

CONFERENCE COMMITTEE ON THE  
APPLICATION OF STANDARDS

EXTRACTS FROM THE  
RECORD OF PROCEEDINGS



# INTERNATIONAL LABOUR CONFERENCE

ONE HUNDRED AND SECOND SESSION  
GENEVA, 2013

## COMMITTEE ON THE APPLICATION OF STANDARDS AT THE CONFERENCE

### EXTRACTS FROM THE RECORD OF PROCEEDINGS

- GENERAL REPORT
- OBSERVATIONS OF THE COMMITTEE OF EXPERTS  
ON THE APPLICATION OF CONVENTIONS AND  
RECOMMENDATIONS – INDIVIDUAL CASES
- OBSERVATIONS AND INFORMATION CONCERNING  
PARTICULAR COUNTRIES
- SUBMISSION, DISCUSSION AND APPROVAL

INTERNATIONAL LABOUR OFFICE  
GENEVA

ISBN 978-92-2-128007-1 (print)  
ISBN 978-92-2-128008-8 (Web pdf)

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*First edition 2013*

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Formatted by TTE: reference ILC102(2013)-Record of Proceedings-NORMES-[NORME-130927-6]-En.docx  
Printed by the International Labour Office, Geneva, Switzerland

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## Foreword

The Conference Committee on the Application of Standards, a standing tripartite body of the International Labour Conference and an essential component of the ILO's supervisory system, examines each year the report published by the Committee of Experts on the Application of Conventions and Recommendations. Following the technical and independent scrutiny of government reports carried out by the Committee of Experts, the Conference Committee provides the opportunity for the representatives of governments, employers and workers to examine jointly the manner in which States fulfil their obligations deriving from Conventions and Recommendations. The Officers of the Committee also prepare a list of observations contained in the report of the Committee of Experts on which it would appear desirable to invite governments to provide information to the Conference Committee, which examines over 20 individual cases every year.

The report of the Conference Committee is submitted for discussion by the Conference in plenary, and is then published in the *Provisional Record*. Since 2007, with a view to improving the visibility of its work and in response to the wishes expressed by ILO constituents, it has been decided to produce a separate publication in a more attractive format bringing together the usual three parts of the work of the Conference Committee. In 2008, in order to facilitate the reading of the discussion on individual cases appearing in the second part of the report, it was decided to add the observations of the Committee of Experts concerning these cases at the beginning of this part. This publication is structured in the following way: (i) the General Report of the Conference Committee on the Application of Standards; (ii) the observations of the Committee of Experts on the Application of Conventions and Recommendations concerning the individual cases selected by the Conference Committee; (iii) the report of the Committee on the Application of Standards on the individual cases; and (iv) the report of the Committee on the Application of Standards: Submission, discussion and approval.



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REPORT OF THE COMMITTEE ON THE  
APPLICATION OF STANDARDS

GENERAL REPORT





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

**Report of the Committee on the Application of Standards**

PART ONE

GENERAL REPORT

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## A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 220 members (126 Government members, five Employer members and 89 Worker members). It also included three Government deputy members, 76 Employer deputy members, and 161 Worker deputy members. In addition, 19 international non-governmental organizations were represented by observers.<sup>1</sup>

2. The Committee elected its Officers as follows:

*Chairperson:* Ms Noemí Rial (Government member, Argentina)

*Vice-Chairpersons:* Ms Sonia Regenbogen (Employer member, Canada); and  
Mr Marc Leemans (Worker member, Belgium)

*Reporter:* Mr David Katjaimo (Government member, Namibia)

3. The Committee held 16 sittings.

4. In accordance with its terms of reference, the Committee considered the following: (i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference; (ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Labour Relations (Public Service) Convention, 1978 (No. 151), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), the Collective Bargaining Convention, 1981 (No. 154), and the Collective Bargaining Recommendation, 1981 (No. 163).<sup>2</sup>

### Opening statements of Vice-Chairpersons

5. The Employer members stressed the important role of international labour Conventions, and highlighted that the supervisory system was the heart and soul of the ILO to which the Employer members continued to give their full support. While noting the key role of the Committee of Experts and the Conference Committee – the two pillars of the supervisory system – the Employer members reaffirmed that tripartite governance was necessary to ensure the system’s relevance and sustainability. Referring to last year’s Conference, the Employer members raised concerns which still needed to be addressed to maintain the system’s relevance and credibility. In this regard, they were pleased to note the statement

<sup>1</sup> For changes in the composition of the Committee, refer to reports of the Selection Committee, *Provisional Records* Nos 3 to 3J. For the list of international non-governmental organizations, see *Provisional Record* No. 2-3.

<sup>2</sup> Report III to the International Labour Conference – Part 1AI: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1AII: Information document on ratifications and standards-related activities; Part 1B: General Survey concerning labour relations and collective bargaining in the public service.

