be regulated by collective agreements. This discrimination could take place at the time of recruitment, during employment or in relation to dismissal and was contrary to Convention No. 98, particularly Article 1 (anti-union discrimination) and Article 4 (obstacles to collective bargaining). Firstly, with regard to discrimination at the time of recruitment, the Australian courts had found that there was no discrimination in a case in which an employer had made a job offer conditional upon the signature by the future employee of an Australian workplace agreement on the grounds that in that case there was no pre-existing relationship between the parties concerned. In this respect, the Committee of Experts had recalled that the protection provided for in the Convention covered both the time of recruitment and the period of employment, including cessation of the employment contract. With regard to discrimination during employment, the courts had once again found no anti-union discrimination in a case in which employees had been required to sign an Australian workplace agreement in order to receive a wage increase, thereby giving up their right to collective bargaining. The Committee of Experts recalled, in this regard, that Article 1 of Convention No 98 covered all acts which "otherwise" prejudiced a worker in any manner, and not only in relation to dismissal. With regard to discrimination in relation to termination of employment, the Workplace Relations Act, 1996, prohibited the dismissal of workers who refused to negotiate an Australian workplace agreement. However, broad categories of workers were excluded from the scope of the Act, and particularly, employees on contracts of employment for a specified period of time or a specified task, employees on probation or engaged on an occasional basis.

Secondly, the Committee of Experts had pointed out that the Workplace Relations Act, 1996, did not provide protection against anti-union discrimination in the case of the negotiation of multiple enterprise agreements. In this respect, the Government admitted that the provisions of the Act were intended to facilitate the negotiation of agreements at the enterprise or workplace level. The parties were nevertheless free to negotiate and conclude agreements covering several enterprises outside the formal system, if they so wished. However, according to the Committee of Experts, the choice of the level of negotiation should be for the partners themselves to decide and the parties were best placed to decide on the most appropriate level of negotiation.

Thirdly, the Workplace Relations Act, 1996, allowed an employer to conclude an agreement with one or more workers' organizations, where each organization had at least one member employed in the enterprise. The employers could therefore choose the union with which they wished to negotiate. In this respect, the Committee of Experts concluded that this procedure enabled employers to interfere in the functioning of trade unions, which was contrary to Article 2 of Convention No. 98.

Fourthly, the Workplace Relations Act, 1996, provided that an individual employment contract excluded the application of a subsequent collective agreement, even where the latter was more favourable to the worker. The Committee of Experts considered this to constitute anti-union discrimination.

Fifthly, certain provisions of the Workplace Relations Act, 1996, allowed workers to be represented by trade unions, but employers could easily avoid this by unilaterally modifying the scope and object of negotiations or by simply stating that they no longer wished to seek an agreement. In the view of the Committee of Experts, under the terms of this Act, a request for trade union representation could lead to the partial or total abandonment of negotiations, which implied that the Act dissuaded workers from seeking such representation. On the other hand, an employer could directly conclude agreements with its employees without going through trade unions. On this point, the Committee of Experts had recalled that effective protection needed to be provided for the right to trade union representation and that negotiations with non-unionized workers could take place only where there was no representative trade union in the enterprise.

Sixthly, the Workplace Relations Act, 1996, provided for the deduction of remuneration in the event of a strike. In this respect, the Committee of Experts felt that, even if it was not contrary to the Convention to deduct remuneration for strike days, it was incompatible with the Convention for the Act to impose such deductions in all cases. Indeed, in a system of voluntary collective bargaining, the parties should be able to negotiate on this point.

Seventhly, the Workplace Relations Act, 1996, provided that a new employer could choose the organization with which he or she wished to negotiate. The Act provided that any agreement could be applied for three years, during which period collective agreements were not applicable. According to the Committee of Experts, such agreements should only be concluded in special circumstances and should not last as long as regular collective agreements, which could not exceed three years.

The Worker members indicated that the Committee of Experts' observations were overwhelming. The Government should accept the recommendations of the Committee of Experts and amend the Workplace Relations Act, 1996. They urged the Government to provide a report containing detailed information on the measures taken to amend the Act and to request the Office's advice before adopting any new provisions.

The Worker member of France commended the work of the Committee of Experts, the conclusions of which were once again complete and precise, and allowed an understanding of the spirit and letter of the Australian labour legislation. With regard to the substance of the issue, it was disturbing to note that the provisions of the Workplace Relations Act, 1996, in practice violated the rights of workers to organize and bargain collectively. The Act had to be amended, especially considering the current economic situation, as it seriously challenged the mandate of the ILO. The discussion on the General Survey on hours of work had demonstrated the danger of using a flexible notion or concept in respect of labour standards. In that debate it had been recalled that, taking into account recent experience, especially in Europe, the promotion, at the request of certain employers and governments, of negotiation at the local, or even individual, level, commonly referred to as the "opt-out" clause, weakened the ability of workers to defend their rights. The promotion of negotiation at the enterprise or individual level, to the detriment of sectoral collective agreements, encouraged a form of blackmail in a context of increasing unemployment and precarity. It was not infrequent to hear an employer say: "either accept my conditions, or I will subcontract the work or delocalize the enterprise". The consequences of the Australian labour legislation on the workers concerned, however, went even further. Indeed, it grouped together a wide range of conditions, resulting in the de facto denial of the right of workers to organize. This was the case when, in law, the promise of a job or pay

rise was dependent on the employee renouncing her or his right to collective bargaining, which could then be used by the employer and interpreted as the worker having forever renounced the right to engage in union activities. According to the Government, nothing was compulsory. But what freedom did an employee have when isolated in the labour market and considered to be a simple commodity? According to information on the Australian workplace agreement provided to employees by employment agencies, workers could choose their work schedule. However, to what extent did an employee on her or his own have any choice other than to accept?

The Preamble of the ILO Constitution of 1919, recalled in the General Survey on hours of work, stated that "the regulation of the hours of work" was among the measures urgently required to improve conditions of labour. But for regulations to effectively take into account the needs of workers, they had to provide for collective bargaining. Collective bargaining, however, could only exist if workers were guaranteed freedom of association. The Australian Workplace Relations Act did exactly the opposite. This was the case when, under the Act, a collective action by workers to negotiate a sectoral agreement covering several enterprises was considered illegal. The Government had indicated that workers were free to negotiate sectoral collective agreements, but any action to demand such agreements could be considered illegal. This was a one-way concept of freedom. He concluded by urging the Government to recognize the legal basis of the comments of the Committee of Experts and the Conference Committee.

The Worker member of the United Kingdom recalled the discussion by the Committee in 1996 of a very similar case concerning the application of Articles 1 and 4 of the Convention by his own country, where trade unionists had been subject to inducements and pressures to relinquish the protection of collective agreements in favour of the total lack of protection provided by individual contracts. In that same year, the Australian Government had adopted its infamous Workplace Relations Act, constituting an import from his country that should have been immediately turned back. He recalled that in 1996 the Committee of Experts had noted that an amendment to the legislation in the United Kingdom prevented industrial tribunals from redressing situations in which employees who refused to give up the right to collective negotiation had been deprived of a pay rise and therefore raised significant problems of compatibility with the principles of freedom of association. The Committee on Freedom of Association had commented that such a provision could hardly be said to constitute a measure to encourage voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements, as provided in Article 4 of the Convention. The Committee of Experts had concluded that section 13 of the United Kingdom Trade Union and Labour Relations Act, 1992, was likely to result in a situation wherein collective bargaining would be easily and effectively discouraged and that the Act failed to protect the right of a union member to make use of the union's essential services, such as collective bargaining.

In that year, the Conference Committee had noted the insufficiency of the protection afforded by the legislation to workers against acts of anti-union discrimination. It had called upon the Government to re-examine the situation so that its law and practice gave unambiguous effect to the principles contained in the Convention, and particularly to guarantee respect for the protection against acts of anti-union discrimination and to promote collective bargaining.

The 1992 Act in the United Kingdom had been amended in 1999 to make it clear that action short of dismissal on grounds of union membership or activities did include acts of omission. Yet in 2002, the European Court of Human Rights had found in the Wilson/Palmer case that trade union law in the United Kingdom was still not compatible with Article 11 of the European Convention on Human Rights on freedom of association. In particular, the European Court had found that workers had the right not to be bribed by employers not to be union members, not to access the services of a union or not to be collectively represented by a union through collective bargaining. It had also ruled that union members should be free from discrimination on grounds that they made use of union services, including collective bargaining. The Employment Relations Act, 2004, had revised the law in the United Kingdom in the light of that judgement and in compliance with it.

He said that he had drawn attention to the 1996 discussion of the case of the United Kingdom for the very simple reason that all three of the ILO's key supervisory mechanisms had been here before and made their views very clear on precisely the matters that were now being discussed. The law and practice in Australia was therefore explicitly and knowingly in violation of Convention No. 98 and constituted a determined attempt to destroy the right to collective bargaining in the country, which gave true grounds for nightmares.

The Worker member of Australia said that it gave her no pleasure to represent the Australian workers, who were now being forced to watch the systematic dismantling of a civilized industrial relations system in which employees had rights. It was a shocking reality to know that this was a deliberate act by the Government of a democratic nation and to witness its impact on the lives of Australian workers. There was no pretence that Australian laws promoted collective bargaining, even when an overwhelming majority of employees had expressed the desire to stand up for each other and bargain collectively. Instead, it was the employer who decided whether bargaining would occur or an employee would be forced to sign an individual contract.

It was no exaggeration to state that there was no right to bargain collectively in Australia. It was now legal for the employer to make it a precondition of employment that an employee sign an individual contract. The effect was to prevent employees being covered by a collective agreement for up to three years. As noted by the Committee of Experts, such situations could amount to anti-union discrimination, contrary to Article 1 of the Convention, and could not be said to encourage and promote voluntary collective bargaining, as required under Article 4. Indeed, there was no question that Australian legislation was in violation of Convention No. 98, as it permitted employers to make the obtaining of a job, the obtaining of a benefit of employment, and the continuation of a job, dependent upon employees abandoning their right to bargain collectively. This was not an unintended consequence of Australian legislation. It was Government policy that individual bargaining should prevail over collective bargaining to the exclusion of collective agreements.

It was difficult to believe that a Government in a democratic nation could be so determined to dismantle collective bargaining. Nevertheless, it threatened universities and technical colleges with loss of funding unless they ignored the fact that their employees were organized and offered them individual contracts. The same was true for state government projects and private sector infrastructure projects which involved national Government financing. The Government did not prohibit collective agreements in universities, but insisted that every collective contract must contain a clause giving precedence to individual bargaining. It did the same within its own departments. The outcomes were becoming very clear as wages and conditions were driven down. All of these cases were in violation of Convention No. 98, because they failed to encourage collective bargaining, actively discouraged collective bargaining and restricted the autonomy of the parties to reach agreements independently and without interference by government. Moreover, where the parties at the workplace opted to conclude a collective agreement, they were constrained in what they could agree to. The law placed restrictions on both the content of agreements and the levels at which agreements could be pursued. In addition, a decision of the High Court last year has the effect that a number of other provisions have been determined to be outside the scope of lawful bargaining, including the voluntary agreement of employers to payroll deductions of union fees.

If the right to Collectively Bargain is not guaranteed as an unenforceable right, then Freedom of Association and the Right to Organize is similarly fictitious.

With respect to activities to advance the interests of members, the Australian laws are very restrictive.

For example, it has been found that, (once an employer has successfully signed all the employees onto individual agreements), a union no longer enjoys the statutory right to visit employees in the workplace, in order to hold discussions with the employees, regardless of union membership at that workplace. (ALDI Foods v NUW)

And, at the same time that the High Court decision last year limited the matters which may be included in an enforceable collective contract, it also limited the matters about which workers may take industrial action with immunity.

Multi-employer agreements were effectively subject to prior approval, as they could only be enforced if they met a public interest test. Australian law prohibited employers and employees from freely negotiating matters which, in the opinion of the Committee of Experts, should be left to the parties. For example, it was prohibited to negotiate strike pay and a law was currently before Parliament to prohibit the inclusion in collective contracts of provisions governing the right of entry of unions into workplaces.

Recent examples were provided highlighting cases where employees were dismissed for refusing individual contracts that reduced their pay significantly, workers who hold a formal ballot in support of collective bargaining and whose employer refused and began discriminating against union members. Recent academic research highlighting the impacts was mentioned.

For over a century, Australian labour law had been based on the assumption that the Government's powers were limited to settling industrial disputes through an independent process of conciliation and arbitration. Yet, the Government was now set upon shifting the very constitutional basis upon which it legislated. As the power of corporations prevailed, labour was coming to be defined through its relationship with the corporation and was being left with no independent status or dignity. The Government's recent announcements showed that it had no regard for its obligations under the Conventions that it had ratified and even intended to deny those obligations even further at a time when, paradoxically, it had sought and obtained membership of the ILO Governing Body. She could only conclude that it was high time to call the Government of Australia to account.

The Employer member of Australia expressed his total and strong support for all the statements made on behalf of the Government of Australia. He recalled that, as had already been pointed out, Article 4 of the Convention was subject to two important qualifications which were contained in the words "where necessary" and "appropriate to national conditions". It was clear that Article 4 required certain measures to be taken only where necessary or when appropriate to national conditions. In this respect, it was important to note that the Australian system of industrial relations was a hybrid system of bargaining and compulsory

conciliation and arbitration. The whole system encouraged and promoted collective agreements between employers and employers' organizations and workers' organizations, while at the same allowing other forms of agreement, including individual agreements.

He emphasized that Article 4 of the Convention did not require the encouragement and promotion of one form of agreement to the exclusion of other forms of agreement, as the Committee of Experts appeared to believe. If Article 4 had so required, it was reasonable to expect that this would have been stated, in clear terms. In fact, an examination of the preparatory work carried out for this Convention showed that the flexibility provided for in Article 4 was intended and deliberate, and that there was no basis for the restrictive approach adopted by the Committee of Experts. The words "where necessary" had been added to the Office draft following a proposal made by the Australian Government; the words "appropriate to national conditions" had been added by a working party of the Conference Committee that drafted the Convention. He added that the Reporter of that Committee had said, in presenting his report to the members of the Conference, that "Articles 3 and 4 were drafted in terms designed to take account of the widely divergent conditions in various countries". In this respect, he reiterated his statement that the Australian system, taken as a whole, did indeed encourage and promote certain forms of collective agreement, while allowing other forms of agreement. There was no requirement in Article 4 to exclude these other forms of agreement, nor was there a requirement for every provision in the legislation to encourage and promote a certain form of agreement.

Finally, with respect to " Greenfield agreements", he pointed out that these related to a special form of collective agreement, which was common in the building industry, where a project might well start with a very small workforce, which could grow quickly to a large workforce, and then disappear with the completion of the project after a relatively short period of time. He asserted that the Committee of Experts' had constructed hypothetical argument that these agreements may be made for a period of three years, and that this potentially prejudiced the workers' choice of a bargaining agent for a considerable period of time. However, the Committee of Experts had ignored the fact that such an agreement could only be made with one or more organizations of employees entitled to represent the interests of the workers whose employment was likely to be subject to the agreement. They had also ignored the benefits to all concerned of the stability of such agreements. It was therefore difficult to understand how it could be argued that the legislative provisions did not comply with Article 4 of Convention No.98.

With regard to the comment of the Committee of Experts concerning the freedom of choice of the level of bargaining, he indicated that the possibility of industrial action to force the adoption of a particular waiver of bargaining would make nonsense of the concept of freedom of choice.

In conclusion, he reiterated his support for the statement made by the Australian Government, in particular with respect to the Committee of Experts' comments related to anti-union discrimination. It was clear from the Government's statement that the legislation did provide adequate protection in this respect, as required by Article 1 of the Convention.

The Worker member of Pakistan took note with appreciation of the observation made by the Committee of Experts on the application by Australia of Convention No. 98, concerning the obstacles faced in implementing the principles and basic right of collective bargaining and the need to amend the Workplace Relations Act, 1996. He questioned the interpretation made by the Employer members of Conventions Nos. 87 and 98, especially as it had been clearly stated by the Committee of Experts that the national legislation of Australia was in conflict with the Convention.

Coming from Pakistan, he had great respect for a country such as Australia, which was well advanced in terms of its democratic, social and economic development. He emphasized that, under the Convention, the Government should also respect the right of employers to freedom of association, and that Article 2 of Convention No. 98 clearly stated that "workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration". This meant that employers should not impose conditions on workers with respect to their right to bargain collectively. He added that many lacunae existed in the Workplace Relations Act which denied the right to collective bargaining to newly recruited workers and workers on probationary contracts, which amounted to an anti-union attitude.

Referring to Article 1 of Convention No. 98, he stated that the legislation in Australia constituted a disincentive to becoming a union member, that it did not protect workers against anti-union discrimination and that it did not promote collective bargaining. He hoped that the Government would bring its law and practice into conformity with the Convention, and would refer in this regard to the case of the United Kingdom, which had also been the subject of a discussion by the Committee.

The Worker member of New Zealand stated that he had followed with great concern the application of the Australian Workplace Relations Act, 1996, which was having the same negative impact on workers as the highly criticized Employment Contracts Act of 1991 in New Zealand, and which was perhaps even worse than the New Zealand legislation. The ILO had rightfully questioned the Workplace Relations Act because it was not in conformity with the provisions of Convention No. 98 and it undermined trade union activity and organization on several levels. It also severely deterred, rather than promoted collective bargaining, from the very beginning of a worker's career. In addition, collective membership and support was effectively denied in favour of individualized arrangements by forcing employees into the individualized Australian workplace agreement. The Workplace Relations Act, therefore, had a considerable impact in preventing collectivization and unionization.

This was illustrated by the fact that state sector employers, who were well aware of the possibilities under the existing legislation, had reportedly forced workers to declare that they would not join a union. In his view, this was effectively asking workers to contract out of fundamental human rights and he expressed concern that these cases might only be the tip of the iceberg, as workers might be too afraid to speak up.

He said that it was no coincidence that, despite the criticism, the Government had not taken any remedial action, since it was well aware of the impact of its policies. In his view, the Government was disregarding workers' rights in its desperation to destroy any form of political opposition, including Australian organized labour. The Government was very well aware that trade union membership in New Zealand had been decimated to the point that within a decade several long-standing unions had collapsed and overall union density had shrunk from 56 per cent to 21 per cent of New Zealand's wage and salary earners. The Government also knew that terms and conditions of employment for many workers previously covered by collective agreements had greatly deteriorated. Pay increases, penal rates, overtime rates – in fact genuine negotiations had become something of the past in New Zealand. More importantly, workers, especially non-unionized workers, had become less confident in themselves at negotiating with employers on a range of issues, whether or not they were included in collective agreements. Unions had become more narrow in their focus, moving away from being involved in wider employment and social issues on behalf of workers, in favour of being simple bargaining agents concerned with trying to survive by negotiating employment agreements in a hostile environment.

He emphasized that under this kind of legislation, decent work was impossible and tripartism and social dialogue would be a thing of the past, with workers becoming more vulnerable. The policies mentioned were the antithesis of the ILO's decent work programme and had to be challenged if the ILO was to be serious about decent work. Recalling that employment equity had suffered, as the New Zealand task force on Pay and Employment Equity (PAEE) had discovered that discretionary pay systems and an absence of collective bargaining fostered pay and employment inequity, he said that this would also be the immediate and ongoing impact of the implementation of the Workplace Relations Act in Australia. Moreover, he felt that even if more favourable legislation were to be adopted, as had been the case in New Zealand in 2001, significant damage would already have been done to the union movement in particular, and to workplace relations in general. Employers and workers would not easily embark once again on a constructive relationship based on mutual respect and an ability to engage in social dialogue.

Australia should be made to realize that this type of law was unacceptable to the ILO. However, the Australian Government appeared to have a different view, as it believed that the current Workplace Relations Act did not go far enough in denying workers' collective rights and it was drawing up new legislation. The Australian Government had also recently stated to the Governing Body that its record on Convention No. 98 was of no consequence to it, nor was it a source of embarrassment.

He concluded that this situation could not continue. It was time that the Australian Government was brought into touch with real democracy and fundamental rights. The Conference Committee should act decisively, and he urged the Australian Government to amend the Act immediately so that it complied with the requirements of Convention No. 98.

The Government representative thanked all those who had contributed to the discussion, although he indicated that he did not share all the views expressed during the debate. Moreover, a number of the statements made had been inaccurate and had gone beyond the scope of the comments made by the Committee of Experts. He reaffirmed the willingness of his Government to work with the Committee of Experts to help in gaining an understanding of the Australian industrial relations system and in resolving the issues raised in its comments.

The Employer members noted the divergent views expressed by members of the Committee. One of the issues that had been raised during the discussion concerned the protection afforded to certain categories of workers from dismissal on the basis of trade union activities. The Employer members recalled that two types of protection were provided by Australian legislation in relation to trade union membership, depending on the category of worker. The protection provided for under section 170CK of the Workplace Relations Act, 1996, applied to a wide range of trade union activities. The expression employed by the Committee of Experts in this respect, namely, that the sections "do not seem to provide adequate protection against anti-union discrimination", betrayed a certain caution. In the view of the Employer members, the Australian legislation afforded effective protection for the right to collective bargaining. They also considered that Article 4 of the

Convention was an intentionally flexible provision and that nothing in it could be interpreted as limiting the type of agreement to be concluded or the level of bargaining. It would, therefore, be necessary for the members of the Committee to find common ground in a context of differing views.

The Worker members indicated that divergent legal views had been expressed in the discussions on the case of Australia. Some members were of the opinion that there was a violation of Convention No. 98, while others thought that it was a question of a difference of interpretation of the Convention. The Government representative had stated that the Workplace Relations Act, 1996, did not hinder the organization of collective bargaining. It was, therefore, important to recall that Convention No. 98 provided for the promotion of free collective bargaining, which was not the case in Australia. Referring to the comments of the Committee of Experts, the Worker members called on the Government to supply a report containing detailed information on the measures taken to amend the Workplace Relations Act, 1996, and to request the opinion of the Office before adopting new legal provisions.

The Committee noted the statement by the Government representative and the debate that followed. The Committee recalled that the Committee of Experts had been making comments for several years on certain provisions of the Workplace Relations Act, particularly in relation to the exclusion from the scope of application of the Act of certain categories of workers, the limitations on the scope of union activities covered by protection against anti-union discrimination and the relationship between individual contracts and collective agreements.

The Committee noted the Government's statement that there was an extensive system of collective bargaining and that individual negotiation was not given priority over collective bargaining, but that the system offered an alternative for both employees and employers. The Committee also noted the Government's statement concerning the complexity of the situation and its wish to continue a constructive dialogue with the Committee of Experts.

The Committee requested the Government to provide a detailed report to the Committee of Experts on all elements relating to the application of the Convention, in both law and practice, including the discussion held in the present Committee, taking into account all matters relating to the impact of the legislation on the effective recognition of the right to collective bargaining, and the measures adopted or envisaged by the Government. The Committee also requested the Government to provide copies of all draft laws that might relate to the application of the Convention. The Committee requested the Committee of Experts to examine the elements of the debate on this case. The Government should consider requesting the advice of the Office in this respect.

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

1.1. The Government of Zimbabwe confirms that it commenced a review of its labour legislation and that the Bill has since been approved by Cabinet and published as H.B. 1/2005. It will be tabled for debate before Parliament, during the 1st Session of the 6th Parliament of Zimbabwe, which resumes in June 2005.

1.2. The Government confirms further that all legislative amendments it undertook to include at the 92nd Session of the Conference have been incorporated into the Bill. These in particular are:

(i) Repeal of section 22 of the Labour Act, Chapter 28.01, which permitted the fixing of maximum wages by the Minister or at all.

(ii) The repeal of sections 25(2)(b), 79(2)(b) and 81(1)(b) of the Labour Act, Chapter 28.01, which permitted the authorities not to register collective bargaining agreements which were deemed not to be equitable to consumers and the public generally.

1.3. The Government confirms that it is up to date with all correspondence relating to the reports by the International Confederation of Free Trade Unions.

2. The Government notes that the Committee of Experts also suggests that sections 25(2)(c), 79(2)(c) and 81(1)(c) of the Labour Act, Chapter 28.01, which permits the authorities not to register a collective bargaining agreement "which has become unreasonable or unfair having regard to the respective rights of the parties ...", be repealed for want of compliance with Convention No. 98.

It is noted that the Convention specifically recognizes two grounds by the authorities for declining to register collective bargaining agreements, viz.:

(i) a procedural flaw in the collective bargaining agreement; or

(ii) inconsistency with general labour legislation minimum standards.

Stricto senso there may be no room for declining to register on grounds of unfairness or reasonableness with respect to the rights of the parties.

The Convention being supreme and binding, Zimbabwe has no hesitation in amending its laws accordingly so as to be in keeping with the wording of the Convention.

3. The Government also notes that the Committee of Experts is not comfortable with section 25(1) of the Labour Act, which generally provides that an agreement reached by more than 50 per cent of the employees at a workplace is binding regardless of the position of the other unionized employees.

It is felt that this section does not recognize the provisions of Article 4 of the Convention which requires "measures ... to encourage and promote the full development and utilization of machinery for voluntary negotiations between employers or employers' organizations and workers' organizations ...".

Section 25(1) of the Labour Act ensures majority rule at the workplace. It is a cornerstone of democracy in all practice that the voice of the majority prevails. The proposal by the Committee of Experts implies that the concept of majority rule does not apply in collective bargaining. The Government is of the strong view that section 25(1) is consistent with universal democratic practice, which Convention No. 98 recognizes.

In the circumstances, Zimbabwe stands further guided by the Committee of Experts on the point in the light of this explanation.

4. Finally, the Government appreciates the Committee of Experts' observation that the issue of prison staff is a constitutional question as explained by the Government at the 92nd Session of the Conference.

5. The Government observes with deep concern that, notwithstanding substantial compliance with Convention No. 98, it continues to be listed with respect to the same Convention. It has appeared before this Committee consecutively since 2002 in circumstances which do not meet the selection criteria for listing Members before this Committee.

At all previous Zimbabwe appearances, discussions have degenerated into political discourse. Convention No. 98 is used as a smokescreen to demonize Zimbabwe because of the unpopularity of Zimbabwe's domestic policies in the circles of some former colonial powers.

6. Zimbabwe also does not lose sight of the Nicodemus circumstances under which it was eventually listed through the agency of errant and dubious unionists at this 93rd Session and warns the ILO against the inevitable impairment of its credibility as a transparent and objective international organization.

In view of the foregoing and given the known selection criteria for listing Members, Zimbabwe urges Officers of the Committee to objectively consider its case.

In addition, before the Committee, **a Government representative** stated that his Government had prepared and made available its response to the observations of the Committee of Experts. He reiterated that Zimbabwe had fully undertaken the process of implementation of all commitments it had made at the previous session of the Conference Committee. It had tabled a Bill amending the Labour Relations Act with a view to repealing sections 22, 25(2)(b), 79(2)(b) and 81(1)(b). This Bill was due for debate in Parliament this June. All social partners had participated in drafting the Bill and the draft was made public. Furthermore, to implement the observations of the Committee of Experts, the Government had now agreed to repeal sections 25(2)(c), 79(2)(c) and 81(1)(c) of the Labour Relations Act, which subjected collective agreements to ministerial approval on the grounds that the agreement was deemed unreasonable or unfair with regard to the rights of the parties. As the Bill was still before Parliament, it was not too late to include these amendments.

With regard to section 25(1) of the Labour Relations Act, which provided for the binding nature of collective agreements approved by more than 50 per cent of employees at a workplace regardless of the views of a unionized minority, and with regard to the statement made by the Government last year before the Conference Committee to the effect that employment council codes took precedence over workers' council codes and hence gave precedence to unionized agreements, the Committee of Experts had correctly pointed out that codes of conduct did not regulate all issues covered by collective agreements. Although his Government questioned whether by disregarding the views of the majority at the workplace, shop-floor democracy was not discarded, it nevertheless would abide by the decision of the Committee of Experts.

With regard to the request of the Committee of Experts to reply to the ICFTU comments, the Government representative indicated that his Government did not deal directly with the ICFTU as the latter was not an ILO body. As for the specific alleged violations of the freedom of association brought by individuals or the ICFTU, the Government had provided its response. These matters were for the Committee on Freedom of Association to examine and not the Conference Committee.

On the issue of prison staff, the speaker explained that any guarantee of the exercise of the rights afforded by the Convention was premised upon the prison service being deemed not to be a military force under the Constitution. But until the Constitution was amended, this situation would remain unchanged. Social partners were very aware of this fact.

The Government representative expressed his bewilderment at the fact that Zimbabwe had to appear before the Conference Committee for the fourth time as the questions at issue were of a legislative nature and mostly related to the interpretation of several provisions, and no problems with the practical application of the Convention were raised. There were no discernible criteria to justify the discussions of Zimbabwe before the Conference Committee for over four years. In his Government's opinion, his country was called before the Conference Committee at the demand of some former colonial powers who were openly agitating for regime change in the country following a successful land reform programme. But there could be other appropriate forums to talk of other concerns, which were not covered by Convention No. 98. The Conference Committee should focus on the issues raised by the Committee of Experts. His Government once again

called for a review of the working methods of the Conference Committee.

The Employer members thanked the Government for the information provided and assured the Government that the case had not been selected on the basis of any political consideration. This was rather a case involving tangible progress, which was one of the criteria for selection provided for under the Committee's methods of work. Zimbabwe had recently ratified the Convention and the Committee of Experts had already noted some legislative reforms with satisfaction. Nevertheless, some problems remained. Sections 25, 79 and 81 of the Labour Code needed to be amended and, according to the Government, such amendments were under way. While the Bill concerned was already finalized, there was still time to include amendments to common subsection (c) of these sections, as requested by the Committee of Experts. The requirement to submit collective bargaining agreements to the Ministry for approval was an interference with the ability of workers and employers to determine the conditions of employment independently from the Government. The Government did not provide information on section 22 which constituted a serious constraint on the subject matter and scope of collective bargaining and, therefore, needed to be removed. Regarding section 25(1), the Government should clarify whether a union was required to cover a certain percentage of the employees in order to be able to bargain collectively. In conclusion, the Government had already addressed a number of problems, but it was crucial that the remaining points would be properly addressed. The Government should supply a comprehensive report to the Committee of Experts on all the outstanding issues and should take advantage of technical assistance provided by the ILO in order to remove all legislative provisions that interfered with collective bargaining in accordance with the Convention.

The Worker members noted that the application of the Convention in Zimbabwe had been under discussion by the Conference Committee, the Committee on Freedom of Association and the Committee of Experts for several years. In 2003, the Conference had asked the Government to accept a direct contacts mission and to inform the Committee of Experts. In 2004, the Conference had revealed that the Government had not accepted this direct contacts mission, invoking the fact that such a move could not be undertaken for strictly legal reasons, while in its 2003 conclusions the Conference had referred to violations of the Convention in practice and in law. The Worker members considered that the attitude of the Government demonstrated clearly that it did not wish to give up interfering with collective negotiations, and that it sought to retain the possibility of signing direct agreements with workers, even where unions existed. The Government had declared that it had decided to repeal the ministerial approval as a prerequisite to collective agreements and the setting of minimum wages. In doing so, it nevertheless revealed that this reform had been decided by itself alone, without discussion between the social partners and that in addition it reserved the right to put the matter before Parliament. But, in a truly democratic state, aware of its credibility, a draft law had to be submitted to Parliament and run the risk of being opposed. The Government had not taken the opportunity offered to it to take up social dialogue again. At present, it was happy to repeat its promises of 2003 and 2004, without even mentioning a timetable for these reforms. The Government admitted that the Convention took priority over domestic law and announced that it would modify sections 25(2)(b), 79(2)(b) and 81(1)(b) of the Labour Relations Act, without any concrete measure actually backing up these declarations, and it had still not modified section 22 of the Labour Relations Act in order to ensure that a trade union could undertake collective bargaining, even if it represented less than 50 per cent of wage earners. For the Worker members such an obstacle clearly showed the Government's intention of continuing to exercise control over collective bargaining and, more generally, to deny the fundamental principles of freedom of association.

A Worker member of Zimbabwe stated that it was sad to note that the Zimbabwe Congress of Trade Unions (ZCTU) had come back with the same concerns that it had raised at last year's session of the Committee. The Government's continued anti-trade union attitude was evident in the fact that provisions of the Labour Relations Act requiring collective bargaining agreements to be submitted for ministerial approval and to be published as statutory instruments in order for them to be in force, as well as provisions fixing maximum wages were still in force. The Government had stated in 2004 that it would address these issues by reforming legislation in consultation with the social partners. In fact, the Government had published Labour Act Amendment Bill H.B. 1 of 2005 without consulting the social partners on its substance. The Bill did not address some of the abovementioned issues of concern to the ZCTU, nor did it address the use of the Public Order and Security Act (POSA) by police and security agencies to arrest trade unionists because of their trade union activities. Furthermore, public service employees were removed from the ambit of the Labour Relations Act and were placed under the scope of the Public Service Act, which did not allow public service employees to join trade unions or to collectively bargain. At the last session of the Committee, the ZCTU had also raised the issue of prison service employees, who did not enjoy the right to collective bargaining. The Government had indicated that it would rectify this through a constitutional amendment, yet the amendment pending before the current Parliament did not address this concern. Tripartism was not implemented seriously in the country. While the Government had asked the social partners for submissions on the amendment of the Labour Relations Act, the submissions of the workers had just been shelved. The tripartite system lacked a governing statute and relied on the will of the Government to be convened. The speaker concluded by pointing to further problems in the application of the Convention. He noted that a tripartite event to mark the World Health and Safety Day, attended by government officials, employers, ILO representatives and national social security authority officials, had been disrupted by the police, who had arrested only ZCTU members. Furthermore, the POSA had been used to attack the informal economy, which had been developed by trade unions as a poverty-reduction strategy. The POSA and the Access to Information and Protection of Privacy Act (No. 5 of 2002) were also used to attack trade unions. He urged the Government to commit itself to respecting the Convention.

Another Worker member of Zimbabwe stated that he was the Third Vice-President of the Zimbabwe Congress of Trade Unions (ZCTU). He could confirm that the Government had tabled the Labour Act Amendment Bill H.B. 1 which addressed the concerns raised during last year's session of this Committee. In this regard, he found the listing of Zimbabwe in the individual cases before this Committee counterproductive. He wished to state for the record that the case had not been put on the list by the ZCTU or any regional trade union association, but rather by persons with ulterior political motives. It was not appropriate for this Committee to address political developments in Zimbabwe, as this was better left for the persons directly involved. He stated that the ZCTU was pleased with the legislative progress that had been made in this case, and felt that these developments should be applauded. He was of the view that this forum was not the place to address internal disputes within the ZCTU or to resolve issues of persons who had fallen out of favour with the ZCTU.

The Employer member of Zimbabwe recalled that last year the employers had urged the Committee to give the Government time to address the issues that had been raised. He wished to report, from the employers' perspective, on the progress that had been made over the past 12 months. The speaker noted with satisfaction the positive tenor of the Committee of Experts' report and expressed surprise that the Conference Committee had included Zimbabwe again in the list of individual cases. He recalled the steps that had been taken previously to promote the concept of social dialogue by ensuring maximum participation by employers in the process of law reform and acknowledged the assistance Zimbabwe had received from the ILO through the ILO/SWISS Project, which continued to bring the social partners together in spite of the differences that existed. The employers' efforts undertaken on the bipartite and tripartite level had contributed to the publication by the Government, in January 2005, of the Labour Act Amendment Bill H.B. 1 of 2005, which sought to address most of the points raised by this Committee in 2004. The Bill proposed to repeal section 22 of the Labour Relations Act, which permitted the fixing of maximum wages by the minister, as well as sections 25(2)(b), 79(2)(b) and 81(l)(b), which permitted the authorities not to register collective agreements which were deemed not to be equitable to consumers and the public generally. These provisions of the Bill seemed to respond to the Committee of Experts' concerns with a view to ensuring compliance with the Convention. However, as regards section 25(1) of the Labour Relations Act, while having noted the Committee's concern that where a union had not managed to recruit 50 per cent of the workers at a workplace, representatives of non-unionized workers would be able to negotiate directly with the employer, even if a trade union existed at the enterprise, the speaker believed that this section promoted the concept of majority rule at the workplace. He therefore considered that workers were sufficiently protected. The speaker recalled that Zimbabwe had been appearing before this Committee on allegations of failure to comply with the Convention for the fourth consecutive year. Although it had been a learning experience, which had resulted in significant improvements to the labour legislation, each appearance had generated the kind of publicity that the country could well do without. He called on the Committee to give Zimbabwe and its social partners a chance to make progress on the case.

The Government member of Malawi stated that it had not been appropriate to put Zimbabwe on the list of individual cases. He had heard allegations that it originally had not been on the list, but had somehow been placed there at the last minute. He stated that this Committee's credibility rested on its objectivity and fairness. He noted from the Committee of Experts' report that Zimbabwe was cooperating with the ILO. This development needed to be encouraged instead of condemned. Social dialogue, especially as set out in Convention No. 144, could play an important role. He suggested that before a case went before this Committee, it should first be discussed in a tripartite setting at the national and regional levels. It was not clear whether this case had ever been discussed at these levels. He concluded by stating that it was important to promote the application of Convention No. 98. It was also important for this Committee to act openly and objectively.

The Government member of China stated that he had listened carefully to the response by the Government and to the discussion. It was clear from the Committee of Experts' report that Zimbabwe was amending the laws which had been the subject of concern. The Government representative had mentioned further actions which would be taken in this regard. The Government appeared to be making progress and needed more time. His delegation supported the efforts of

the Zimbabwe Government and he urged the ILO to provide relevant technical cooperation.

The Government member of Canada expressed his concern regarding the fact that the Government had failed to follow up its stated intentions to adopt legislation in response to the questions raised by the Committee of Experts. Even though the legal framework had evolved, it was regrettable that the exercise of the right to collective bargaining, which included the right of workers to freely choose their representatives and the right of those representatives to perform their duties without interference, had become increasingly difficult. Moreover, those rights could not be fully exercised without respect for human rights, and there was reason to be deeply concerned by the recent upsurge in human rights violations in Zimbabwe. The speaker encouraged the Government of Zimbabwe to take the necessary steps to guarantee the right to collective bargaining of workers' organizations.

The Government member of Kenya stated that his Government had carefully studied the Committee of Experts' report and the response by the Government regarding conformity with the Convention. He noted that, during the last four years, Zimbabwe had been appearing before this Committee to provide information on the progress made with regard to issues raised by the ZCTU. In its reply, the Government had indicated efforts undertaken to redress the situation by carrying out legislative reform: a Bill had been brought before the Cabinet committee and would be promulgated in June 2005. The speaker wished to commend the Government for this legislative reform, which proved its willingness to cooperate with the ILO in addressing the concerns raised, and expressed the view that the Committee of Experts should allow the Government to complete this reform, in order to guarantee full compliance with the Convention. He also suggested that, taking into account the country's circumstances, the ILO should consider and offer technical assistance to Zimbabwe, in order to enable it to complete the review process and to bring legislation into line with the principles of the Convention.

The Government member of Cuba stated that, after having studied the most recent report of the Committee of Experts, he had been able to note that, in the case of Zimbabwe, there had been recognition of progress made in the reform of labour legislation. The speaker therefore wondered why Zimbabwe had been included in the list. He felt that it was not technically relevant to discuss such a case in the present Committee. The report of the Committee of Experts was not unfavourable towards Zimbabwe and had taken note of the progress made in a process in which perfection could not be aspired to over night. The issue in question and the request for the improvement of certain aspects of the country's labour legislation and its practical application could have been addressed in the next reporting cycle. The speaker indicated that the logical conclusion to all the above was that the inclusion of Zimbabwe in the list of countries appearing before the present Committee could be attributed to the same political reasons that had been repeatedly referred to as a negative element affecting the credibility of the Committee. He wished to express his firm belief that singling out Zimbabwe in the present Committee would not help the country to improve social dialogue. Finally, he expressed his hope that the conclusions would contain an offer of ILO technical assistance, which would contribute and be an effective support to the improvement of the reform process currently under way in Zimbabwe with the support of its Government.

The Government member of Nigeria stated that there was an evident need to talk about transparency in the establishment of the list of individual cases before this Committee. She recalled that her Government had stated last year before this Committee that it believed that the aim of the individual cases was not punitive, but rather to ensure that the social partners coexisted in a harmonious industrial relations environment and that ratified ILO standards were enshrined in national legislation. All the parties concerned should be encouraged to engage in social dialogue to resolve the issues at hand, and this Committee must be seen to be supporting this. The speaker pointed out that, during the last year, the Government of Zimbabwe had made remarkable progress in regard to the Committee of Experts' concerns and had responded positively by elaborating the Labour Act Amendment Bill H.B. 1 of 2005. The Government had indicated its willingness to amend the law with a view to bringing it into conformity with the Convention, and therefore should be collectively encouraged to do more, especially through ILO technical assistance, and to continue along this progressive path.

The Government member of Luxembourg, speaking on behalf of Governments of the Member States of the European Union, as well as of Bosnia and Herzegovina, Bulgaria, Croatia, The former Yugoslav Republic of Macedonia, Norway, Romania, Serbia and Montenegro, Switzerland, Turkey, Ukraine and the United States stated that the European Union was alarmed at the situation in Zimbabwe, given the news on constant politically motivated violence, restrictions on the freedom of opinion, expression, association and assembly. Independent trade unions were an important element of civil society, and in this context the European Union expressed its concern at the inability of independent organizations in Zimbabwe to operate without fear of harassment or intimidation. The speaker recalled that this case had been the subject of comments by the Committee of Experts for many years, and in recent years it had also been before this Committee. The European Union shared the regret of the Committee of Experts that the Government had not made sufficient efforts to amend the Labour Relations Act in order to meet the requirements of the Convention. However, it noted that the Government would table new legislation, which might aim at resolving some of the issues previously raised. The speaker urged the Government to bring the legislation into conformity with the Convention and to create an environment in which the right to collective bargaining could be assured.

The Government member of South Africa noted that the first paragraph of the Committee of Experts' observation on this case indicated that the Government of Zimbabwe was engaged in a process to respond to the issues that had been raised in this Committee the previous year. From what he had noted in the case, he was happy with the progress made. This raised the question of why Zimbabwe had nonetheless been selected for the list of individual cases, which appeared to be almost exclusively composed of developing countries. Where clear criteria did not exist, it was inevitable that those affected would question the method of selecting cases. The case was a clear example of the lack of transparency in the working methods of the Committee. He further noted that without social dialogue, the problems in this case would not be easy to solve. He called on the Committee to assist Zimbabwe's efforts in this case and to take every opportunity to promote relevant social dialogue.

During the speaker's intervention, the **Chairperson** recalled that statements should focus on the case at hand, and not on the working methods of the Committee, which had been the subject of a previous debate.

The Government member of Namibia expressed his surprise at the inclusion of Zimbabwe on the list of individual cases, as his Government had done the previous year, and stated that this fact raised serious questions about the working methods of the Committee. It was clear from the Committee of Experts' report that the Government of Zimbabwe was in the process of adopting legislative amendments in order to ensure conformity with the Convention. The speaker considered that the Government had been making progress and wished to congratulate it for its sustained efforts, positive actions and concrete steps to address the Committee of Experts' concerns. He stated that the Government must be given appropriate time to conclude the adoption of amendments.