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by the representative of the Secretary-General of the vital role of this Committee as the main ILO tripartite supervisory body in maintaining and strengthening the ILO standards system. Moreover, they welcomed her statement concerning the importance of a credible supervisory system, that had the support of the tripartite constituents.

6. They explained that after last year's Conference, they noted the following several outstanding issues: the mandate of the Committee of Experts, particularly its scope and the manner in which it was communicated and expressed; and the interpretation given to the right to strike as a component of Convention No. 87. The Employer members were hopeful that these issues would be resolved and in this respect, stated that they would propose a number of measures which would help to make the standards supervision more effective, relevant and sustainable.
7. The Worker members indicated that it was difficult not to go back over the events that had affected the Conference Committee's work in 2012 since, for the workers present, they had given rise to feelings of frustration on several counts. Firstly, many workers had been unable to expose the violations of the rights guaranteed to them by the ILO Conventions and had gone home fearing reprisals. Secondly, some governments had construed the impasse as fostering impunity regarding their use of the economic crisis as a pretext for their refusal to apply international rules. Academic circles and certain international bodies, such as the European Committee on Social Dialogue, had wondered about the consequences of the failure of the Conference Committee's work. Nevertheless, the Worker members welcomed the fact that many governments concerned by the preliminary list of cases had submitted their reports to the Committee of Experts, as requested at the end of the previous year's session of the Conference, on developments in the situation in their respective countries.
8. The Worker members hoped that a solution would be found to the impasse in the supervisory system and recalled that employers needed workers and their representatives to guarantee social peace, which was the only way to ensure an economy geared to growth, maintaining quality of employment and a balance of everyone's needs. The parties concerned had held several informal tripartite consultations in September 2012 and February 2013, and the ILO Governing Body had noted their commitment towards pursuing such discussions. The meeting between the Employer and Worker Vice-Chairpersons and the Committee of Experts had also enabled a calm discussion of each party's concerns and objectives for an effective and efficient supervisory mechanism.
9. The Worker members expressed the wish for an acceptable and balanced tripartite solution to be found in order to preserve the role of the ILO as a standard-setting organization having sufficient powers to ensure the application in law and in practice of the standards that it had created. They recalled the ILO Director-General's statement that a supervisory system that lacked the necessary credibility and authority and the support of all parties would not allow the ILO to discharge its core duties. The Worker members indicated that constructive meetings had been held between the Employers and Workers to determine the list of individual cases, which should ensure that the Conference Committee functioned normally this year.
10. However, for the Worker members, it was imperative that all Conventions could be discussed, taking into account, as usual, both a geographic and a thematic balance. The cases would therefore cover the application of the fundamental and priority Conventions as well as those more technical Conventions which related to the current social and legislative climate of the countries referred to in the Committee of Experts' report. The Worker members thus recalled that the right to strike is the workers' ultimate means of exerting pressure to achieve respect of their rights. This right could give rise to understandable reactions. The fact remained, however, that any list excluding discussions on the



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application of Convention No. 87 was totally impossible, as that Convention related to fundamental rights which must be guaranteed for both workers and employers. The Worker members thus considered it important that the individual cases on which an agreement would be reached be discussed calmly, as requested several times by the governments themselves.

11. The Worker members also emphasized the importance for the Committee of adopting conclusions, shared by both Workers and Employers, which were clear, relevant and able to be implemented by the governments concerned. To that end, efforts had to be made by both groups to ensure that the conclusions were adopted by consensus, even if the related discussions were long and difficult. Disagreement over the conclusions would send a negative message to States that were unwilling to ratify or apply the ILO Conventions.
12. The Worker members, recalling that the supervisory system was based on the principle of mutual supervision among ILO member States in order to prevent unfair competition, considered that the diverging opinions regarding the exact mandate of the Committee of Experts must not lead to the destruction of a system which functioned better than any international system based on financial, economic or penal sanctions.
13. The Worker members recalled that the work of the Committee of Experts was a decisive part of the tripartite oversight of the application of standards that began with the Governing Body, itself a tripartite body, which had the duty to approve report forms under the ILO Constitution. The work of the Committee of Experts should be as much the result of the involvement of governments as of employers and workers in the process of submitting reports and comments from the social partners on the application of Conventions. As for the role of workers' organizations in the supervisory process, the Worker members observed that effort was needed on their part to provide up-to-date, properly substantiated and documented information on States' application of ratified Conventions. The attention of workers' organizations would be drawn to that in order to strengthen the work of the Committee of Experts.