The Government representative thanked the governments that had taken the floor in his country's support. With regard to the issues raised by the Worker members, he indicated that he had responded to them in his written reply to the Committee. The Worker members had also questioned the political will of the Government to resolve this case. He took great exception to this statement, and recalled that Zimbabwe had joined the ILO and had ratified ILO Conventions voluntarily. There could be no question about the political will of his Government to engage with the ILO. With regard to the question of the participation of the social partners in the drafting of the Labour Act Amendment Bill, he pointed out that the employers in Zimbabwe had participated in consultations, but the trade unions had refused, based on the advice of their foreign handlers who did not want to support the ZANU-PF Government. He recalled that this Bill, which addressed the problems raised by the Committee, was already on the Parliament's agenda and would most likely be debated in a few days. The speaker appealed to Zimbabwean workers to address any problems they had directly to the Government, and not seek international forums to do so. With regard to the intervention of the Government member of Canada, he questioned his capacity to provide solutions in this matter, given his distance from the country.

With regard to comments on Zimbabwe's informal economy, he stated that trade union claims of having established a flourishing informal economy were not true. The Government had allowed the informal economy to develop in the 1990s following an economic adjustment programme. While it had brought some economic relief, the informal economy had also allowed illegal activities to flourish, and its massive size was now causing serious infrastructure and public health problems. For these reasons, the recent police actions were necessary. Now the Government was building a new infrastructure to support the informal economy and people were returning to their activities. The support for the Government was clear from every election.

The Employer members expressed their appreciation for the information provided by the Government representative, which mentioned draft legislation that would soon be debated by Parliament. The Government should supply copies of these texts to the ILO. Turning to the question of the transparency in the process of selecting individual cases for this Committee, which had been raised by numerous delegations, the Employer members noted that the selection of a particular case was often due to a lack of certainty by members as to what was really happening in the country concerned. The Committee had always been ruled by a double credo: to trust, but also to verify. When the Committee selected an individual case for examination, it was often done to seek and verify information about what was happening on the ground. The best way to respond to a case was to provide complete and accurate information on the situation in question; if this was done, the case might disappear from the list. In this respect, they urged the Government to consider accepting a direct contacts mission to verify that the legislative measures under way in Zimbabwe indeed furthered the application of the Convention.

The Worker members regretted having to make the following statement prior to the drawing of conclusions on the case. They dis-

tanced themselves from the comments made by a Worker member of Zimbabwe, the Third Vice-President of the Zimbabwe Congress of Trade Unions (ZCTU), which was a purely honorific title. The ZCTU was represented at that meeting by its General Secretary, and its Chairperson. The latter was present as a member of the ICFTU, since the Government had refused to appoint him as a worker representative, which undermined the principles defended by the ILO. In that regard, the status of the above mentioned Worker member was the subject of a complaint pending before the Credentials Committee. The Committee should also know that Government representatives of Zimbabwe had, on this very day, both inside and outside the meeting room, exerted unacceptable pressure on the workers of Zimbabwe. Finally, the Worker members wished to highlight that they were aware that violations to the Convention existed in every country, as demonstrated by the examination of Australia's application of the Convention this year.

With regard to the case under examination, the Worker members emphasized the continuous lack of will shown by the Government, which would not take constructive steps to align its legislation with the Convention. In its 2003 conclusions, the present Committee had been accommodating and had proposed a direct contacts mission with a view to following in situ the planned legislative revision process. The Government had rejected that mission, which it considered as interference. The Worker members wondered what the new legislative changes were worth in a climate of permanent intimidation, and thus proposed a new direct contacts mission with a view to ensuring that the envisaged changes would comply with the Convention, both in law and practice.

The Worker members wished to point out that, for the sake of the serenity of the discussion, they had limited the number of their statements. That had not been case as far as the Government representatives were concerned. The discussion had therefore been imbalanced and that was regrettable.

The Committee took note of the written statement made by the Government and the oral information provided by the Government representative, the Minister of Public Service, Labour and Social Welfare, and of the debate that followed. The Committee noted with concern that the problems raised by the Committee of Experts referred to: the legal requirement that collective agreements be submitted for ministerial approval in order to guarantee that said provisions were equitable to consumers, to the general public or to any party to the collective agreement; the Minister's power to fix a maximum wage and the maximum amount that may be payable by way of benefits, allowances, bonuses or increments by statutory instrument prevailing over any collective agreement; the legal provisions under which, if workers' committees (including non-unionized workers) concluded a collective agreement with the employer, that agreement must be approved by the trade union and more than 50 per cent of the workers; and the constitutional provisions depriving prison staff of the rights guaranteed by the Convention. The Committee also noted that the International Confederation of Free Trade Unions (ICFTU) had submitted comments to the Committee of Experts and that two cases concerning Zimbabwe were currently pending before the Committee on Freedom of Association.

The Committee noted that the Government had informed the Committee of Experts that the provisions concerning the ministerial approval of collective agreements would be amended, although not in all cases provided for in the legislation, and that measures were being taken to repeal the provision giving the Minister the power to fix a maximum wage and the maximum amount that may be payable by way of certain benefits. The Committee noted the statement by the Government representative that, in keeping with this undertaking, the Bill to amend sections 22, 25(2)(b), 79(2)(b) and 81(1)(b) was due to be debated in Parliament this month. Consideration would also be given to amending other provisions mentioned by the Committee of Experts.

The Committee recalled the importance that it attached to the principle that the rights guaranteed by the Convention be applied in national law and practice and emphasized the importance of full social dialogue, as well as extensive consultation with employers' and workers' organizations on all legislation affecting them. Effective guarantees for this principle implied full respect for the independence of employers' and workers' organizations.

The Committee urged the Government to take all necessary measures to bring the law and practice into full conformity with the Convention, and expressed its hope that, in the very near future, it would be in a position to note concrete progress in connection with all the pending issues. The Committee requested the Government to submit a clear and comprehensive report to the Committee of Experts, with information on all the problems mentioned, a copy of the draft or the legislation adopted, and a full reply to the comments made by the ICFTU on the application of the Convention.

Taking into account the statement made by the Government representative to the effect that there was a certain degree of misunderstanding in the Committee with respect to the situation in the country, the Committee, in a fully constructive spirit, felt that a direct contacts mission could provide greater clarity on the situation, in particular on the ongoing legislative process.

The Government representative indicated that this was not the first occasion on which the present case had been discussed by the Committee and the Government wished to reaffirm its position, as stated previously, that it was not prepared to accept a direct contacts mission now.

The Worker members emphasized that the statement by the Government representative was regrettable as they had made every possible effort to approach the case in a positive manner and to demonstrate that a direct contacts mission was necessary. However, in view of the Government's attitude and its refusal to cooperate, the Worker members requested the inclusion of a special paragraph in the report of the Committee.

The Employer members noted that the Government representative had indicated that his country was not prepared to receive a direct contacts mission for now. As they believed that this was an indication that the Government representative did not have the authority to accept such a mission at this moment, and since the most important consideration was the ability to verify the situation at the national level and the action that was being taken, they proposed that consideration could also be given to the sending of a high-level ILO technical assistance mission to the country as an alternative. That would give the Government the opportunity before the Committee next met to accept one of these two alternatives as a means of demonstrating its good faith and willingness to participate in the verification process. The Employer members could not therefore at this stage support the proposal made by the Worker members for the Committee's conclusions on this case to be placed in a special paragraph of its report. However, they urged the Government to give serious consideration to agreeing to some type of meaningful verification arrangement involving the ILO.

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

Peru (ratification: 1961). **A Government representative** (Vice-Minister of Labour) referred to the points made by the Committee of Experts in its observations of 2004 and in addition presented a detailed and extensive written report indicating progress made. He was pleased that the Conference Committee had focused on questions of social security and had not confined itself to Conventions on freedom of association.

I. Health-care scheme

The speaker pointed out that in cases of home visits those affiliated to Health Care Providers (EPS) were entitled from September 2005 to the additional "Doctor at Home" service in the framework of the Contractual Plan with EPS in all contractual plans signed up to by insurance-takers.

As to the changes brought about in the departments of Amazonas, Apurimac, Madre de Dios, Huancalevica, Huánuco, Moquegua and Pasco on applications for membership of the EPS system, the speaker said that 84 per cent of the total number of regular and potential members had been covered in enterprises related to the EPS system at a rate of 4.69 enrolments on average in 2004, including in the abovementioned departments.

In the sample available on "Health care services in enterprises related to EPS plans for departments by type of establishment", in December 2004, one clinic was registered in December 2004 in the Huánuco department, compared with what had been reported in May 2004.

According to available data, health care establishments were operating in the departments of Madre de Dios, Huancavelica and Moquegua. Patients were accepted when their clinical condition warranted it.

The documents sought by the Committee of Experts had been ordered by the Health Care Providers Supervisory Authority and would be appended to the note to be presented on the application of Convention No. 102 in September 2005.

The speaker stated that the participation of affiliated members in the administration of individual institutions could affect the constitutional rights to freedom of operation and ownership of the private establishments taking over from the EPS. Convention No. 102 was based on the assumption that service provision to the public was provided by the State. Consequently, it was logical that contributors played a part in administration. However, in private sector participatory schemes in the services of the public service, the role of the State had changed from one of service provider to one of regulation and administration. Convention No. 102 could be interpreted in the sense that member participation could be carried out by publicly regulated bodies.

II. Pension system

Private pensions system

The speaker referred to the need to have pensions representing at least 40 per cent of the reference salary, recalling that the private pensions system (SPP) was an individual capitalization scheme in that the pension paid out was in direct relation to the amount paid in by the worker during his/her working life, the yield generated by investments and the no-claims bonus if applicable. In this respect, the pensions administered by SPP could not be set in advance.

The speaker provided an estimate based on certain acceptable

assumptions: a contribution tax of 8 per cent, a pension of 460 soles, an annual profits tax of 5 per cent at age 65, and 14 annual payments. From the above, it could be deduced that a member contributing for 30 years, i.e. starting as from 35 years old, at a pension level of 460 soles (approximately US$141) would, at the age of 65, receive a payment of 52.4 per cent for men and 50.8 per cent for women. On the other hand, if the worker contributed for 40 years, the payment would be 95.3 per cent for a man and 92.3 per cent for a woman.

The approved minimum pension scheme was a complementary scheme and did not replace state action. The minimum pension represented a guarantee offered by the State to those workers who, in compliance with age and contribution requirements, could not attain a pension that was equal to or greater than the minimum pension established by the SNP.

However, according to the provisions of the Supreme Decree No. 100-2002-EF, those workers who had collected a retirement pension under the modalities of the retirement plan and whose account had expired, had no subsequent claim to the minimum pension. The Supervisory Authority had requested the Ministry of Economy and Finance to evaluate the possibility of financing extraordinary pensions for those workers affiliated to the SPP who could not collect the minimum pension because they were collecting a retirement pension at the time Act No. 27617 came into force, and who currently were receiving a pension that was lower than the minimum pension; and for those workers who did not collect a pension due to the fact that the funds of the Cuenta Individual de Capitalización (CIC) had been exhausted.

The retirement plan could be revoked. Contributors could change to whatever other types of pension they chose: Family Trust Annuity (in new soles or dollars), Provisional Annuity with Deferred Trust Annuity (in new soles or dollars), or complementary products or services within the basic modalities. The SPP guaranteed full cover complemented by an environment which, with appropriate information provided, allowed the contributor to opt for other conditions.

The speaker explained that when a worker went below the security threshold for invalidity and survivor's coverage, he/she could receive a pension under a life annuity trust. In the case where the contributor could not be covered by SPP, a pension was paid out from his/her CIC funds and from the no-claims bonus. The insured person could join the retirement programme and later on opt for an annuity trust, which would ensure coverage until death.

The speaker advised that CIC fund management was handled by AFP, which collected a fee for its services. The AFP could collect commissions as a function of the type of pension fund. In the case of voluntary contributions, the amount of commission collected by the AFP for withdrawal of the abovementioned contributions, could be replaced by an amount sufficient to cover the balance of the Voluntary Fund or the balance of the Voluntary Fund of Legal Persons. They established modifications to the current account with respect to permanent benefits in an administration whose results could be achieved by those members of SPP. AFP could supply programmes that reduced the fees for the service benefits so that it adequately compensated the fidelity and future membership of an affiliated member in the pension fund.

The private system also featured a minimum pension so that the State could subsidize the pension adequately for affiliated members that fulfilled the requirements of age and contributions. The minimum pension was financed directly from funds in the Public Treasury.

In relation to the calculation of the total security costs charged to protected wage earners, the speaker insisted that contributors in the private system were obligated to contribute individual costs at a rate of 8 per cent of monthly remuneration. These contributions were allowed to accumulate to finance retirement benefits since the private pension system was a direct function of the early individual contributions made by workers during their working life.

III. The pension system administered by the ONP

The speaker also stated that part of the pension amount was reduced for those who had 15 years of membership, as stipulated in Decree No. 19990, for those affiliated since December 1992 and 60 years of age and who had completed the required number of contributions. Nevertheless, with regard to the application of Convention No. 102, the ONP had provided answers regarding the qualification costs in terms of the impact of the plan for the National Pension System in terms of the actuarial costs.

In conclusion, the speaker stated that the ILO should deal with the real challenge and contribute to the modernization of the social security system.

The Employer members expressed the view that the case under examination was one of real progress. The Committee of Experts had been looking at this question for many years and the Conference Committee had discussed it on two occasions in 1997 and 2002. More questions were raised at that time, however, than answers given by the Government. The Employer members noted that much more information was at the disposal of the Committee this time. With regard to the issue of medical care, they noted that there seemed to be no violations of the Convention. The Government had provided information with regard to the duty to ensure house visits both in its reply to the Committee of Experts and orally before the Conference Committee. With regard to the issue of individual insurance providers, in particular the duty to ensure the participation in the management of protected persons (Article 72 of the Convention), the Employer members considered that, although the legislation did not provide for such participation, there were supervision and control mechanisms such as, for instance, the need to obtain the approval of the Ministry of Health and to submit health plans to the public authorities in order to be able to carry out their activities. Also, the Committee of Experts pointed out that such mecahnism procedures did provide some guarantee for the rights of insured persons. Because of this, the Employer members considered that the provisions of the Convention might be excessively restrictive in this respect.

With regard to the issue of private pension systems, an issue which concerned many other Latin American countries, the Employer members noted with satisfaction that the Committee of Experts accepted that both public and private systems fell within the terms of the Convention. This allowed minimum standards of social security to be guaranteed in different ways.

With regard to other issues raised in the Committee of Experts' observation, the Employer members noted that the Government had reported on various areas of progress. Concerning the minimum rate of 40 per cent of the reference wage applying to the old-age benefit, the Employer members took note of the Government representative's statement which contained figures actually higher than 40 per cent. The Committee of Experts had moreover noted progress in the public pensions level which had risen by 86 per cent between December 1997 and September 2004. The Employer members stated that they disagreed with the Committee of Experts on the issue of the distribution of the costs of fund administration. The observation of the Committee of Experts seemed to imply that the costs should be obligatorily shared between the employers and workers. However, the Convention did not indicate that there was an obligation of equal contributions except in serious situations. In Peru, the employers made voluntary contributions. The Convention only required to prevent serious situations. Moreover, the reported drop in the costs of fund administration in 2002 was a further sign of progress.

Another area of progress was the duty to include a representative of the protected pensions in the management of the public pensions system. Act No. 27617 provided that two representatives of pensioners would be appointed to the Board of the Consolidated Reserve Fund. However, the system was quite complicated and the Employer members agreed with the Committee of Experts that further information was needed in order to establish its conformity with the Convention. The Employer members trusted that the Government would provide this information as it had done in the past.

The Worker members indicated that since the introduction of the new health and pensions system in 1997, the Government had not adopted the necessary measures to apply the Convention. Neither had it presented on this occasion the information necessary to evaluate the conformity of the legislation with the Convention. With regard to the private health system, the observations of the Committee of Experts spoke for themselves and were conclusive with respect to the lack of information by the Government on the measures adopted or foreseen to guarantee the participation of the protected persons in the administration of the health providers.

With regard to the private pensions system, the Government had provided neither statistical information to allow an evaluation of the amount of the benefits, nor information on the measures taken to guarantee that the worker who had opted for programmed retirement would receive the pay and old age and invalidity benefits for the whole duration of the contingency, once the capital accumulated in his individual account had been used up; nor information on the costs, administrative expenses and amount of commissions in favour of private pension fund administrators (AFP).

All this information was necessary in order to evaluate whether Article 71, paragraph 1, of the Convention was applied. By virtue of this Article, "the cost of the benefits provided in compliance with this Convention and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected".

The Government had also not communicated actuarial studies and calculations with regard to the financial equilibrium of the public and private institutions required by Article 71, paragraph 3, and Article 72, paragraph 2, of the Convention nor provided information on the measures foreseen to guarantee the participation of the protected workers in the private pensions system administration.

Even more worrying was the fact that the majority of Peruvians were excluded from the health and pensions coverage. Although the Committee of Experts referred to some of Peru's poorest departments, the speaker stated that the problem was national. According to ILO data, in 2000, approximately 60 per cent of the economically active population worked in the informal economy and 7 per cent was unemployed. These percentages had not changed in reality.

The Conference Committee and the Worker members in particular, had firmly supported that the States should protect the weaker segments of the population. It was impossible for a worker to contribute to a private system due to his modest income. Only society could protect workers through systems of intergenerational solidarity. Without the neces-

sary social protection it was impossible to contribute to the creation of the conditions for attaining decent work. Whatever the nature of the system, public or private, the principles of the Convention should be observed with regard to the participation of the protected persons in the administration, financing and functioning of the systems. The State should for its part take on the responsibility of the social security systems so that the benefits would be duly paid.

The Worker members concluded by reiterating that the Government had not provided the requested information to the Committee of Experts and that the system of social security benefits was not in compliance with the requirements of the Convention.

The Worker member of Peru stated that the private pensions system in Peru did not guarantee an adequate pension since the workers' income was low. Increases discussed by the Congress in the draft law on the operational application of the system which in fact were obligatory, had affected the free choice of workers.

The participation of the workers in the supervision of the health insurance providers and the private pension fund administrators (AFP) were very important since these entities were being financed with the funds of the insured. Unfortunately, in reality workers did not have the right to participate in the AFP since the member representing the workers to the Board of Directors had not been elected by them.

The Employer member of Chile stated that the capitalization systems were a response to the important demographic changes which had taken place in the world. In fact, the life expectancies had increased at the same time as the rate of birth had decreased. The ratio between active and passive workers had dropped considerably. In some cases, a single active worker had to cover a passive worker rendering impossible the financing of the intergenerational system and leading progressively to the adoption of a system of defined contributions in which the pension depended on the amount of the contributions made and the eventual profit. Pensions should be rendered profitable through a diversification of the investments.

With regard to unemployment and the informal economy and its relation to coverage, the speaker considered that these important issues should be addressed by public policies and were not the responsibility of the welfare system. Therefore, the pension system had to be based on three pillars so that the State could take on the responsibility for covering those who were unemployed or worked in the informal economy or did not contribute to the private pensions system. The coverage systems should be improved, giving better incentives for hedging to private pension fund administrators (AFP) .

The speaker shared the concerns expressed with regard to the need for strict and technical supervision of the AFP.

The Worker member of Paraguay stated that the reform of the health and pension system was adopted without consultation or agreement on the part of workers' organizations, thus giving rise to a system that excluded the majority of workers. The new system did not respond to the real social security needs of workers. The public and private social security systems should be improved by taking into account the particular circumstances of workers in the informal economy and unemployed workers, who should also be covered. Finally, the speaker insisted that the Government should respond to all of the questions raised by the Committee of Experts.

The Worker member of Chile indicated that the fragmenting and inadequate information provided by the Government had not allowed the Committee of Experts to make observations which would be comprehensible to all. As for the Government's statements relative to the dependency of pensions on the accumulated capital in the individual capitalization accounts, the speaker underlined that only workers made contributions, at the rate of 10 per cent of their salary, in order to finance the old-age benefits. Moreover, the costs of fund administration should be deducted from the contribution of the worker, which was contrary to the Convention. As a consequence, the majority of workers did not manage to cover the minimum pension. In fact, approximately 76 per cent of those affiliated to the system did not have sufficient funds to finance the minimum pension and for this reason, the Government should promise to cover 40 per cent of the pension.

The speaker added that the Government violated the Convention with regard to the tripartite social security contribution as only workers made contributions in the private system. The system did not provide for the contribution of the employer or the administrators themselves of the pension funds. It also did not provide for the granting of reduced pensions to workers after 15 years of contribution. Moreover, a serious risk existed that the mishandling by the pension funds administrators would cause considerable losses in the individual capitalization accounts so that workers could not count on the accumulated funds at the end of their lives, when they were most in need of them. The system had already suffered losses during various periods.

The speaker regretted that the Government had not referred to the comments presented by the World Confederation of Labour (WCL) and urged the Government to respect its commitments and modify the legislation in order to bring it into conformity with the provisions of the Convention.

A Government representative insisted that the public system that existed was insolvent and that it was necessary to find an alternative that gave opportunities to the private sector. In fact, any worker could opt between the public system and an individual account in a private system. An important modification to the social security system had been accepted: employers were in charge of health, while workers were in charge of their pensions.

The private pension system did not violate Convention No. 102. The Government had provided information that contained detailed answers on the administrative costs of the private system. It had requested cooperation and would do so in the future.

The AFP had reduced administrative costs and the private system was more competitive. The AFP had given complete information and was subject to close scrutiny by a pension fund administrator. All of the expenditures and investments that affected the AFP were made public.

In response to the statement by the Employer member from Chile, the speaker declared that the protection of workers was part of government policy. The reduction of underemployment and those employed in the informal economy were priority issues to strengthen the social security system. In Congress, debates had taken place regarding methods of exiting the private system and moving to the public system, and therefore it could not be said that the public system no longer existed. The private system of pensions had been the subject of modifications to improve it. Minimum pensions had been established, coverage improved, and enhanced profitability indicators had been found in AFP. The workers retained a real alternative in the private pension system. His Government believed that this system complied with the Convention, with regard to both health benefits and old-age benefits.

The Employer members stated that the information and statistics provided by the Government in this case pointed to positive developments which indicated that private and public social security systems could coexist. The problems that had arisen in practice were undoubtedly due to the fact that the basic reform of the social security system had only begun ten years ago, that the country suffered from a high unemployment rate and a large number of workers were active in the informal economy. Nonetheless, the information in this case did not lead to the conclusion that there was a violation of Convention No. 102. The President of the International Federation of Pension Funds Administrators had provided this Committee with his expert opinion on the benefits of private social security systems and the urgent need for private and public systems to coexist. The ILO should assist the Government in ensuring that private and public systems can co-exist in this development. Furthermore, the Government should supply information on supervision procedures in the private system.

The Worker members considered that public schemes constituted a pillar of the pension and health-care systems. As indicated by the Committee of Experts, a certain level prescribed by the Convention must be guaranteed, regardless of the type of system selected. The Worker members therefore requested the following: that the Government should give particular attention to all the aspects mentioned and communicate detailed information on the measures taken in response to the Experts' questions and concerns, given the lack of protection of the majority of the population; that the ILO should provide technical assistance in order to guarantee the compliance of the national legislation and practice with the Convention; that the Committee of Experts should formulate a detailed comment taking into account all the elements of the discussion and the information submitted by the Government; and that the Government should supply information allowing the assessment of the scheme introduced more than 15 years ago.

The Committee noted the oral and written information provided by the Government representative and the discussion that followed. The Committee nonetheless observed that, since the introduction in 1997 of the new, mostly private health and pension systems, the Government had not yet adopted all measures necessary to give effect to various provisions of the Convention, nor had it provided the necessary information to evaluate these systems with the Convention. With regard to the private health-carte scheme, the Committee hoped that, the Government would provide the information requested by the Committee of Experts on the measures adopted or foreseen to guarantee the participation of protected persons in the administration of the Health Care Providers (EPS) scheme.

With regard to the private pensions system, the Committee also hoped that the Government would provide information, including statistics, which would permit the evaluation of the amount of benefits, as well as the measures adopted or foreseen to guarantee a worker who had opted for programmed retirement the payment of old-age and invalidity benefits throughout the duration of the contingency. The Committee also hoped that the Government would provide information on the costs, administration charges and the rate of commissions charged to workers affiliated with private pension fund administrators (AFP).

Finally, with regard to the private and public pensions systems, the Committee hoped that the Government would communicate actuarial calculations and studies on the equal financing of public and private institutions, and indicate the measures it envisages to take to guarantee the participation of protected persons in the administration of the private pensions system. The Committee therefore urged the Government to take the necessary measures to give effect to the provisions of the Convention and to provide in its next report all information requested by the Committee of Experts, so that it may be examined with the information provided by the Government in this Committee. The Committee suggested that the

Government have recourse to technical assistance from the ILO to resolve pending problems of application of the Convention.

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

Saudi Arabia (ratification: 1978). **A Government representative** assured the Committee of his country's commitment to comply with the ILO Conventions that it had ratified and that it was also envisaging the ratification of other Conventions. He described his country's cooperation with the ILO and mentioned, as an example, the technical assistance provided in the framework of the draft Labour Code, which had later been discussed in the Consultation Council before being submitted to the Council of Ministers. Various ILO technical missions had visited his country. He indicated that national laws and regulations were not discriminatory, and that the issues raised by the Committee of Experts could be the result of a problem in the supervision of their implementation. The Constitution of Saudi Arabia guaranteed human dignity, equality and justice, and prohibited any form of injustice.

His country regularly examined its legal texts with a view to improving them through reforms in all fields. Moreover, a number of reforms had been adopted which were beneficial to both Saudi nationals and foreign nationals. Examples included reforms for the promotion of women's rights in the fields of education, training and employment, while other measures were planned. In Saudi Arabia, there were 2,200,000 women students in higher education representing 50 per cent of all students while, in higher education women represented even 58 per cent of the students; 26 technical training facilities for women had been constructed and there was a plan to open 15 others. Women represented 24 per cent of physicians and 53 per cent of nurses. There were over 429,000 women working in 2004, a figure which would reach 847,000 in 2009, and 253,000 women were working in the public sector, representing 34 per cent of public servants as a whole. Moreover, national legislation guaranteed equality between men and women in respect of both rights and obligations. His Government had taken a number of measures intended to reinforce the labour inspection system so as to guarantee the application of the Conventions that had been ratified. Measures had also been taken to guarantee the rights of migrant workers and prohibit their inhumane treatment. While certain migrant workers could believe that their wages had been reduced upon arrival in the Kingdom, this was due to the fact that intermediate agencies in the country of origin of these workers were giving them misleading information about their wages and the nature of the work to be done. Consultations had been held with their countries of origin with a view to finding more appropriate solutions to the problems which arose. Measures had also been taken to prevent the confiscation of migrant workers' passports and to guarantee their freedom of movement in the country. To reinforce the application of these measures, the Ministry of Labour had established an administrative body responsible for the protection of migrant workers. In the same context the Minister of Labour had recently taken a decision concerning the prohibition of all form of human trafficking, including the sale of persons, non-compliance with contract obligations and inhumane treatment.

In conclusion, he emphasized that his Government was requesting the Office to send a technical assistance mission from the International Labour Standards Department to address the issues raised in the comments of the Committee of Experts concerning this Convention and the other Conventions ratified by his country.

The Worker members thanked the Government representative for the information provided and welcomed the Government's commitment to implement the Convention. They welcomed the statistics on the participation of women in employment and vocational training and the Government's request for technical assistance. They stated that the case of Saudi Arabia was mainly a case of allegations, requests and question marks. Despite the Government's good intentions, it had not provided much information on the issues raised by the ICFTU, and they supported the request made by the Committee of Experts to the Government to provide full and detailed information on this matter as quickly as possible. On a few points however, they wished to go beyond the questions and requests for information made by the Committee of Experts.

First, with respect to discrimination against migrant workers, the Committee of Experts had expressed concern at the effects of the foreign labour sponsorship system on migrant workers. Despite the seriousness of the allegations made, the Government's reaction to these allegations was not very convincing. According to the Government, there was no basis for discrimination in any form in the law and it was unaware of the alleged reduction of wages. The Government also claimed that, if these practices existed at all, they were isolated incidents and mainly caused by the malfunctioning and malpractices of mediating offices in sending countries. The concern of the Committee of Experts related to the fact that the legislation regulating the labour sponsoring system gave disproportionate powers to employers over migrant workers, which could lead to discrimination on the basis of race and national extraction with respect to their conditions of work. The Worker members called for the Committee's conclusions on the case to request the Government to clarify in its next report whether the present legislation and special regulations in practice afforded sufficient protection to migrant workers. If this was not the case, the Government would need to bring its legislation in line with the Convention.

Second, with regard to the adoption and implementation of a national policy to promote equality of opportunity and treatment, as required by Article 2 of the Convention, the Worker members referred to the comments of the Committee of Experts and urged the Government to take measures to address these gaps in the relevant legislation in line with the Committee of Experts' observations. They indicated that they wished to see this clearly reflected in the Committee's conclusions on this case.

Third, they referred to the comments made by the Committee of Experts with respect to discrimination against migrant workers on the basis of sex with particular reference to migrant domestic workers. The allegations included references to shortcomings in law and practice, in particular the fact that the Labour Code did not protect domestic workers. While this had not been denied by the Government, its position seemed to be that such protection by the law was not necessary as domestic workers were sufficiently protected by the habit of Saudi Arabians to treat them as members of their families. However, even if this was true, it would still be unacceptable for the Convention not to be implemented in law. The Worker members would have liked the Committee of Experts to be more precise and firm in its reaction to the Government's position. There was not a single indication in the report that legal measures to protect migrant domestic workers were indeed in place and the Government representative had not provided any information in this regard. It should therefore be clearly stated in the conclusions that such measures should be included in the relevant legislation, unless of course the Government could provide assurances that this was all a misunderstanding and that the relevant legal provisions did indeed already exist. In such a case, the Government was urged to make the relevant legal texts available to the Committee of Experts as soon as possible.

Fourth, with regard to section 160 of the Labour Code, even if this provision did not result in de facto segregation on the basis of sex, which was questionable, the section should still be repealed. Saudi Arabia had to implement the Convention in practice as well as in law. The legislation should be brought into line with the Convention. The Committee's conclusions should therefore encourage the Government to repeal section 160 of the Labour Code.

Finally, the Worker members recalled that Article 3(a) of the Convention provided that each country for which the Convention was in force had to undertake, by methods appropriate to national conditions and practice, to seek the cooperation of employers' and workers' organizations and other appropriate bodies in promoting the acceptance and observance of the national policy to promote equality of opportunity and treatment in respect of employment and occupation. They requested the Government to explain in its next report the manner in which this Article was implemented and called upon the Government to seek the contribution of organized labour and business in Saudi Arabia in collecting the information to be supplied to the ILO.

The Employer members thanked the Government representative for attending the discussion of this case by the Committee and referred to the last occasion on which it had been examined by the Committee in 1993. The focus of the discussion on that occasion had been on the issue of equality of opportunity and treatment of men and women workers, particularly in view of the provisions of section 160 of the 1969 Labour Code, which proclaimed that in no case should men and women intermingle at the workplace. They recalled that 12 years had since elapsed, but the situation was still essentially the same, despite the fact that occupational segregation was in violation of the basic principles set out in the Convention. The second aspect of the discussion in 1993 had concerned the access of women to vocational education and training.

With regard to the comments made by the Committee of Experts this year, the Employer members noted the indication that other matters were being raised in a request addressed directly to the Government. They suggested that in future it would be useful if the Committee of Experts could give some indication of the subjects covered by such direct requests. One aspect raised in the comments of the Committee of Experts concerned discrimination against migrant workers, particularly on grounds of race, sex, religion and national extraction. In this respect, the Committee of Experts had placed emphasis on the difficulties faced by migrant workers in gaining access to the courts so as to be able to enforce the rights that were legally recognized. Paragraph 7 of the observation by the Committee of Experts was of particular importance. It drew attention to the obligation of the Government, under Article 2 of the Convention, to declare and pursue a national policy designed to promote equality of treatment in respect of employment and occupation by methods appropriate to national conditions and practice, with a view to eliminating any discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin. In this regard, the Employer members emphasized that much clearly remained to be done to give effect to this provision. They therefore proposed that the Government request the technical assistance of the ILO, which could be very helpful to the Government in establishing laws and regulations as a basis for a credible policy of non-discrimination in employment and occupation.

The Government representative thanked the Employer and Worker members for their comments and indicated that they would be taken into consideration. He recalled that the ILO had been created to safeguard the rights of employers and workers. In response to the com-

ments made, he indicated that no restrictions were placed on the employment opportunities of migrant workers, who benefited from all the facilities available to workers of Saudi nationality. If they were seeking work, they could make use of temporary work agencies with a view to entering a new employment relationship. Employers of migrant workers did not have a hold over them and they were free to seek alternative employment. He said that his Government had devoted considerable attention to issues relating to domestic workers and that contacts and cooperation had been established between the Ministry of Labour and the authorities of the major sending countries. A new department had been established within the Ministry to look after the welfare of migrant workers and an emergency telephone line had been established for women domestic workers. Through these channels, migrant workers in Saudi Arabia could seek help, as well as assistance in finding alternative employment. In response to the comments made concerning section 160 of the Labour Code, he noted that its provisions were based on the societal culture in the country. He emphasized that men and women workers enjoyed exactly the same rights and freedoms, but that the work was performed in two different places. Finally, he re-emphasized that many training opportunities were being developed for women, including the establishment of 26 technical schools.

The Worker members thanked the Government representative for the additional information provided. However, this information had not removed their concerns, which they hoped would be reflected in the Committee's conclusions. Moreover, the conclusions should make the link between the matters that were of concern and the areas on which the proposed technical commission would focus. They emphasized that it was not enough for the Government to make promises, or just to say that the practices that were the subject of the comments of the Committee of Experts were a product of the national culture. The ratification of a Convention was an act of free will by a country and if the Committee of Experts demonstrated that the national legislation was not in accordance with the requirements of the Convention, the Government should amend its legislation as rapidly as possible to bring it into line in accordance with the recommendations of the ILO supervisory bodies.

The Committee noted the statement made by the Government representative of Saudi Arabia as well as the ensuing discussion. It noted that the observation of the Committee of Experts discussed by the Committee dealt with serious allegations made by the International Confederation of Free Trade Union (ICFTU) of substantial discrimination against men and women migrant workers on the basis of race, religion and sex, as well as occupational segregation on the basis of sex and the access of women to vocational training, education and particular occupations.

The Committee noted the information provided by the Government representative concerning a new draft Labour Code which was currently being examined. The Government had referred to the measures undertaken by it to improve the access to employment, education and training of women with a view to increasing their participation in the labour market. Statistics had been provided on the participation of women in the labour market, as well as information concerning the measures taken to protect domestic workers. The Government had reiterated its commitment to dialogue and its openness to ILO technical assistance.

The Committee noted the efforts made by the Government to promote and protect the rights of male and female migrant workers. It noted however that the practical impact of those efforts remained unclear, and that considerable problems appeared to exist in the application of the Convention in law and practice with regard to the situation of migrant workers. The Committee therefore emphasized the importance of carrying out a more detailed examination of the situation of men and women migrant workers with a view to determining the situation in practice, as requested by the Committee of Experts. The Committee invited the Government, as recommended by the Committee of Experts, to declare and pursue a national equality policy which covered all workers, including migrant workers, with a view to eliminating discrimination against them on all the grounds listed in the Convention. The Committee emphasized that such a policy had to include effective mechanisms to address existing discrimination, including remedies accessible to men and women migrant workers. In doing so, the Government should fully consult with and involve employers' and workers' organizations, as well as other appropriate bodies, in accordance with Article 3(a) of the Convention. The Committee also requested the Government to take the necessary measures to bring its legislation into line with the Convention so as to provide effective protection for migrant workers against discrimination, in particular measures to deal with the problems of domestic workers and of workers who required special protection against the effects of the foreign labour sponsorship system.

The Committee welcomed the efforts to promote women's access to vocational training and education in various disciplines and hoped that further progress would be possible in the future. However, the Committee continued to be concerned that women continued to be excluded from certain jobs and occupations. It requested the Government to take effective measures to promote and ensure the equal access of women to employment and all occupations.

The Committee noted, as indicated by the Committee of Experts, that section 160 of the Labour Code could result in occupational segregation by sex. The Committee hoped that the new Labour Code, which was currently under review would take into account fully the requirements of the comments of the Convention and the Committee of Experts, and the above section would be repealed.

The Committee welcomed the Government's request for a technical assistance mission and considered that this assistance should include all the points raised by the Committee of Experts and the Conference Committee concerning the effective application of the Convention in law and practice.

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

Nepal (ratification: 1995). **A Government representative** stated that by ratifying the Convention Nepal had accepted tripartite cooperation as a basis for the formulation of laws and policies and decision-making regarding the application of international labour standards. The benefit of such consultations for economic development and social justice was fully recognized. Tripartite cooperation had been undertaken on many issues, such as occupational safety and health, elimination of bonded labour and child labour, or the issue of HIV/AIDS. Tripartite consultations were pursued in the formulation of labour migration policy and the preparation of a decent work action plan. The institutional mechanism for tripartite consultation was the Central Labour Advisory Board, which could make recommendations to the Government on labour matters. The Government, in cooperation with the Board, had organized the second Labour Conference in Kathmandu in January 2005, where a declaration was adopted containing a commitment of achieving labour relations that would be a cornerstone for successful nation-building.

The workers' and employers' representatives on the Central Labour Advisory Board were nominated by their respective organizations. In addition to the formally nominated representatives, additional participants took part in the meetings and expressed their views, a practice which was believed to be in conformity with Article 3 of the Convention. A permanent secretariat for the Board had been established in the Ministry of Labour and Transport Management, but the social partners had sought no direct administrative support. In fact, workers' and employers' organizations had developed facilities to carry out the activities envisaged by the Convention. Social partners were involved in all training and workshops regarding labour matters organized by the Ministry, except in-house training for Ministry staff.

The Government was aware that the obligation of consultation under Article 5(1)(d) of the Convention went beyond the communication of reports. It was established practice to circulate draft reports in advance of meetings to discuss in detail reports on Conventions, questionnaires, or proposals for submission and to incorporate the comments made by the social partners. The documents were only sent to the ILO when all the social partners agreed, and copies were forwarded to workers' and employers' organizations. No annual report pursuant to Article 6 of the Convention had been prepared in the last three years. The Ministry would prepare such a report as and when all social partners deemed it necessary. Finally, the Government would convey to the ILO any future developments with regard to the application of the Convention in practice.

The Worker members expressed their strong concern at the situation prevailing in Nepal, its repercussions for the Nepali trade union movement, and on civil society in the country. It was the responsibility of the Conference Committee not only to assess whether the legislation was in conformity with this Convention, which was ratified by Nepal in 1996, but also to establish how it functioned in practice.

The Worker members noted with great concern the number of issues on which the Committee of Experts requested detailed and updated information from the Government as to how it implemented essential provisions of the Convention.

With regard to effective tripartite consultations, the Committee requested that the Government describe in detail the nature and form of the relevant procedures and to indicate whether the necessary consultations had taken place, as required under Article 2 of the Convention.

The Government was also invited to describe how worker and employer representatives on consultative bodies were chosen and how the Government ensured that they were represented on an equal footing, as required under Article 3 of the Convention.

With regard to administrative support and training, requests were made of the Government to report on any financial means allocated for training of participants in procedures covered by Article 4 of the Convention.

With regard to tripartite consultations required by the Convention, the Committee acknowledged that consultations had been held concerning the possible ratification of Conventions Nos. 87 and 105, and particularly expressed its thanks to the ILO Kathmandu Office for the assistance it provided.

However, the Committee also noted that in certain cases reports required under article 22 of the ILO Constitution, were simply commu-

nicated to the social partners rather than consulting with them as required under Article 5, paragraph 1(d), of Convention No. 144, which appeared to be in breach of the Convention.

Finally, as concerns the operation of the consultative procedures, the Committee requested that the Government indicate the scope and outcome of any consultations held with representative organizations as it related to the production of an annual report on the working of procedures covered by the Convention.

The Worker members expressed concern at the paradoxical situation prevailing in Nepal, where the Government had supposedly put in place various bodies and mechanisms designed to fulfil the requirements laid down by the Convention and then had replaced consultations with the social partners with legal appeals filed by lawyers of these social partners against arbitrary detentions, decrees banning public gatherings and demonstrations, lack of registration of trade union organizations and other breaches of fundamental rights at work.

The Worker members noted that when the King had assumed direct executive powers in February 2005 and had declared a state of emergency, hundreds of citizens had been arbitrarily detained, including nearly two dozen trade union activists, trade union offices were monitored, searched and at times closed down, union meetings had been forbidden and rallies had been banned, while registration of several union organizations had been refused. Several union leaders had been jailed in the last three months, some of them women, and often held in appalling conditions. Six of them remained in detention.

A number of basic constitutional rights were suspended, starting with trade union rights, but also included the right to freedom of expression and assembly; the right to information; the right to property; the right to privacy; and the right to constitutional remedy. Press censorship was imposed and so was the generalized practice of preventive detention, applied, amongst many others, to leaders of journalists' trade unions.

Tensions between the King and civil society parties continued to run high. In April 2005 the King lifted the state of emergency, which was due to expire. However, many basic citizens' rights including freedom of the press and freedom of assembly remained suspended.

Many of these events had been directly witnessed by the international union movement as they had unfolded during the meeting of the Executive Board of the Asian and Pacific Organization of the International Confederation of Free Trade Unions (ICFTU) in Kathmandu. The President of the ICFTU-affiliated Nepal Trade Union Congress (NTUC), Laxman Basnet, who was also a member of the ILO Governing Body, had had to meet the ICFTU Executive clandestinely. He then had had to leave the country, in order to escape arrest.

Throughout these tragic events, the ILO Office in Kathmandu had played a remarkable role in assisting Nepal's social partners and had intervened on their behalf with the authorities. The Kathmandu ILO Office and its Director deserved to be congratulated by the Committee.

Beyond these events, however, the ILO deserved recognition for many other achievements in Nepal, such as its long-standing efforts to promote social dialogue and training as well as other work aimed, among other things, at securing ratification by Nepal of Convention No. 169 on indigenous and tribal peoples. Many observers had noted that ratification of this important instrument could contribute significantly to helping the country to overcome the dramatic internal armed conflict, which had cost hundreds of workers their lives.

With continued technical support from the ILO, the concept and approaches of social dialogue had been well taken and adopted by the ILO constituents in the country. A series of dialogues had been concluded and a bipartite core group had been formed to discuss a seven-point agenda, which included social security and labour flexibility among others. A 19-point guideline to reform the existing labour legislation had been developed and agreed between the employers and the workers.

However, it was highly regrettable that government interference in trade union affairs put these positive developments under threat. The unions had faced difficulties in registering their affiliates and had complained about being barred from access to the Department of Labour.

Trade unions had warned the Government that they might withdraw from the ongoing bipartite social dialogue on labour law reform if the Government did not cease to interfere in union activities. There were strong reasons to believe that the Government was trying to eliminate the entire trade union movement in the country because it saw unions as a threat to direct rule by the King.

And finally, with regard to the issue of tripartite consultations, the Government had forwarded the credentials of its delegates to the 93rd Session of the Conference without due consultation of the social partners. The country's three national federations had not been properly consulted regarding their representatives to this Conference.

The Worker members welcomed the lifting of the emergency in Nepal and urged the Government to respect the fundamental rights of freedom of association to make effective tripartite consultation meaningful since it was a sine qua non for tripartite consultation. They welcomed the intervention of the ILO Director-General for the concern expressed about the security of Mr Basnet, Worker Member of the ILO Governing Body. They hoped for a rapid end to civil strife in the interest of peace and security – social progress of Nepal nation. In these efforts, the Government should seek the cooperation of the trade union movement by developing social dialogue and strengthening tripartism in the country. The Worker members believed that the Government should be strongly urged by the Committee to respond to all the questions raised in detail by the Committee of Experts concerning implementation of the Convention. A further request was also made to take full advantage of ILO technical assistance with a view, not only to overcoming problems in the implementation of this Convention, but also to lifting any obstacles that might prevent it from ratifying other ILO fundamental Conventions. This included Convention No. 87, and with the continued cooperation of the ILO to enable it to ratify, Convention No. 169.

The Employer members recalled that Nepal had ratified the Convention in 1995 and welcomed the undertaking by the Government of Nepal to promote tripartite consultations. This case was examined by the Conference Committee for the first time.

The language of the Convention, with regard to the choice of consultation mechanism was flexible, but the procedures should, however, be determined after consultation with the most representative organizations. The Employer members further highlighted that the employers' and workers' organizations were not bound by the final decision or the position adopted by the Government and noted the Government's indication to the effect that representatives of employers and workers were freely chosen by their organizations, and that it had set up a permanent secretariat at the Central Labour Advisory Board in 2004. They emphasized, however, that it had to be clear that this structure was responsible for the procedures referred to in the Convention and further questioned whether the Government of Nepal consulted the most representative organizations when compiling information and preparing reports to be forwarded to the ILO. Finally, the Employer members urged the Government to apply procedures that would ensure effective consultations.

An observer of the International Confederation of Free Trade Unions (ICFTU) stated that in the absence of freedom of association in the country no real tripartism was possible. The Government had banned all kinds of trade union activities and the unions of public employees, teachers and the press had been attacked recently. At the same time, fake unions had been set up and submitted for accreditation at the present session of the Conference. In this regard, a case was pending before the Credentials Committee. Further, changes in the Labour Law had been made without consultation, as well as changes in the press legislation. Due to the state of emergency, many peaceful workers had been killed.

The Government member of Pakistan recalled the vital importance of the Convention for the social partners. The Government was making extensive efforts to implement tripartite consultations at all levels and had made various efforts to ensure effective consultations on all matters covered by the Convention. A permanent Central Labour Advisory Board had been established. The Government had made it a tradition to consult workers' and employers' representatives before drawing up replies to the report dealing with ILO Conventions. The speaker expressed the hope that the Government would not only continue its efforts to have extensive consultations under the terms of the Convention but also provide in time information on the steps taken to hold such consultations in the framework of the Convention.

The Government representative emphasized that the political situation in the country was very difficult as the Government had to fight Maoist terrorism. It was in these circumstances that the Government had to declare the state of emergency, which had suspended several legislative acts implementing Conventions ratified by Nepal. This radical measure had to be taken in order to ensure the security and therefore the freedoms of Nepal's citizens. However, the state of emergency had ended and many of the suspended rights had been restored. There were no more restrictions imposed on the freedom of assembly. The Government was not interfering in trade union activities and was fully aware of the importance of social partnership. As regards the tripartite representation in this Conference, the Government indicated that all questions in this respect were duly replied to in the Credentials Committee.

The Worker members stated that, while ensuring security in the country was a legitimate concern of the Government, the respect of the right to freedom of association was equally an important matter. The situation with respect to freedom of association was serious and the Government was requested to rectify the situation as a matter of urgency and engage in a meaningful social dialogue. This would be a crucial contribution towards achieving peace and social progress in Nepal.

The Employer members stated that the Government should fully respond on the issues raised by the Committee of Experts with regard to the procedures for effective tripartite consultations and take full advantage of technical assistance to continue to strengthen the social dialogue process which appeared to have commenced. The Employer members finally took note of the comments made by the Worker members on the positive role of the ILO Office in Kathmandu in helping the Government reinforce social dialogue, and recommended the strengthening of the role of technical assistance in this respect.

The Committee took note of the statement by the Government representative and of the discussion that ensued. The Government representative had supplied information on the tripartite meetings that had taken place in Nepal and the matters that had been discussed. According to the Government representative, the social

partners were able to participate freely in the consultations and all the meetings held by the authorities were open to all social partners.

The Committee, noting the exceptional circumstances of the country, called for social dialogue and expressed the view that Convention No. 144 could contribute to the restoration of democracy and to the process of peace building. The Committee was of the view that the consultations that had taken place in the Central Labour Advisory Committee seemed to be insufficient. The Committee noted that the Office could contribute, through technical assistance, to promoting a sincere and constructive social dialogue among all the parties concerned within the scope of Convention No. 144. The Committee invited the Government to take all appropriate measures to promote tripartite dialogue on international labour standards. It also requested the Government to supply a report for the next session of the Committee of Experts on the progress achieved in guaranteeing effective tripartite consultation in a manner satisfactory to all the parties concerned, including information on the functioning of the procedures provided for in the Convention. The Government was also requested to note the deep concern expressed in the Conference Committee at the present situation pertaining to the respect of fundamental rights in the country and its impact on the exercise of tripartite consultations.

UNITED STATES (ratification: 1988). **A Government representative** stated that the United States took its obligations under ratified Conventions very seriously. She pointed out that the United States had ratified Convention No. 144 in 1988 and since then had submitted eight reports under article 22 of the ILO Constitution, describing the mechanism for tripartite consultations on ILO matters and supplying details and documentation on the wide range of consultations held.

She recalled that tripartite arrangements had been established in 1975 when the United States was contemplating withdrawal from the ILO. There had been tripartite consultation at the highest level on the decision to withdraw and, during the period of withdrawal, on whether and when to return. The mechanism was a Cabinet Level Committee that included the President of the AFL-CIO and a representative from the United States Chamber of Commerce. Upon rejoining the ILO in February 1980, the United States formalized the Cabinet Level Committee as a federal advisory committee called the President's Committee on the ILO. This structure was established on the basis of consultation with, and agreement of, the representative worker and employer organizations, and ensured that those organizations would be able to act in full independence. In fact, it was significant in terms of Convention No. 144 that the United States business community itself had decided that the United States Council for International Business would replace the Chamber of Commerce on the new tripartite committee.

The President's Committee was the pinnacle of the tripartite mechanism and provided for consultation at the highest level. More continual consultation occurred through a staff-level consultative group and in the Tripartite Advisory Panel on International Labour Standards (TAPILS) that was created specifically to examine the legal feasibility of ratifying selected ILO Conventions. One of the first conventions that TAPILS had examined was Convention No. 144. After an extensive review, TAPILS had unanimously concluded and reported to the President's Committee that existing United States practice gave full effect to the Convention. The framework for tripartite consultations had not changed since. The nature of the procedures had been modified somewhat over the years, however, to meet the needs and preferences of the members, and, especially, to take advantage of modern technology. As for the scope of tripartite consultations, the function of the President's Committee was to consult on all matters relating to United States participation in the ILO. Consultations therefore covered a broad spectrum, surpassing the five topics required under Article 5(1) of Convention No. 144.

The speaker pointed out that this was the first time that the Committee of Experts had expressed any concern at all about United States application of the Convention. The question, she noted, was whether tripartite consultations in the United States were effective. In studying the observation, the Government had looked carefully at the most recent General Survey on Convention No. 144 (2000) in order to better understand how the Committee of Experts had interpreted this aspect of the Convention. She noted that, firstly, the Committee of Experts had found that Convention No. 144 was a very flexible, promotional instrument that did not lay out precise requirements as to methods of application, but instead provided wide latitude for adopting procedures that were suited to national conditions and practice. Secondly, the purpose of consultations was to assist the Government in reaching a decision for which it alone had responsibility. The Convention did not require either negotiation or agreement. Third, consultations should not be merely a token gesture. Fourth, consultations did not have to be initiated solely by the Government. And, fifth, the Convention did not require an annual meeting, or for that matter, any meetings at all. Consultations could be based either on an exchange of communications or on discussions within tripartite bodies. Furthermore, although the Convention indicated that consultation should be undertaken at least once a year, it did not require annual consultations on every point in Article 5(1).

Turning to the factual issues of the case, she stated that there had indeed not been a meeting of the President's Committee since May 2000. In fact, since the United States ratified Convention No. 144 in 1988, the President's Committee had met on only six occasions. This was because the President's Committee only met when warranted by ILO-related issues that required a decision at the highest level. The Secretary of Labor would not call a meeting of the President's Committee as a token gesture. Nor would the Secretary call a meeting unless the attendance of the Presidents of the AFL-CIO and the United States Council for International Business was assured. As a consequence, most ILO consultations were held less formally.

The observation also indicated that the TAPILS did not meet during the reporting period. She announced that the Panel had met last month to begin reviewing Convention No. 185 on Seafarers' Identity Documents. With regard to Convention No. 111, progress had been slow. On the basis of a finding by TAPILS that United States law and practice were in full conformity with its provisions, Convention No. 111 had been forwarded by the President in May 1998 to the United States Senate with a request for advice and consent to ratification. Since then, Convention No. 111 had consistently been on a list of treaties that the Executive Branch considered to deserve priority attention. The Senate, however, while apparently not disinclined to consider the Convention, had given precedence to treaties having a direct bearing on national security.

With regard to the Committee of Experts' observation that for the first time since 1991, the Government had not convened a full meeting of the consultative group in preparation of the 2004 ILO Conference, she pointed out that the Department of Labor had in fact scheduled its usual full pre-Conference briefing but learned subsequently that a significant portion of the delegation, particularly from the AFL-CIO, could not attend. Consequently, the meeting had to be rescheduled at a time that could include the AFL-CIO, closer to the opening of the Conference, with more limited attendance. In the 25 years since the United States rejoined the ILO, this had been the first and only time the Department of Labour had failed to organize a full tripartite pre-Conference meeting. This year, the Government had again hosted a full tripartite meeting in preparation of the 2005 ILO Conference.

Finally, in regard to the complaint filed with the Credentials Committee at the 2004 ILO Conference on behalf of the AFL-CIO, she stated that there had not been a drastic change in the number of non-government delegation members financed by the United States Government last year and the issue had been discussed on several occasions in the tripartite Consultative Group. The temporary reduction had been strictly the result of budgetary, rather than political, reasons. This year, her Government had once again financed the same number of worker and employer representatives that it had, on average, funded for the past 17 years.

In conclusion, she believed that United States tripartite consultations on ILO matters were effective and well within the letter and spirit of Convention No. 144. Her Government would continue without fail to provide full details on United States implementation of this priority Convention. The United States Government looked to the tripartite partners to provide their constructive input toward continuing to make tripartite consultation in the United States a dynamic and meaningful process.

The Worker members recalled that Convention No. 144 set forth the obligation for ratifying States to establish, in accordance with national practice, effective tripartite consultations with respect to the matters concerning the activities of the ILO. To contravene these provisions or to interpret this instrument in a restrictive manner imperilled the credibility of trade unions as well as the efficiency of ILO standards in that this Convention created the framework enabling the realization of Conventions Nos. 87 and 98. For the past three years, the Government had not convoked the President's Committee or the Tripartite Advisory Panel on International Labour Standards (TAPILS), the bodies intended to implement Convention No. 144. The AFL-CIO was forced to make a complaint to the Credentials Committee at the 92nd Session of the International Labour Conference due to the fact that the Government had attributed insufficient resources to allow for the participation and functioning of the workers' delegation in all of the Conference's activities. The observation of the Committee of Experts had established that the Government had clearly ceased to be active in the tripartite process and had taken no action toward further ratifications of ILO standards. The structures for tripartite consultations existed but their functioning remained purely virtual. The reason for this attitude by the Government appeared to be based on the principle that no Convention should be ratified if doing so would imply modifications of national legislation. This led to the conclusion that it was pointless to convoke the competent bodies and amounted to the United States Government refusing to recognize the usefulness of ILO standards as instruments for the improvement of labour law. Indeed, such a practice, if not fought energetically, risked leading to a dangerous jurisprudence which would authorize every State which would need to adapt its legislation to ratify a Convention to refuse to set into motion the ratification procedures. In conclusion, the Worker members considered that, in view of the United States' role on the international stage, it was urgent that the Government provide a constructive example and reactivate as soon as possible the competent bodies responsible for tripartite consultation.

The Employer members pointed out that Convention No. 144 was an instrument of high value for the social partners, and that the discussion of this case showed that the ILO supervisory system allowed to establish a dialogue with all the member States which had ratified the

Conventions regardless of their level of development. It also brings out the fact that there is no negative connotation in inviting a government to provide information to the Conference. The Committee had to assess the manner in which the United States applied in practice the provisions of Convention No. 144. In this regard, the Committee of Experts referred to Article 2, paragraph 1, of the Convention, which provided for the establishment of procedures ensuring effective consultations between representatives of the government, employers and workers on the matters concerning the activities of the ILO.

Concerning, first of all, the procedures: the International Labour Conference intended to allow certain flexibility on the manner in which the consultations had to be conducted. Besides, Article 2, paragraph 2, expressly provided that the procedures should "be determined in each country in accordance with national practice". This approach presumed that different methods could be adopted by different countries, including the use of technologies that allowed for consultations to take place even without having to meet in person, for example, through video-conference on the internet.

Concerning, secondly, the specific activities referred to in Article 5 of the Convention, it should be made clear that the scope of application of the Convention had been perfectly defined. Other questions, such as those raised by the Credentials Committee in 2004, were therefore excluded from the scope of application of the Convention.

The Employer members took note that specific bodies had been created in the United States, with the sole goal to conduct consultations with the employers and workers. Regarding the workers' wish that these bodies have their meetings on a more regular basis, it should be pointed out that Convention No. 144 was silent about the frequency of the consultations and therefore, no legal parameter existed to make an assessment on the application of the Convention. In her intervention, the Government representative provided detailed information on the procedures and meetings recently organized by the Government in order to give effect to the Convention. The Employer members consequently stated that they associated themselves with the Committee of Experts' demand and encouraged the Government to continue to report on the latest measures taken on the application of the Convention. They hoped that this information would be reflected in the future report by the Committee of Experts.

The Worker member of the United States noted that the ratification of Convention No. 144 was important because it institutionalized a more effective and pragmatic process for tripartite consultation with the purpose, among other things, of increasing the number of ratifications by the United States. In the 55-year period from 1934, when the United States joined the ILO, until 1988, the United States ratified only five Conventions, all in the maritime family. It was not until the ratification of Convention No. 144 in 1988 that the United States, for the first time in the history of its membership in the ILO, began to consider in a much more serious way the ratification of selected ILO Conventions. From 1990 until 2001, the United States had ratified another five Conventions, including two of the ILO fundamental Conventions, Conventions Nos. 105 and 182. So in only 11 years, the United States had ratified as many Conventions as it had in the first 52 years of its membership in the ILO. He noted that the Government representative had conceded that not a single meeting of the President's Committee had been convened since May 2000, in over five years or since the current Administration had been in office. By way of defence, she had recalled that the President's Committee had not met from 1990 to 1996. He noted that during this period three important Conventions had been ratified, which stood in stark contrast to the current Administration, which had yet to ratify a Convention over which it had any responsibility.

He also noted that not a single meeting of TAPILS had been held since this Administration took office until last month. While he was pleased that the review process for the ratification of Convention No. 185 on seafarer's identity documents had begun, he emphasized that with the exception of this very recent development, the tripartite process, especially as it is related to future ratification of ILO Conventions, had virtually ground to a halt. Furthermore, the process of Senate ratification of Convention No. 111 had languished so long that the Department of Labour had felt compelled to update the TAPILS law and practice report that had been originally submitted to the Senate in 1988. The fact that the mere drafting of this update took years was a clear indication that the ratification of Convention No. 111 was not seen as an urgent matter by the Administration. The AFL-CIO had met with key Senators and their staff on a number of occasions. But the current Administration's party was in the majority in the Senate, and had not yet taken any steps to further ratification.

The speaker stated that he was encouraged by the words of the Government representative but would like to see more action. Specifically, he would like to see the convening of a President's Committee meeting so that TAPILS could be given new guidance on possible ratifications and a renewed mandate to push ahead with its work. He would like to see the Administration actively lobbying Congress for the ratification of Convention No. 111. He also would like to see the Administration support the activities of the International Labour Affairs Bureau of the Department of Labour (ILAB). Among other things, ILAB was the United States Government's primary point of contact with the ILO, and it did all the reporting and provided extra-budgetary funding for the ILO's field programmes. Sadly, every year it had been in office, this Administration had proposed to drastically reduce funding for ILAB. The repeated effort to virtually de-fund ILAB out of existence could not be reconciled with the statement that the United States took its membership in the ILO and its obligations under ratified Conventions seriously.

He concluded by stating that the United States Government had an important and timely opportunity to demonstrate to the world its commitment to the multilateral system and to the ILO in particular. It was time to get the tripartite consultative process in the United States moving again and to improve its ratification record. The AFL-CIO would do its part to bear the responsibility of tripartism. The onus of responsibility rested on the shoulders of the Administration, which up until recently had not shown a good record in this matter.

The Worker member of India stated that this case was a clear violation of Convention No. 144. For the first time since 1991, the United States Government had not convened a full consultative group in 2004 in preparation for the Conference. Only such a group could ensure effective and meaningful participation of all the social partners in the Conference. This lack of this preparation was a violation of democratic norms and was unbecoming for a country which never failed to project itself as the champion of democracy. He also noted the case before the Credentials Committee in 2004 in which the United States had not fully funded travel and subsistence expenses for the worker delegation to the Conference. He urged the Government to learn from countries which were not as rich and powerful as the United States but which would hardly think of not treating all parties in a delegation equally and not paying for relevant expenses. He urged the Government to address the comments of the Committee of Experts and to fully implement Convention No. 144.

The Government member of Cuba stated that the strengthening of tripartism and social dialogue was one of the strategic objectives of the ILO and that compliance with that principle therefore deserved special attention in its supervisory bodies, such as the present Committee. It was clear that greater attention should be focused on Governments that had only ratified a small number of Conventions. It would thus be advisable that the ILO, within the framework of the promotion of fundamental rights at work, also promoted in that country the ratification of other Conventions, such as Convention No. 87 on freedom of association, which formed the basis of the Convention under examination.

The Worker member of Pakistan stated that the United States, in its role as the leader of the developed world and as one of the states of chief industrial importance in the Governing Body, should play an exemplary role not only in the ratification of ILO Conventions but in their implementation in letter and spirit. He shared the concerns of the AFL-CIO and urged the Government to give effect to the recommendations of the Committee of Experts to ensure effective consultation in a manner that satisfied all parties concerned, and to follow up on the recommendations made by the Credentials Committee regarding a complaint made against the United States at the 92nd Session of the Conference in 2004. With regard to the Government representative's position that there were no specific procedures for consultation laid down in Convention No. 144, he pointed out that the Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976 (No. 152), provided specific guidance on the implementation of the Convention, notably on the holding of yearly consultations (paragraph 7) and the issuance of an annual report on the workings of the procedures (paragraph 9). He concluded by noting that the United States often pressed for the ratification and implementation of fundamental Conventions in other countries. In the light of this, the United States should take the lead in ratifying and implementing such Conventions itself.

The Worker member of Singapore noted that Convention No. 144 upheld the core ILO principle of social dialogue. While the Convention allowed for some flexibility on how tripartite consultation should be carried out, there had to be at least regular discussions or meetings. There also had to be some agreement on the form of consultation that should take place. Otherwise, one party might understand «consultation» as an email exchange, whereas the other party might think otherwise. From the facts in this case, it appeared that the agreed form of consultation was a regular meeting. No other modes of consultation had been agreed upon.

She stated that the failure of the United States, a major world power, to comply with this Convention could send a wrong signal to the rest of the world. Already many voices pointed to the low ratification rate of ILO Conventions by the United States, and some countries had even used this as a justification for not ratifying. She hoped that the Government's refusal to convene a full meeting of the consultative group was not an indication of its lack of interest in international labour standards. She called on the Government to convene meetings as required, to conduct meaningful consultations with the social partners and to ratify more Conventions.

The Worker member of Cuba associated himself with the intervention of the Worker member of the United States. He considered it advisable that the statement of the Worker spokesperson would be duly taken into account in the conclusions, which should conform to the discussion and reflect the interests of the Workers' group and those of the workers of the world.

The Government representative stated that she had listened carefully and had taken note of the discussion. She recalled that there was

regular tripartite consultation with the United States social partners before ILO Governing Body and Conference sessions. Her Government would continue to report fully on the application of Convention No. 144 and would respond to the questions raised in this discussion in its next report to the Committee of Experts.

The Worker members observed that, in view of its place in the world, the United States should behave in an exemplary manner. They urged the Government to reactivate the bodies competent in the field of tripartite consultations. They took note of the information provided by the Government representative to the effect that the consultations relating to the ratification of Conventions Nos. 111 and 185, which had been suspended, were resumed. These consultations had to be pursued with respect to Convention No. 144, and not only on an informal basis, which had been promised by the Government. The recourse to technology in no case could replace the dynamics of contacts between the Government and the social partners. The Government must take up the initiative and act more efficiently than during the past few years. It must give a basic impulse to the tripartism and thus show its good will, particularly by ratifying the new Conventions.

The Employer members stated that they had noted with interest the response of the Government according to which consultations were held in a manner satisfactory to the three parties, and that an appeal had been made to the employers and workers to also take initiatives in this domain. They hoped that the Government would continue to provide information on the measures taken and those that it envisaged taking to hold consultations in the framework of Convention No. 144.

The Committee noted the statement made by the Government representative and the discussion that followed. The Committee noted that, in accordance with the Convention and the comments made by the Committee of Experts in its observation, the Government and the social partners should establish procedures to ensure effective consultations.

The Committee noted the information provided by the Government on the background and implementation of the Convention, including the schedule of the meeting of the President's Committee and the Tripartite Advisory Panel on International Labour Standards (TAPILS), in particular the meeting held by TAPILS in May 2005 on Convention No. 185. The Committee noted the information relating to the procedure relating to the ratification of Convention No. 111, which was being examined by the Senate. The Committee also noted the information on the meetings held by the consultative group to prepare for the Conference. The Committee noted the importance that the Government attached to social dialogue and the holding in practice of the tripartite consultation required by the Convention.

The Committee hoped that the consultations concerning the ratification of Conventions Nos. 111 and 185 would be concluded in the near future. The Committee requested the Government to take all the appropriate measures to promote tripartite dialogue on international labour standards. The Committee hoped that the Government would provide information in its next report on the progress made to guarantee the holding in practice of tripartite consultations in a manner that was satisfactory for all the parties concerned.

Convention No. 182: Worst Forms of Child Labour, 1999

Niger (ratification: 2000). **A Government representative,** Minister of the Public Service and Labour) expressed her surprise at the fact that her country once again had been included into the list of individual cases, whereas the matters of the Committee of Experts' concern in this case did not relate exclusively to her country, but could be found in the majority of the poor countries with important informal sectors. Niger had decisively placed itself within the process of eradication of human rights violations, proved by the ratification of the eight fundamental ILO Conventions, by the study on the identification of obstacles to the implementation of the ILO Declaration on the Fundamental Principles and Rights at Work of 1998 and by the collaboration with IPEC and the programme of support to the implementation of the Declaration. The Government had to face ancient practices related essentially to the consequences of poverty. In this regard, Niger had elaborated a strategy of poverty reduction which had integrated the various dimensions of the subjects examined in the present case. Even if the goal had not yet been attained, the considerable efforts undertaken by the Government had brought the results, and Niger counted on the increased support and cooperation of the ILO and on international solidarity, in order to resolutely lead this fight. The problems of application of Convention No. 182 in the context of a developing country had been thus described. As regards more particularly the measures taken to prohibit and eliminate the sale and trafficking of children, the speaker asserted that Niger was not a country involved in the sale or trafficking of children, and that public authorities were not aware of such practices. Concerning the measures taken to combat forced labour of which children are the victims, it should be recalled that begging was connected with the cultural and educative practices aiming at developing humility and compassion in adults. However, the competent bodies were considering appropriate measures to respond to the risks which stemmed from these practices caused by poverty. Concerning the programmes of action aimed at combating child labour, Niger had launched a new IPEC programme and would furnish information on the implementation of the whole set of programmes from which it benefited. As regards the application of sanctions, the speaker indicated that the judges had received no complaints and therefore had not had an opportunity to impose sanctions. Even if the Government had made a particular effort in law enforcement, economic reality still would not allow the effective application of standards, and the emphasis had been made more particularly on the awareness-raising and sensitivization campaigns. In conclusion, the speaker pointed out that her Government continued to undertake important efforts for the children's schooling, but they remained dependent on the limited financial possibilities of the country and were affected by the strong demographic growth. It was therefore impossible to fix a deadline on which the objective of the complete schooling of all the children could be attained.

The Employer members noted that this was the first examination by this Committee of a case dealing with the worst forms of child labour under Convention No. 182; up to now, such matters had been dealt with under the Forced Labour Convention, 1930 (No. 29). The high ratification rate of Convention No. 182 indicated that there was a clear international consensus on the importance of eliminating the worst forms of child labour.

Turning to the specific elements of the case, the Employer members noted that the Government had not responded to a request for information by the Committee of Experts on penalties against the worst forms of child labour. While laws clearly existed which prohibited begging by children, trafficking of children, and certain types of work for persons under the age of 18, more information was needed on the application of these penalties for the offences in practice, and on how many children were affected by such practices. The Government should provide the necessary information on the application and enforcement of the penalties for the offences.

They noted that this case also dealt with trafficking of children and with the custom of placing children under the tutelage of spiritual guides, who often compelled them to beg. This custom caused even greater difficulties in an urban environment than in a rural one. Finally, the case dealt with hazardous work. The Employers shared the concern of the Committee of Experts on this matter. Nonetheless, they were surprised that the Experts had not raised the issue that work which should be prohibited under Article 3(d) of the Convention should, under its Article 4(1), be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). The procedure for the determination of the types of work to be prohibited should not be neglected.

They concluded by noting that this case related to poverty. The worst forms of child labour resulted in children not receiving an education, which, as the Government representative had pointed out, risked creating a lost generation in the country. For this reason, the lack of education played an important role in the application of Convention No. 182.

The Worker members thanked the Government of Niger for the submission of its first report on the application of Convention No. 182. The Committee of Experts referred to its comments on child labour formulated earlier under Convention No. 29. These comments concerned, first of all, the sale and trafficking of children, with regard to which the Committee, while having noted the legislation in force, requested the Government to take urgent measures concerning its application in practice, since the sale and trafficking of children was one of the worst forms of child labour. These comments also concerned children entrusted to a spiritual guide who required them to beg in exchange for his services. On this point, since the Government's will to eradicate these practices had been already expressed in 2004, the Worker members requested the Government to provide information on putting this will into practice. Lastly, these comments concerned child labour in mines, which, according to certain estimates referred to by the Committee of Experts, employed up to 250,000 children in revolting conditions.

The Worker members observed that the information supplied by the Government in its report and provided orally to this Committee contained no reference to the fundamental problem of the work of children in mines. They associated themselves with the Committee of Experts' requests to insist that the Government take urgent measures with a view to prohibiting children under 18 years of age from underground work in mines, in accordance with the ILO Conventions, and to break the silence in this regard by providing information in extenso on the situation of children working in mines.

The Worker member of the United Kingdom welcomed the remarkable ratification rate of Convention No. 182, which since 1999 had become the most rapidly ratified Convention in the history of the ILO. Universal ratification remained an achievable aim provided that the campaign was pursued. The Convention had refocused international and national attention on child labour and had also led to a phenomenal leap in the level of ratification of Convention No. 138. As wholly complementary Conventions he urged all Members which had ratified Convention No. 182, but not yet Convention No. 138, to examine as a priority and through tripartite consultation the advantages that ratification of Convention No. 138 would bring to their national strategies for

the elimination of child labour, where necessary seeking the technical assistance of the ILO, and to proceed to ratification without delay. These two fundamental human rights Conventions, alongside Convention No. 29, were cornerstones of decent work and of sustainable national development policies.

The case of Niger, which demonstrated a degree of political will by the Government through its relationship with the IPEC, also recalled the urgent need for action because the challenges to be met in Niger, as in other West African countries, involved very great and grave suffering of children damaged by trafficking and slavery, including sexual slavery, forced begging, and hazardous work in mines and quarries. What was important was for that political will to be sustained, rather than denying the existence of trafficking. He therefore expressed concern at the detention of two leading anti-slavery activists, Ilguilas Weila and Alasanne Biga of the NGO Timidra, a partner of Anti-Slavery International, in what appeared to be an attempt to silence outspoken critics of slavery in Niger. Both had twice been denied bail. He called on the Government to either release them or to ensure that their trial was open, impartial, and held soon in a public court.

He welcomed the general observation of the Committee of Experts in relation to trafficking and the request to all governments which had ratified the Convention to supply information on key elements of its application, namely legislation, measures to prevent trafficking, programme development, training and awareness raising, the collection of statistical data, time-bound measures for prevention, removal, rehabilitation and reintegration, effective monitoring and international cooperation. In this context, he welcomed the development of the West Africa subregional LUTRENA programme, as combating trafficking required extensive cross-border and international cooperation.

He emphasized in particular the relationship between the elimination of child labour, including its worst forms, and free, compulsory, universal, accessible and formal basic education, provided as a quality public service for all children. He said that at the heart of every community should be a good school. In this respect, he shared the view of the Committee of Experts that explaining child labour and trafficking for child labour simply as a consequence of poverty was too simplistic. Child labour was both a cause and consequence of poverty. It acted as a brake on the human development of the individual child and on the human resources of the nation. Every child out of school, every trafficked child, diminished the ability of national economies to meet sustainably the challenges of the global economy. All too often, child labour turned the child into an unemployed adult, lacking the transferable skills and education required in the formal labour market. It therefore contributed a loss of valuable human resources. He expressed the view that child labour would never be eliminated without the provision of universal education, but equally universal education would never be achieved without the elimination of child labour. It was not poverty alone that denied children access to school, but rather social injustice and inequality. Making education a key public priority was indeed possible, even when countries were not rich. It was a far better investment than weapons of war. In this respect, there was a need for global solidarity, as foreseen in the Convention and the Recommendation, as well as for a just and equitable global economic and trading system. Nevertheless, levels of literacy were higher in certain poor countries than in some far richer industrialized countries because they had chosen equity over greed. Another common feature of such countries was the comparatively high social status of women. He recalled, in this respect, that 2005 was to have been the year in which all countries would reach the interim Millennium Development Goal of equal school enrolment of girls and boys. Unfortunately, this had been a miserable failure, even though evidence showed the exponential social and economic benefits of the education of the girl child. He emphasized that access to education was not just a matter of provision, although experience showed that even the poorest parents would send their child to school if it was free and accessible. It was also a matter of empowerment. Empowered communities, through social mobilization, could overcome the democratic deficit and demand that their governments meet their needs as citizens for equal legal protection, decent work for adults and schools for their children.

In conclusion, he said that the elimination of child labour, including its worst forms, was not just a poverty issue. It was an issue of education, gender, class, discrimination, the labour market, exploitation, decent work for adults, social justice, crime, equity, development, tripartism, democracy and, above all, fundamental human rights. Conventions Nos. 138 and 182 were indivisibly linked with all other fundamental human rights at work proclaimed by the ILO and were the most significant normative tools available for the elimination of all forms of child labour. He therefore thanked the Committee of Experts for the sense of urgency that it had injected into the general observation on Convention No. 182, especially with regard to trafficking. In welcoming and supporting the general observation, he called for no longer wasting entire generations of children and also for the universal ratification and implementation of Conventions Nos. 138 and 182. In so doing, an important contribution would be made to «making poverty history» by making every child, boy or girl, a school-going child.

The Worker member of Niger recalled that child labour and forced labour were considered by workers' organizations in Niger as a scourge which destroyed decent work and gave rise to economic insecurity, which was the reason for their commitment to the IPEC programme. He emphasized that the ratification of Conventions Nos. 29 and 182 was an act of political will by Niger, which was being reinforced and encouraged by the ILO through its technical cooperation programmes. He hoped this political will would continue and be reinforced by action taken in practice.

He indicated that, in Africa in general and in Niger in particular, child labour was more an issue of underdevelopment than of culture and its eradication requested measures to combat poverty and promote good economic governance. That poverty was perpetuated by the international financial institutions (the IMF and the World Bank) through the structural adjustment programmes imposed on the State. He called for assistance to be provided to Niger to combat poverty which was the surest means of ensuring the schooling of children in Niger so as to prepare for their future and that of their country.

Finally, he emphasized that slavery and forced labour, which were vile and unlawful practices in the informal economy, could not be resolved solely by law. He called on the ILO to design a technical cooperation programme with Niger for the elimination of this scourge with the participation of all the national partners.

The Government member of the United States emphasized that international cooperation and assistance – by both the ILO and the international community at large – were critical to achieving the elimination of the worst forms of child labour in Niger. As her country had ratified Convention No. 182, it was obliged under Article 8 to assist Niger and other countries in their efforts to secure a better, brighter future for their children. Consequently, her Government was currently sponsoring a project in Niger targeting some 18,000 children aged between 6 and 18 years with the aim of reducing their engagement in the worst forms of child labour by increasing their participation in appropriate education programmes. The project was helping the Government of Niger to develop a national action plan aimed at reducing child labour, improving school quality and improving access to education. In addition, her Government was working with ILO/IPEC to develop a project to remove children from gold, salt, stone and mineral mining in Niger and in a neighbouring country. The project would also put in place a structure to prevent child labour in mining beyond the life of the project.

In conclusion, she hoped that projects like these would help the Government of Niger to achieve the full application of Convention No. 182 in law and, more importantly, in practice, within the shortest possible period.

The Employer member of Niger said that his country was poor and disadvantaged and that this should be taken into account. He emphasized that there was no trafficking in children in his country. He acknowledged the existence of work by young persons which, according to him, was limited to small mining enterprises. He added that these children did not go to school for reasons of poverty and were therefore obliged to work to meet their daily needs. He indicated that 6 million children were of school age, but one-third of them did not go to school for the above reasons.

The Worker member of Senegal emphasized that the Government of Niger had been called for the second time in two years to appear before the Committee on the issue of the violation of ratified Conventions. Last year, the Committee had examined Convention No. 29, and today the discussion was devoted to Convention No. 182.

In 2004, the members of the Committee had discussed the persistence of forced labour in the country, despite the measures taken by the Government to solve the situation with the help of the labour inspection services, the ILO/IPEC programme and collaboration with NGOs.

In 2001, a study carried out by the ILO had proposed certain measures to combat forced labour, such as the strengthening of the legal arsenal, the organization of information activities, awareness campaigns and the education of the population on its rights and obligations, and the development of the conditions for access to means of subsistence through freely chosen employment. The report also described the working conditions of children in mines and quarries. In this regard, it was important to emphasize that a little less than a half of workers in mines were children and that in certain quarries the number could reach 50 per cent. These activities were arduous and dangerous and involved risks for children. Although the Government had ratified Conventions Nos. 138 and 182, which set the minimum age of 18 years for admission to hazardous work, the national legislation did not seem to prohibit this type of child labour.

The information contained in the observation made by the Committee of Experts confirmed the existence of the problem of trafficking in girls for the purpose of labour exploitation, for domestic work and for sexual exploitation. This information also confirmed that boys were victims of trafficking for the purpose of labour exploitation.

It was important to emphasize that, contrary to other countries, the Government of Niger was ready to cooperate. However, in accordance with the principles shared by all the members of the Committee, no transaction would be permitted. The Committee had to give explicit and formal directives to the Government to encourage it to take necessary measures to ensure the application of the Convention in law and practice. For example, the Government could adopt a plan of action for ten years to reinforce the rights of the child and to ensure that they attended school. Cooperation with the ILO/IPEC programme could contribute to the achievement of this aim. Moreover, the programme could include measures for social reintegration as well as a poverty eradication plan. Finally, he called for Iiguilas Weila and Alasanne Biga to be freed.

The Government member of Cuba said that the Committee should bear in mind that Niger was one of the poorest countries in the world and that, despite this fact, the Committee of Experts had nevertheless noted that a number of legislative measures had been taken by the Government and specific programmes were being implemented with the technical assistance of the ILO and other international organizations. This demonstrated the Government's interest in finding solutions. She emphasized that Niger genuinely needed international cooperation and referred to the economic crisis and the lack of infrastructure and human resources, following years of exploitation and pillage. She indicated that Cuba, a country with scarce resources but great will, which was subjected to an economic blockade had, for example, sent a medical team to Niger and urged the Committee to call for international assistance and cooperation with a view to solving the problems in question. In this respect, she endorsed the request made by the Government representative of Niger and stated that international solidarity was also a principle of humanism.

The Employer member of the United States said that, as one of the drafting members of Convention No. 182, it was gratifying for him to be in this Committee and to witness the substantial and rapid rate of ratification and implementation of the Convention. He was pleased to see that Niger had ratified Convention No. 182, and that the country had not done this without recognizing that some key difficulties existed with respect to its implementation. He emphasized that this was, however, the whole idea behind the Convention, namely to bring attention and action to these issues and to support action. He recalled that Convention No. 182 referred to the worst forms of child labour, and that it was generally recognized that, while the whole issue of child labour should be addressed, this would have to be done in stages. He noted that work done by children that did not affect their health or personal development or interfere with their schooling was generally regarded as positive, and contributed to the child's development and the welfare of families. It provided skills and experience and contributed to children becoming useful and productive members of society in their adult life.

He emphasized that there were 300 million child labourers and that Convention No. 182 did not address all of those. The worst forms of child labour were well known. They related to labour which interfered with education and development and which was mentally, socially or morally dangerous and harmful to children. In his view there was no debate in Niger on these issues or on issues of slavery or trafficking. Referring to Article 4 of the Convention, he pointed out that for the determination of the types of work referred to in Article 3(d) which were harmful to the health, safety or morals of children, the relevant paragraphs of Recommendation No. 190 should be taken into account. The reason for this specific reference was because there was an understanding that not all situations of child labour could be defined in the Convention. Moreover, the Convention provided for tripartite consultation to determine these types of work.

However, the most important provision of Convention No. 182 was Article 8. It was unique in providing that member States should take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and assistance. As this case was one of the first cases on Convention No. 182 discussed by the Conference Committee, the Committee should reflect on whether and how it should congratulate, condemn or support the countries concerned. It was impossible to address the situation of all 300 million child labourers straightaway, but it was important to work together to help a few of them already.

The Government representative said that she had taken due note of all the interventions. She emphasized that neither the worst forms of child labour nor trafficking in children existed in Niger. With regard to child labour and begging, she indicated that her country had made every effort to combat this scourge and was committed for that purpose to eliminating illiteracy. She added that education was provided at the primary and secondary school levels but, because of poverty, the primary concern of children was not going to school, but rather to meet their daily needs. She said that her country had been making considerable efforts to eliminate this scourge and had requested assistance from the international community. She considered that education was the best means of eliminating the worst forms of child labour and called for international solidarity in this respect.

The Employer members thanked the Government representative for the information provided. They indicated that they were uncertain whether the Government of Niger was or was not in denial of the existence of problems in the implementation of the Convention. There was clearly a need for technical assistance by the ILO to assess in practice the actual situation, as indicated by the Committee of Experts in its observation. They recalled the statement by the Employer member of Niger indicating that 50 per cent of the population was below 15 years of age and stated that Niger was clearly facing huge problems, especially considering the extensive poverty that prevailed in the country. It was, therefore, essential and critical that other countries which had ratified Convention No. 182, and which had the means to help, ensured that they provided assistance to Niger, particularly to give effect to its obligations under Article 7 of the Convention, to take measures to ensure access to free basic education and, wherever possible and appropriate, vocational training for all children removed from the worst forms of child labour. In addition, there was a need for changes in the legislation, although the Employer members cautioned that this would not be sufficient in itself. The implementation of the Convention in practice would require an effective labour inspection system and enforcement mechanisms. The Employer members had serious doubts that such mechanisms existed in law and in practice in Niger.

The Worker members encouraged the Government to continue its efforts to eliminate child labour, in particular with the technical assistance of the ILO. The Government should pay particular attention to the problem of child labour in mines when adopting legislative measures and developing programmes of action. Moreover, it was important for trade unions to be more closely associated with the elimination of this problem. It was to be hoped that the next report by the Government would provide detailed information on the measures taken with regard to child labour in mines.

The Worker members expressed their concern at the action taken against anti-slavery activists and their firm conviction that, in combating slavery, dialogue would lead to solutions being found.

Concerning the general observation made by the Committee of Experts, it was important for governments to include in their next reports information on: (1) the legislative measures adopted or envisaged to prohibit trafficking of children under 18 years of age for the purposes of economic and sexual exploitation by (*i*) making any violation of this prohibition a criminal offence and (*ii*) imposing penal and other sanctions of an effectively dissuasive nature; (2) the measures adopted or envisaged to (*i*) prevent such trafficking and (*ii*) formulate and implement programmes of action targeting multiple levels of society; (3) training, collaboration and awareness-raising for public officials on action to combat the trafficking of children; (4) statistics on the number of violations, investigations, prosecutions and convictions relating to the trafficking of children and the text of any court decisions in such cases; (5) the effective application of the principle of free and compulsory schooling for children, particularly for girls; and (6) the time-bound measures taken to prevent the engagement of children in trafficking, remove children from trafficking, protect the victims of trafficking and provide for their rehabilitation and social integration.

The Worker members also emphasized the importance of combating the transnational dimension of child labour. In this regard, they once again thanked the Committee of Experts for its general observation, which raised the issue of the international dimension of child labour and emphasized that in future this matter could be addressed in general observations on the application of other Conventions.

The Committee noted the information provided by the Government representative and the discussion that ensued. The Committee noted the information contained in the report of the Committee of Experts relating to the use of children in begging, in hazardous work, in mines and quarries, and the sale and trafficking of children in Niger for purposes of economic and sexual exploitation.

The Committee took note of the information provided by the Government highlighting the issues of poverty and the limits of its education system, as well as the Government's view that the sale and trafficking of children did not exist in Niger. The Committee also took note of the Government's request for ILO technical assistance.

The Committee shared the concern of the Committee of Experts with regard to the vulnerability of children who begged in the streets, as well as those performing hazardous work in mines and quarries. The Committee emphasized the seriousness of such violations of Convention No. 182. In this regard, the Committee noted that various action programmes had already been undertaken in collaboration with ILO/IPEC and other governments to remove children from such situations. The Committee further noted that the Government of Niger had expressed its willingness to continue its efforts to eradicate such situations with the technical assistance and cooperation of the ILO.

The Committee stressed that the use of children in begging and in hazardous work in mines and quarries constituted one of the worst forms of child labour and that the Government was obliged to take, by virtue of Article 1 of the Convention, immediate and effective measures to secure the prohibition and the elimination of the worst forms of child labour as a matter of urgency. The Committee requested the Government to indicate the effective and time-bound measures taken to remove child beggars under 18 years old from the streets as well as children under 18 working in hazardous conditions in mines and quarries. It also requested the Government to provide additional information on the measures taken to provide for the rehabilitation and social integration of these children, in conformity with Article 7, paragraph 2, of the Convention.

While noting of the Government's commitment to implement the Convention, the Committee underlined the importance of free and compulsory schooling to preventing the worst forms of child labour. The Committee urged the Government to take the necessary measures without delay to ensure access to free basic education for both boys and girls, especially in rural or particularly disadvantaged areas.

Concerning the issue of the sale and trafficking of children, and the Government's indication that such a practice did not exist in Niger, the Committee decided that an ILO fact-finding mission be undertaken to the country. This fact-finding mission should also

examine all the issues raised in the comments of the Committee of Experts and in this Committee.

The Committee called on ILO member States to provide assistance to the Government of Niger in line with Article 8 of the Convention, with special priority on facilitating free basic education as provided in Article 7. The Committee requested the Government to undertake efforts to apply the Convention in cooperation with the social partners and to report in detail on the results achieved in its next report to the Committee of Experts.

The Worker members stated that all underground work was hazardous and should be prohibited for persons under 18 years of age.

The Employer members stated that it is not up to the Conference Committee to indicate whether, with respect to Convention No. 182, underground work should be qualified as hazardous or not.

Qatar (ratification: 2000). **The Government** communicated the following written information:

Law No. 22 of the year 2005 on the prohibition of bringing in, employing, training and involving children in camel racing

I, Tameem Bin Hamad Al-Thani, Vice-Emir of the State of Qatar,

After examination of the provisional amended statute, namely Articles (22), (23), (34), and (51), and Law No. (1) of the year 1994 concerning juveniles, and Law No. (7) of the year 1999 concerning regulation of the Ministry of Civil Service Affairs and Housing and determination of its competence,

And Labour Law No. (14) of the year 2004,

And Decree No. (54) of the year 1995 allowing the affiliation of the State of Qatar to the Convention on the Rights of the Child,

And Decree No. (29) of 2001 on ratification of the Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour (No. 182) and the 1999 urgent procedures to eliminate it,

And the proposition of the Minister of Civil Service Affairs and Housing,

And the draft Law submitted by the Council of Ministers,

And after consultation with the Consultative Council,

We decided the following law:

Article (1)

Is considered a child, according to the provisions of this law, a person who is less than 18 years old.

Article (2)

It is prohibited to bring in, employ, train or involve children in camel racing.

Article (3)

Officers of the Labour Department, Ministry of Civil Service Affairs and Housing, who will be the object of the Attorney-General's decision, by mutual agreement with the Minister of Civil Service Affairs and Housing, will have the capacity of judicial investigation commissioners in order to determine and prove crimes which are contrary to the provisions of this law and related decisions.

Article (4)

Anyone who breaches the provision of Article (2) of this law will be imprisoned for no less than three years and no more than ten years and fined a minimum of fifty thousand QR and nor more than two hundred thousand QR, without precluding any more severe punishment stated by other laws.

Article (5)

The Minister of Civil Service Affairs and Housing will issue the necessary decisions to enforce the provisions of this law.

Article (6)

All competent authorities shall enforce this law which must be implemented from the date of its publication in the *Official Journal*.

Tameem Bin Al-Thani,
Vice Emir of the State of Qatar

Issued at the Emiri Diwan
On 23 May 2005

In addtion, before the Committee, **a Government representative** stated that Qatar had ratified the Convention less than one year after its adoption and since then the Government had always cooperated with the Committee of Experts and had provided the necessary information. The Government would also fully reply to the observation under discussion in the Committee. Two years ago an institute for the protection of children and women had been established which provided an institutional framework for the protection of children's rights. The High Council for Family Affairs was also involved in such matters and numerous seminars and workshops had been organized. With regard to the participation of children as jockeys in camel racing, the Government informed the Committee that Law No. 22 had been promulgated on 23 May 2005, which prohibited the bringing in, involving or participation of children as jockeys and/or other involvement of persons below the age of 18 in camel races, as well as the training of persons under the age of 18 for such a purpose. The Law provided for sanctions of fines up to 200,000 rials and of imprisonment between three to ten years. The Labour Inspectorate was responsible for supervising the Law's application and was cooperating with the public prosecutor in order to ensure strict implementation and enforcement of this legislation. The Government representative further stated that a light robot had been developed to replace children as camel jockeys and had already been successfully tested. Children had previously participated in camel racing as a hobby always with the authorization of their parents while the High Council for Family Affairs was making every effort to integrate the children concerned in the educational system.

The Employer members emphasized the particular significance of the Convention which sought to protect the most vulnerable members of society, the children. In adopting this Convention, the ILO had recognized that this issue was a priority, not only at the national, but also at the international level. The Convention was intended to address a particularly abhorrent situation, and was adopted for this reason unanimously and quickly by the ILO. Underlying the entire Convention was a recognition of the urgency of the matter. Although the Convention was adopted in 1999, the issues it sought to redress had been present for far too many years, and had been discussed far too often in consideration of other Conventions, and especially Convention No. 29. The adoption of Convention No. 182 had reflected the inadequacies of existing instruments to address certain circumstances, a great urgency to eliminate the worst forms of child labour and a frustration at the lack of progress in eliminating the worst forms of child labour under the other instruments.

The Employer members noted, in this connection, that they remained frustrated at the fact that the issues which had given rise to this case, i.e., the trafficking of children for the purposes of, and the use of children in, the camel racing industry, continued to exist. They agreed with the Committee of Experts that the issue of trafficking and forced labour of children and the use of children as camel jockeys, could be examined more specifically and appropriately under this Convention especially because of the need for immediate and effective steps. The Convention was to address the worst forms of child labour in distinction to the other forms of child labour, which might be beneficial and adequate for the development of children, for which Convention No. 138 provided a framework. Convention No. 182 was a clear and unequivocal call to action for member States to take immediate and comprehensive steps, as a matter of urgency.

The Employer members considered that the fact that this case was being commented upon and further information was being sought by the Committee of Experts was evidence that children's involvement in camel racing continued. In addition, the comments of the Government, as noted by the Committee of Experts, had indicated that while certain measures appeared to be taken, they were not effective. The Committee of Experts had commented on the concept of the worst forms of child labour as applying to those under the age of 18. Article 3 of the Convention set out the types of work which constituted the worst forms of child labour. These could be distinguished into two categories. The first group was found in Articles 3(a) through (c) and included forms of slavery or practices similar to slavery, such as the sale and trafficking of children; forced or compulsory labour; the use, procuring or offering of a child for prostitution; the use, and procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. For purposes of this case, the Committee of Experts had commented, and the Employers agreed, that the sale and trafficking of children, and forced or compulsory labour for the purposes of camel jockeying fell within Article 3(a) of the Convention. Thus, the Convention required trafficking in children to be immediately eliminated and prohibited. According to the observation of the Committee of Experts, no evidence had been provided and the Employer members assumed that the Government had failed to do so.

The second category of worst forms of child labour were found in Article 3(d) which referred to "work which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children". Work which fell under Article 3(d) required that the Government in consultation with employers' and workers' organizations, develop a list of the types of work in accordance with national laws, which were also the worst forms of child labour. The Government should take immediate measures to develop the list, in consultation with the social partners, and then take immediate and effective measures to prohibit and eliminate these worst forms of child labour. In other words, the determination of the worst forms of child labour under Article 3(d) did not require less immediacy or urgency, but simply an additional step. Regrettably, in its comments, the Committee of Experts had failed to recognize this unique feature of Article 3(d), as described in Article 4. There was also no indication by the Committee of Experts or by the Government that such a consultation had taken place or a list prepared. The Employer members, therefore, encouraged the Government to consult with the social partners immediately for this purpose.

The Employer members considered that camel racing was inherently dangerous to the health and safety of children, and did not foresee any circumstances where camel racing would not be considered as a worst form of child labour in accordance with Article 3(d). It was not clear from the comments of the Committee of Experts that the Government shared this view. Therefore, the Employer members asked the Government to clarify its position on this issue.

Article 7 of the Convention, required that governments take steps to ensure effective implementation and enforcement, including through the provision of penal sanctions. While there was an indication in the report of the Committee of Experts that section 193 of the National Penal Code criminalized trafficking of persons, which should be noted as a positive element, unfortunately, there was neither evidence that the measure was effective, nor that penalties had been applied. The Employer members encouraged the Government to ensure the effective implementation and enforcement of the national penal law and to pro-

vide the necessary information on the penal sanctions that had been imposed in practice. Absent of such information, the Employer members would remain sceptical that such a measure was being enforced against an activity whose primary purpose was the entertainment of the wealthy social élite.

The Employer members further observed that by asking for additional information on camel jockeys under the age of 18, the Committee of Experts suggested that there might be circumstances where the Government believed that camel jockeying by children was not a violation of the Convention. In this respect, the Employer members requested the Government to provide clear information that under no circumstances were children under the age of 18, working as camel jockeys, and to take effective measures to this end.

In addition, the Committee of Experts commented on measures put in place that might differentiate between children that were nationals and those that were non-nationals involved in camel racing. Such a distinction based on nationality would not be appropriate nor in compliance with the Convention which was clear in that the worst forms of child labour were to be addressed, regardless of nationality or any other distinction.

Finally, the Committee of Experts had stated that camel jockeying was likely to harm the health and safety of children and therefore fell under Article 3(d) of the Convention. While the Employer members agreed with the underlying sentiment of the Committee of Experts, they took exception, with regard to the approach of determining what circumstances fell within Article 3(d). In so doing, the Committee of Experts had exceeded its mandate and failed to consider Article 4 of the Convention according to which the list of circumstances that would fall under Article 3(d) should be determined by the national governments, after consultation with employers' and workers' organizations and periodically examined and revised in consultation with these social partners.

The Convention recognized that there were root causes underlying the circumstances of the worst forms of child labour, and particularly the problem of trafficking of children, was recognized as one which took place, not only within countries but also between them. It was not just a national problem but also an international one. Accordingly, the Convention required member States to take steps to assist one another through enhanced international cooperation and assistance. Regrettably, in this case, there was no indication of any cooperative efforts between countries. Given the requirement for immediate measures to be taken, there should be information on such cooperative measures. The Employer members requested the Government to provide any information on cooperative measures taken directly or through the Gulf Cooperation Council. The Government was reminded that technical cooperation was available to it, to assist it in giving effect to the Convention.

The Committee of Experts had observed that there were cases of children being trafficked for the purposes of camel racing and had invited the Government to redouble its efforts to improve the situation. In the view of the Employer members, the trafficking of children should be immediately prohibited and eliminated as a matter of urgency. The implementation of the Convention was not a matter of degree, but a "black and white" issue. As long as there were still reported cases of trafficking, as observed by the Committee of Experts, there was evidence that any measures taken to date had not been effective, as required by the Convention. The circumstances of children engaged in camel jockeying had been discussed in this Committee far too often, and it was the Employer members' intention to remind and encourage governments to implement this fundamental Convention. They wished to remind the Government of the technical assistance available through the ILO and strongly encouraged it to seek such assistance. They further noted that the Government had ratified the Convention in 2000, shortly after its adoption. The time had now come to ensure full compliance with the Convention.

The Employer members thanked the Government for its efforts to respond to the observation of the Committee of Experts in a timely manner and for the information contained in the response, which indicated that a new law, Law No. 22, had been adopted on 23 May 2005 to the effect that "it is prohibited to bring in, employ, train or involve children in camel racing". The Employer members commended the Government for the clear and broad scope of this prohibition. They asked the Government to confirm that the Law applied to all children under 18, both Qatari and non-Qatari, without distinction. They also noted that section 6 of Law No. 22 provided that the Law "shall be enforced from the date of its publication in the official journal" and asked the Government to confirm that the Law had been published and was in force.

Finally, with regard to the general observation made by the Committee of Experts, the Employer members noted, that due to the fact that this was a new Convention and its requirements were urgent and a priority, it might be of assistance to the Conference Committee to deviate from its mandate and provide comments in relation to the understanding of the Convention. As for the comment related to activities in West Africa, since the trafficking of children was not confined to one region, they believed such comments were not of assistance as they could detract from the recognition that this was an international issue.

The Worker members noted that the Committee had discussed for several years the suffering of children trafficked to the Gulf region for forced labour exploitation as camel jockeys. This exploitation violated at least three Conventions (Nos. 29, 138 and 182), involving boys sometimes less than 10 years old in trafficking, forced labour and employment and hazardous work below the minimum age.

Qatar had ratified Convention No. 182 but not Convention No. 138. While welcoming recent legislative developments in the county, the Worker members suggested that for a coherent national strategy to eliminate child labour, Qatar should also ratify Convention No. 138.

As regards trafficking, there was no doubt that numerous young children had been trafficked to the Gulf, including Qatar. In reply to the Government's claim that they were there with their families, the Worker members had hoped that the denial stage had been passed as a barrier to resolution of the problem. The annual United States report on trafficking in persons of June 2005 stated that: "Qatar is a destination for men and women trafficked for the purpose of labour exploitation and young boys trafficked for the purpose of exploitation as camel jockeys. Children trafficked for exploitation as camel jockeys come primarily from South Asia and Sudan. Most no longer remember where they come from."

The report also noted that "the Government of Qatar does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so. During the rating period, the Government failed to show evidence of significant efforts to combat identified severe forms of trafficking on the three fronts of prosecution, protection and prevention. A 2003 National Action Plan remains unimplemented. The Government of Qatar does not collect statistics on persons trafficked into the country. According to diplomatic sources and NGOs, there have been no rescues of the estimated 75 to 250 child camel jockeys, nor prosecutions of the traffickers. The Government provides no shelter for trafficking victims; instead it detains and punishes trafficking victims for immigration violence."

As regards hazardous work, there were severe risks of injury and even death, psychological trauma and abuse. On immediate prohibition and elimination, Qatari law prohibited employment in hazardous work for Qatari children under 18, but a non-Qatari worker required the approval of the Department of Labour and a work permit, which was insufficient. The prohibition should apply to all children, regardless of their nationality. Trafficked workers were undocumented; therefore, much more evidence was required to prove that Qatar was immune to the problem.

The denial that trafficking existed was at odds with the Qatari penal code, section 193 of which made liable to ten years' imprisonment any person found guilty of importing, exporting, selling, taking possession of or disposing of a person, which sounded remarkably like a description of trafficking.

The Worker members questioned the formulation used by the Committee of Experts in its observation in noting that the Government should provide information on the measures taken to ensure that non-Qatari camel jockeys under 18 years of age did not perform their work under circumstances detrimental to their health and safety. A similar formulation was also used for similar violations in the United Arab Emirates. But, the Conference Committee's conclusions in 2003 on the UAE case stipulated that camel jockeying was "intrinsically hazardous" and therefore should not be performed by any person under 18 years of age. It seemed that the Government of Qatar had understood the hazardous nature of camel jockeying and the Worker members welcomed the issuing of Law No. 22, which specifically referred to Convention No. 182 and stated that a child was a person under 18 years of age, and also forbade the employment, training or involvement of children in camel racing. It did not refer to different rules for non-Qatari children. It did provide for judicial investigation to determine and prove crimes in violation of the Law, a minimum of three years' imprisonment and a fine of between 50,000 and 200,000 Qatari rials. The Ministry of Civil Affairs and Housing would issue the necessary decisions to enforce the Law and ensure that all competent authorities would implement it.

The Worker members wanted to know how the Government intended to identify violations of the Law, what measures it was taking to rehabilitate, repatriate and compensate child camel jockeys, and ensure that psychiatric and medical care, counselling and education were provided. Measures on tracing families were also important. They asked if legislation that prohibited and punished the employment of children of any nationality under the age of 18 in other types of hazardous work were being taken as a matter of priority. Statistics on prosecutions for violations, successful convictions and sentences passed, broken down by year, were also required. A report should also be made on any measures of cooperation between Qatar, other Gulf States and countries of origin of child victims and on steps taken to harmonize legislation on camel racing in the Gulf countries.

The Government representative thanked all members of the Committee for their contributions. His delegation had already met with senior ILO officials and had requested technical assistance with a view to solving remaining problems. The Committee of Experts had commented on Qatar for the first time under this Convention, and the Government would provide all information requested in time. The issue had been brought to the attention of all levels of Government. The Government representative also confirmed that Law No. 22 applied to all children, irrespective of their nationality. Further, the Law prohibited the bringing-in of children, which meant that trafficking was also covered. He reiterated that the Labour Inspectorate was competent to

ensure compliance with this legislation and that harsh sanctions could be imposed for violations. There was also international cooperation with other countries in the region to address the problem of trafficking. In addition, the Government was studying the possibility of ratifying Convention No. 138. The labour legislation already prohibited the employment of persons under the age of 18, irrespective of nationality, in work likely to harm health, safety or morals. Finally, it was stated that the United States report on trafficking of persons had been issued before the promulgation of Law No. 22 and that the United States Government through its Ambassador to Qatar had paid tribute to the Law as an important effort to eliminate trafficking. The Government was committed to continued cooperation with the ILO and other partners on this matter.

The Employer members were encouraged by the measures taken by the Government as evidenced in the adoption of Law No. 22. However, they remained sceptical as to the effective implementation of the Convention given the urgency with which the Government should address this issue. They, therefore, called on the Government to give details on the penalties imposed under the Law, on efforts to harmonize the legislation on camel racing throughout the Gulf countries as well as to reply to the Committee of Experts concerning measures taken to implement the Convention in law and in practice. The Employer members also called on the Government to engage immediately in social dialogue in order to develop a list of the worst forms of child labour and to provide information to the Committee in this regard. They took note of the Government representative's assurances that Law No. 22 was being implemented and had entered into force and waited for the Committee of Experts to review its conformity with the Convention. They called on the Government to continue to participate in international cooperation efforts to bring its law and practice into conformity with the Convention and to provide information to the effect that Law No. 22 applied to all children regardless of nationality. They finally urged the Government to avail itself of the technical assistance of the ILO and to use such assistance on a priority and urgent basis in conformity with the terms of the Convention. The Employer members finally reiterated the priority that they attached to this Convention.

The Worker members noted a brief but informative discussion. The challenge was the effective implementation of the new Law and recognition by the Government that it was not immune from the trafficking problem. The Worker members asked that the Committee recommend the Government to identify violations of the Law, inter alia, by carrying out regular unannounced inspections to identify, release and rehabilitate any child being used as a jockey and ensure that those responsible for trafficking and using under age jockeys were prosecuted. Measures must be taken to rehabilitate, repatriate and compensate child camel jockeys, and ensure that the children concerned were provided with psychiatric and medical care, counselling and education. The Government should also ensure that family tracing was carried out before repatriation and that services were in place to care for the child if no family were found. The Government should introduce legislation through tripartite cooperation to prohibit and punish the employment of children of any nationality under 18 years of age in other types of hazardous work, as a matter of priority. The Government was invited to seek technical assistance from the ILO. Finally, the Worker members requested the Government to provide to the Committee of Experts information on these points and on any other measures of cooperation passed between Qatar, other Gulf States and the countries of origin of the child victims and on steps taken to harmonize legislation on camel racing in the Gulf countries.

The Committee noted the written and oral information provided by the Government representative and the discussion that ensued. The Committee noted the information contained in the report of the Committee of Experts relating to the sale and trafficking of children under 18 years into Qatar for work as camel jockeys and the hazardous nature of this activity.

In this regard, the Committee noted the information provided by the Government representative that Law No. 22 of May 2005 prohibited the trafficking of children under 18 to Qatar to work in camel racing. The Government also pointed out that by virtue of article 4 of this recently enacted Law, whoever violated the prohibition on the trafficking of children to work as camel jockeys was liable to between three and ten years imprisonment and a fine, and that article 2 of the recently enacted Law No. 22 of 2005 prohibited the employment, training and use of children in camel racing, and that by virtue of article 1 of the Law, a child was a person under 18 years of age.

The Committee also noted the intent expressed by the Government representative to combat child trafficking for labour exploitation. This intent was reported to be reflected in concrete measures, including the purchase and use of robots to replace the use of children as camel jockeys. The Committee further noted that the Government of Qatar had expressed its willingness to continue its efforts to eradicate such situations with the technical assistance of the ILO. The Committee also noted that the Government was considering the ratification of Convention No. 138.

While welcoming the recent measures taken, the Committee urged that children should no longer continue to be victims of trafficking for the purpose of labour exploitation, and that those responsible would be punished. The Committee emphasized that, in accordance with Article 3(a) of the Convention, the sale and trafficking of children for labour exploitation, including camel racing, constituted one of the worst forms of child labour and that the Government was obliged, by virtue of Article 1 of the Convention, to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. In this regard, the Committee urged the Government to take the necessary measures to ensure that unannounced inspections were carried out by the labour inspectorate and that persons, regardless of their nationality, who trafficked in children to work as camel jockeys, were prosecuted and sufficiently effective and dissuasive penalties were imposed.

The Committee expressed its concern about the inherently hazardous nature of this activity. The Committee asked the Government to take necessary measures to ensure also that Qatari or non-Qatari children under 18 years of age did not perform any work under the circumstances that were likely to be detrimental to their health, safety or morals. The Committee recalled that Convention No. 182 had to be applied without distinction as to nationality. The Committee also invited the Government to take steps to develop social dialogue on the implementation of the Convention, in particular, concerning the determination of types of hazardous work, in accordance with Articles 3(d) and 4(1) of the Convention.

Noting that the Government was prepared to avail itself of ILO technical assistance, the Committee decided that a technical advisory mission should be undertaken to the country to evaluate the situation of compliance with the Convention in law and practice.

The Committee requested the Government to provide detailed information in its next report to the Committee of Experts on measures taken to implement Convention No. 182 and in, particular, the implementation in practice of the Penal Code and the new Law, including the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied. The Committee also requested the Government to provide detailed information on the effective and time-bound measures taken to prevent trafficking and to remove former child victims of trafficking from hazardous work and to provide for their rehabilitation and social integration, in conformity with Article 7(2) of the Convention. These measures should include the repatriation, family reunification and support for former child victims of trafficking.

Finally, the Committee requested the Government to provide information on the steps taken to harmonize the legislation on camel racing in the Gulf region.

Appendix I. Table of reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

Reports received as of 16 June 2005

The table published in the Report of the Committee of Experts, page 497, 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.

Barbados — 16 reports requested

(Paragraph 31)

- 11 reports received: Conventions Nos. 29, 63, 81, 98, 101, 105, 111, 118, 135, 144, 182
- 5 reports not received: Conventions Nos. 22, 74, 108, 138, 147

Belgium — 22 reports requested

- 21 reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 55, 68, 69, 73, 74, 81, 92, 105, 129, 138, 147, 151, 154, (182)
- 1 report not received: Convention No. 56

Botswana — 11 reports requested

(Paragraph 31)

- 7 reports received: Conventions Nos. 14, 29, 87, 98, 105, 144, 151
- 4 reports not received: Conventions Nos. 111, 138, 173, 182

Central African Republic — 16 reports requested

(Paragraph 31)

- 15 reports received: Conventions Nos. 14, 18, 29, 41, 62, 81, 87, 95, 98, 101, 105, 118, 119, 138, 182
- 1 report not received: Convention No. 117

Chad — 11 reports requested

(Paragraphs 27 and 31)

- All reports received: Conventions Nos. 14, 26, 29, 41, 81, 87, 105, (132), 135, 151, (182)

Chile — 14 reports requested

- All reports received: Conventions Nos. 8, 9, 16, 22, 29, 63, 103, 105, 115, 135, 138, 140, 151, 182

China — 8 reports requested

- All reports received: Conventions Nos. 16, 22, 23, 138, (150), (167), 170, (182)

Cyprus — 17 reports requested

(Paragraph 31)

- All reports received: Conventions Nos. 16, 23, 29, 81, 92, 105, 111, 135, 138, 142, 147, 150, 151, 154, 160, 171, (182)

Denmark — 30 reports requested

(Paragraph 31)

- 24 reports received: Conventions Nos. 8, 16, 29, 73, 81, 92, 105, 111, 119, 120, 122, 129, 134, 135, 138, 139, 144, 147, 149, 151, 160, 163, 169, 182
- 6 reports not received: Conventions Nos. 9, 52, 53, 108, 142, 150

Dominica — 14 reports requested

(Paragraph 31)

- 8 reports received: Conventions Nos. 8, 14, 22, 29, 81, 105, 111, 138
- 6 reports not received: Conventions Nos. 16, 100, 108, (144), (169), (182)

France — 30 reports requested

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 55, 56, 63, 68, 69, 71, 73, 74, 81, 82, 92, 105, 108, 129, 133, 134, 135, 138, 142, 145, 146, 147, 182

France - French Guiana — 28 reports requested

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 55, 56, 58, 68, 69, 71, 73, 74, 81, 92, 105, 108, 112, 113, 125, 129, 133, 135, 145, 146, 147

France - French Southern and Antarctic Territories — 20 reports requested

(Paragraph 31)

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 53, 58, 68, 69, 73, 74, 87, 92, 98, 108, 111, 133, 134, 146, 147

France - Guadeloupe — 28 reports requested

(Paragraph 31)

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 55, 56, 58, 68, 69, 71, 73, 74, 81, 92, 105, 108, 112, 113, 125, 129, 133, 135, 145, 146, 147

France - Martinique — 28 reports requested

(Paragraph 31)

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 55, 56, 58, 68, 69, 71, 73, 74, 81, 92, 105, 108, 112, 113, 125, 129, 133, 135, 145, 146, 147

France - Réunion — 28 reports requested

(Paragraph 31)

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 29, 53, 55, 56, 58, 68, 69, 71, 73, 74, 81, 92, 105, 108, 112, 113, 125, 129, 133, 135, 145, 146, 147

France - St. Pierre and Miquelon — 21 reports requested

(Paragraph 31)

- All reports received: Conventions Nos. 9, 16, 22, 23, 29, 53, 55, 56, 58, 63, 69, 71, 73, 81, 105, 108, 125, 129, 145, 146, 147

Ghana — 29 reports requested

(Paragraph 31)

- 22 reports received: Conventions Nos. 1, 8, 14, 22, 29, 30, 69, 74, 87, 89, 94, 98, 100, 103, 106, 107, 108, 111, 149, 150, 151, 182
- 7 reports not received: Conventions Nos. 16, 23, 58, 81, 92, 105, 117

Guinea — 32 reports requested

- 17 reports received: Conventions Nos. 3, 14, 16, 29, 62, 95, 105, 113, 117, 122, 135, 139, 142, 150, 151, 152, 159
- 15 reports not received: Conventions Nos. 10, 26, 33, 81, 87, 94, 111, 118, 119, 120, 121, 133, 134, 140, 144

Haiti — 18 reports requested

(Paragraphs 20 and 31)

- 11 reports received: Conventions Nos. 14, 24, 25, 29, 81, 87, 98, 100, 105, 106, 111
- 7 reports not received: Conventions Nos. 1, 19, 30, 77, 78, 90, 107

Iceland — 7 reports requested

- All reports received: Conventions Nos. 29, 105, 108, 111, 138, 147, 182

Kyrgyzstan — 43 reports requested

- 4 reports received: Conventions Nos. (81), 87, 95, 100
- 39 reports not received: Conventions Nos. 11, 14, 16, 23, 27, 29, 32, 45, 47, 52, 69, 73, 77, 78, 79, 90, 92, 98, 103, (105), 106, 108, 111, 113, 115, 119, 120, 122, 124, 126, (133), 134, 138, 142, 147, 148, 149, 159, 160

Lesotho — 11 reports requested

(Paragraphs 27 and 31)

- 8 reports received: Conventions Nos. 87, 98, 100, (105), 111, 144, (150), (155)
- 3 reports not received: Conventions Nos. 45, 135, 167

Madagascar — 18 reports requested

(Paragraph 27)

- 16 reports received: Conventions Nos. 81, 87, 88, (97), 98, 100, 111, 117, 119, 120, 122, 127, 129, 144, 159, (182)
- 2 reports not received: Conventions Nos. 13, 173

Malta — 20 reports requested

- All reports received: Conventions Nos. 2, 13, 45, (53), 62, (74), 87, 88, 96, 98, 100, 111, 119, 127, 135, 136, (147), 148, 159, (180)

Netherlands - Netherlands Antilles — 8 reports requested

(Paragraph 31)

- All reports received: Conventions Nos. 14, 29, 87, 88, 101, 106, 122, 172

Niger — 13 reports requested

(Paragraph 31)

- All reports received: Conventions Nos. 6, 13, 14, 87, 98, 100, 102, 111, 119, 135, 142, 148, 154

Pakistan — 17 reports requested

(Paragraph 27)

- 9 reports received: Conventions Nos. 1, 14, 45, 81, 89, (100), 106, 159, (182)
- 8 reports not received: Conventions Nos. 18, 87, 96, 98, 105, 107, 111, 144

Panama — 13 reports requested

- All reports received: Conventions Nos. 13, 45, 87, 88, 98, 100, 111, 119, 120, 122, 127, 159, 181

Saint Vincent and the Grenadines — 6 reports requested

- All reports received: Conventions Nos. 87, 98, 100, 101, 111, (180)

Serbia and Montenegro — 43 reports requested

(Paragraph 31)

- 25 reports received: Conventions Nos. (12), (14), (19), 29, (32), (81), 87, (89), (90), (97), (98), 100, (102), (106), (111), (121), 122, 129, (132), 135, 138, (140), (142), (143), (158)
- 18 reports not received: Conventions Nos. (11), (13), (24), (25), (27), (45), (88), (113), (114), 119, (136), (139), (148), (155), (156), (159), (161), (162)

Seychelles — 7 reports requested

(Paragraph 31)

- 6 reports received: Conventions Nos. 87, 98, 100, 111, 148, 151
- 1 report not received: Convention No. 2

Slovakia — 29 reports requested

- All reports received: Conventions Nos. 13, 29, 34, 45, 87, 88, 98, 100, 102, 105, 111, 115, 120, 122, 128, 130, 136, 139, 144, 148, 155, (156), 159, 161, 167, (171), 173, 176, (184)

Slovenia — 23 reports requested

- All reports received: Conventions Nos. 13, 45, 87, 88, 98, 100, 111, 119, 122, 135, 136, 138, 139, 140, 142, 148, 155, 159, 161, 162, (173), (175), (182)

Somalia — 5 reports requested

(Paragraph 20)

- All reports received: Conventions Nos. 29, 45, 84, 105, 111

Swaziland — 17 reports requested

- 15 reports received: Conventions Nos. 11, 14, 45, 81, 87, 89, 98, 100, 101, 105, 111, 131, (138), 144, (182)
- 2 reports not received: Conventions Nos. 29, 96

Sweden — 26 reports requested

(Paragraph 31)

- All reports received: Conventions Nos. 13, 87, 88, 98, 100, 111, 115, 119, 120, 122, 128, 135, 139, 144, 148, 151, 154, 155, 159, 161, 162, 167, 170, 174, (175), 176

United Republic of Tanzania - Tanganyika — 3 reports requested

· 1 report received: Convention No. 101
· 2 reports not received: Conventions Nos. 45, 88

Trinidad and Tobago — 8 reports requested

(Paragraph 31)

· All reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 144, 159

Turkey — 16 reports requested

· All reports received: Conventions Nos. 45, 87, 88, 96, 98, 100, 102, 111, 115, 119, 122, 127, 135, 144, 151, 159

United Kingdom — 12 reports requested

· All reports received: Conventions Nos. 2, 87, 98, 100, 111, 115, 120, 122, 135, 144, 148, 151

United Kingdom - Anguilla — 10 reports requested

· All reports received: Conventions Nos. 14, 29, 58, 82, 87, 98, 101, 105, 140, 148

United Kingdom - Falkland Islands (Malvinas) — 7 reports requested

· All reports received: Conventions Nos. 14, 29, 45, 82, 87, 98, 105

United Kingdom - Isle of Man — 5 reports requested

(Paragraph 31)

· All reports received: Conventions Nos. 2, 87, 98, 122, 151

Zambia — 19 reports requested

(Paragraph 27)

· 5 reports received: Conventions Nos. 100, 111, 135, 148, (182)
· 14 reports not received: Conventions Nos. 87, 98, 105, 117, 122, 136, 141, 144, 149, 151, 154, 159, 173, 176

Grand Total

A total of 2,569 reports (article 22) were requested,
of which 1,852 reports (72.09 per cent) were received.

A total of 331 reports (article 35) were requested,
of which 303 reports (91.54 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions as of 16 June 2005

(article 22 of the Constitution)

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

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%

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

Observations and Information

(a) Failure to submit instruments to the competent authorities

The Employer members said that the obligation to submit instruments adopted by the International Labour Conference to the competent authorities arose from the ILO Constitution and that the term "competent authorities" normally referred to the legislature. This obligation involved two important elements. The first was the obligation to inform employers and workers, which derived from the ILO Constitution, and to consult them, in the case of countries that had ratified Convention No. 144. The second was the obligation to inform the competent authorities, sometimes accompanied by proposals in which governments expressed their views, it being understood that this did not imply the obligation to ratify a Convention or accept a Recommendation. They could even submit a Convention to the competent authorities and recommend that the Convention that was being submitted not be ratified, and compliance with this obligation therefore should not pose any problems. They urged governments to comply with this obligation and, if necessary, to request ILO technical assistance.

The Worker members emphasized that the obligation to submit instruments to the competent authorities constituted one of the fundamental mechanisms of the ILO system. It helped in strengthening relations between the ILO and national authorities, promoting the ratification of Conventions and in stimulating the tripartite dialogue at the national level. It was important for the Committee of Experts to explain the nature of this obligation and the means by which it was to be fulfilled. They emphasized that submission did not involve the obligation by governments to propose the ratification of the Conventions or the acceptance of the Recommendations under consideration. They expressed their concern at the great backlog built up by certain countries and the resulting difficulties in making it up. They hoped that the Committee would urge the governments of Member states to comply with this obligation and remind them of the possibility of having recourse to technical assistance for this purpose.

A Government representative of Cambodia said that the new Ministry of Labour, with the technical assistance of the ILO, would make every effort to submit to the competent authorities the instruments adopted from the 82nd to the 91st Sessions of the Conference.

The Employer members regretted that only one Government representative had provided information of any sort to explain its failure to submit instruments to the competent authorities. It was therefore necessary to reiterate the fact that submission did not imply ratification, but was an obligation that member States could and had to comply with and they therefore urged them to do so.

The Worker members indicated that the procedure in question should not give rise to problems in countries with a democratic system. It was clear that ILO instruments had to be submitted to the competent authorities. While noting the work of the Governing Body in revising the Memorandum concerning the obligation of submission, they hoped that the Memorandum would be widely distributed and, in particular, used to improve the situation and ensure that ILO instruments were submitted to the competent authorities.

The Committee noted the information and verbal explanations provided by the sole Government representative to have taken the floor. The Committee regretted that the countries listed, namely, Afghanistan, Armenia, Cambodia, Haiti, Lao People's Democratic Republic, Sierra Leone, Solomon Islands, Somalia, Turkmenistan and Uzbekistan, had not sent any information in this respect and urged them to supply reports in the near future containing information on the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee expressed deep concern at the delays and failures to submit instruments, and at the increase in the number of such cases, as these were obligations derived from the Constitution and were essential for the effectiveness of standards-related activities. In this respect, the Committee reiterated that the ILO could provide technical assistance to contribute to compliance with this obligation. The Committee decided to mention all the above cases in the appropriate section of the General Report.

(b) Information received

Djibouti. The ratification of Convention No. 182, adopted at the 87th Session of the Conference (1999), was registered on 28 February 2005.

Latvia. The instruments adopted by the Conference at the last ten sessions (from the 81st to the 91st Sessions) have been submitted, on 4 June 2004, to the Parliament of the Republic of Latvia.

Sao Tome and Principe. 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 4 May 2005.

III. REPORTS ON UNRATIFIED CONVENTIONS, RECOMMENDATIONS (ARTICLE 19 OF THE CONSTITUTION)

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

The Worker members recalled that article 19 of the ILO Constitution established the obligation for member States to supply reports on unratified Conventions and Recommendations. These reports served as a basis for the drafting of general surveys and gave an overview of the obstacles that might prevent States from ratifying Conventions. The reports also showed whether standards were still adapted to the economic and social situation. This year, in the context of the General Survey, governments had had to supply reports concerning Conventions Nos. 1 and 30 on hours of work. In this regard, it was regrettable that only 52.57 per cent of the reports requested had been supplied. The Worker members emphasized that over the past five years too many countries had not fulfilled the obligation to supply reports on unratified Conventions and on Recommendations and urged the governments concerned to comply with article 19 of the ILO Constitution.

The Employer members said that the supply of reports on unratified Conventions was of great importance for the Committee of Experts to be able to prepare general surveys and examine the extent to which national law and practice were in accordance with the instruments concerned. They emphasized that cases of failure to submit reports in the last five years on unratified Conventions and on Recommendations should not give rise to problems in practice. They urged governments to comply with their obligations or, where appropriate, to explain the reasons why they had not been able to do so.

A Government representative of the Congo assured the Conference Committee of the commitment of his Government to comply with its constitutional obligations. In this respect, the Congo had ratified all the fundamental Conventions and last year reports on Conventions Nos. 13, 14, 26, 29, 81, 87, 89, 95, 98, 100, 105, 111, 119, 138, 144, 149, 150, 152 and 182 had been sent to the Office, thereby complying with the provisions of article 22 of the ILO Constitution. With regard to the supply of reports on unratified Conventions and on Recommendations, his country took due note of the comments made by the Committee of Experts. While indicating that his Government would take all the necessary measures as rapidly as possible to resolve this situation, he noted that one of the reasons for the failure to comply with this obligation was the change of government in his country.

A Government representative of the Dominican Republic invited the secretariat to take a careful look at the reasons for including the Dominican Republic on the list of countries which for the past five years had not submitted any of the reports requested for the preparation of the General Survey. He indicated that his country had ratified Convention No. 122, which had been the subject of the General Survey the previous year, and which indicated that the information provided by his Government had been examined by the Committee of Experts in the context of articles 19 and 22 of the ILO Constitution. Furthermore, information on his country had been included on 54 occasions in the General Survey of 2003 on the protection of wages. It would therefore be presumptuous to consider that his country had not met its obligations under article 19 of the Constitution. He asserted that his country complied with its obligations related to reporting and submission and responded to the Office's other requests, which was why he was surprised that his country had been included in the group of countries listed for non-compliance. Finally, he emphasized the importance of the ratification of the ILO's fundamental Conventions and their full implementation by the authorities and social partners.

A Government representative of Uganda stated that it was regrettable that his Government had not been able to supply the reports requested. He added that his Government had sought technical clarifications and guidance from the Office with respect to its obligations regarding the submission of these reports. The situation had now been settled, and his Government would, in the course of the first week of July 2005, supply reports on Convention No. 81, the Protocol of 1995 to Convention No. 81, Recommendations Nos. 81 and 82, Convention No. 129 and Recommendation No. 133.

A Government representative of Zambia referred to his previous statement in which he had deeply regretted that his Government had encountered difficulties in fulfilling its obligations to submit reports on time. He recalled that this was due to the restructuring of the Ministry of Labour, which had taken much longer than expected, and which had resulted in the early retirement of those officials who had been responsible for reporting to the ILO. However, the Ministry was now taking the necessary steps, with the assistance of the local ILO Office, to prepare these reports as soon as possible, and it would start training the new officials in the very near future.

The Worker members regretted that the statements made by Government representatives had not provided much new information on the reasons for their failure to supply reports. The Committee should therefore urge governments to comply fully with this obligation established by the ILO Constitution, thereby allowing the Committee of Experts to prepare complete general surveys.

The Employer members thanked the representatives of the four Governments which had presented additional information, but pointed out that this information had not provided any further significant elements. In one case, reference had been made to a change of government, in another to the restructuring of the Ministry of Labour, in a third to an error in relation to the receipt of the reports, and in another to the need for ILO technical assistance. They urged member States to collaborate in complying with this basic obligation and, where appropriate, to explain any difficulties encountered and the reasons for their failures to comply, as this would help to determine how attuned the instruments were to the situation at the national level.

The representative of the Secretary-General, in response to the statement by the Government member of the Dominican Republic, said that following a verification of the relevant files she could confirm that none of the reports due from his country for the past five years on unratified Conventions and on Recommendations had been received by the Office. She added that, with a view to the preparation of general surveys that were as complete as possible, in cases where it was not supplied directly by the government, the Office endeavoured to find information that was available on the countries concerned. She indicated that the Office was prepared to discuss with the Government any difficulties that it was encountering in this regard.

The Committee noted the information and explanations provided by the Government representatives who had taken the floor. The Committee emphasized the importance that it attached to the constitutional obligation of supplying reports on unratified Conventions and on Recommendations. Such reports made it possible to evaluate the situation more fully in the context of the general surveys prepared by the Committee of Experts. The Committee urged all member States to comply with their obligations in this respect and expressed the firm hope that the Governments of Afghanistan, Bosnia and Herzegovina, Congo, Democratic Republic of the Congo, Dominican Republic, Guinea, Guyana, Kazakhstan, Kyrgyzstan, Liberia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Uganda, Uzbekistan and Zambia would comply in future with their obligations under article 19 of the Constitution. The Committee reaffirmed the availability of the Office to provide technical assistance to help in complying with these obligations. The Committee decided to mention these cases in the appropriate section of its General Report.

The Worker members indicated that the present situation was a matter of concern as it involved serious breaches of constitutional obligations. Governments needed to make all possible efforts to fulfil their obligations. They called for a discussion to be held on the methods of work relating to cases of serious failure of member States to respect their obligations to supply reports and other standards-related obligations so as to prepare for the next session of the Committee on this issue.

The Employer members agreed with the Worker members that the failure of member States to respect their reporting or other standards-related obligations constituted a serious failure in the system in general. It was necessary to improve the procedures followed by the Conference Committee concerning these cases and for the Committee of Experts to provide fuller information, on a country-by-country basis, on why such failures in reporting were occurring, as well as on cases in which assistance was being provided. In their view, it would not be possible to solve these problems until the underlying reasons for non-compliance with reporting and other obligations were known and understood.

The representative of the Secretary-General, in response to the discussion, indicated that the Office had taken note of the suggestions made by the Employer and Worker members. The Office would examine once again the information made available to the Conference Committee with a view to providing it with much fuller information

next year. The countries concerned would be asked to provide explanations on the specific reasons which had prevented them from fulfilling their obligations, whether they were of an institutional, political or other nature, so that technical assistance could be provided to help overcome such obstacles. It was to be hoped that this process could be undertaken in consultation with the Officers of the Committee and that the information provided would allow the Conference Committee to engage in a fuller discussion of the important issues arising out of cases of serious failure by member States to respect their reporting or other standards-related obligations.

(b) Information received

Since the meeting of the Committee of Experts, reports on unratified Conventions and on Recommendations have subsequently been received from the following countries: Cameroon, Mali, Mongolia, Slovakia and St. Vincent and the Grenadines.

(c) Reports received on unratified Conventions Nos. 1 and 30 as of 16 June 2005

In addition to the reports listed in Appendix VII on page 135 of the Report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following countries: Barbados, Mongolia, Slovakia and Trinidad and Tobago.

INDEX BY COUNTRIES TO OBSERVATIONS AND INFORMATION CONTAINED IN THE REPORT