## **Work of the Committee**

14. In accordance with its usual practice, the Committee began its work with a discussion on general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. In this part of the general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations and to the information document on ratifications and standards-related activities. During the first part of the general discussion, the Committee also considered its working methods with reference being made to a document submitted to the Committee for this purpose.<sup>3</sup> A summary of this part of the general discussion is found under relevant headings in sections A and B of Part One of this report.
15. The second part of the general discussion dealt with the General Survey concerning labour relations and collective bargaining in the public service carried out by the Committee of Experts. It is summarized in section C of Part One of this report. The final part of the general discussion considered the report on Teaching Personnel of the Joint ILO–UNESCO Committee of Experts. This discussion is set out in section D of this report.

<sup>3</sup> Work of the Committee on the Application of Standards, ILC, 102nd Session, C.App/D.1 (see Annex 1).

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16. Following the general discussion, the Committee considered various cases concerning compliance with obligations to submit Conventions and Recommendations to the competent national authorities and to supply reports on the application of ratified Conventions. Details on these cases are contained in section E of Part One of this report.
  17. The Committee did not hold a special sitting to consider the application of the Forced Labour Convention, 1930 (No. 29), by Myanmar, as in previous years, because following the recommendation made by the Governing Body in March 2013, the Conference had suspended paragraph 1(a) of its 2000 resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution.<sup>4</sup>
  18. The Committee considered 25 individual cases relating to the application of various Conventions, as well as one case of progress. The Committee noted with regret that it was unable to discuss the case of progress relating to the application by Rwanda of the Minimum Age Convention, 1973 (No. 138), since the Government did not accredit its delegation to the Conference. The examination of the individual cases was based principally on the observations contained in the Committee of Experts' report and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions once again required the Committee to select a limited number of individual cases among the Committee of Experts' observations. With reference to its examination of these cases, the Committee reiterated the importance it placed on the role of tripartite dialogue in its work and trusted that the governments of all those countries selected would make every effort to take the measures necessary to fulfil the obligations they had undertaken by ratifying Conventions. A summary of the information submitted by Governments, the discussions, and conclusions of the examination of individual cases are contained in Part Two of this report.
  19. With regard to the adoption of the list of individual cases to be discussed by the Committee, the Chairperson of the Committee announced that the final list of individual cases was now available.<sup>5</sup>
  20. Following the adoption of the final list of individual cases by the Committee, the Worker members recalled that the Worker members and Employer members, who had been negotiating for several weeks in order to draw up a list of individual cases, had committed, from the outset of the negotiations, to the adoption of a list so as to enable this Committee to effectively fulfil its work. As recalled by the Employer members, the ILO supervisory system was indeed at the heart of the Organization's work. This system was essential for the preservation and advancement of workers' rights and worked better than any economic or financial sanctions. The question of the mandate of the Committee of Experts was to be dealt with in other forums, since the priority task of this Committee was to examine 25 individual cases. As reiterated by the representative of the Secretary-General, the Committee's duty was to evaluate the measures taken by member States to implement ratified Conventions and to take note of progress achieved. Stressing the prominent role of this Committee, the Worker members expressed their willingness to work for the maintenance of the ILO standards system.

<sup>4</sup> *Provisional Record* No. 2-2, para. 51(a).

<sup>5</sup> ILC, 102nd Session, Committee on the Application of Standards, C. App. /D. 6 (see Annex 2).

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21. Regarding the selection of the 25 individual cases, the Worker members indicated that the most serious cases (also known as “double footnoted cases”), identified by the Committee of Experts according to the criteria referred to in paragraph 69 of its report, must be taken into account. In this regard, an agreement was reached with the Employer members on the selection of the four “double footnoted cases” for 2013, as well as of the five “double footnoted cases” for 2012, as they had not been examined last year. Making a selection from the preliminary list of 40 cases established in May 2013 had not been an easy task, as the preliminary list was already the result of a delicate compromise. A first selection through a transparent procedure involving workers from five continents in order to best reflect the challenges they faced on the ground, had resulted in the identification of 50 cases. These cases had then been compared to those that had been selected by the Employer members to arrive at a final list of 25 cases.
  22. However, the Worker members stressed that, in order to accomplish the list of 25 cases, they had to renounce the inclusion of the case of Colombia on the application of Convention No. 87, of the case of Brazil on the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and of the case concerning the trade union situation in Algeria, among others. Regarding Colombia, the Worker members informed the Committee of the assassination on 5 June 2013 of two CGT leaders by the FARC and the serious injuries inflicted on a third CGT leader. They also recalled the serious acts of violence and threats directed against the leaders of the CTC, the CUT and the CGT, all present in this Committee. In 2012, 20 trade unionists had been murdered and, despite some real progress, much remained to be done to implement the conclusions of the mechanisms of the ILO. Even if a commitment existed regarding the establishment of a tripartite process during this Conference under the aegis of the ILO, the inclusion on the list of individual cases of Colombia would have permitted to evaluate the results achieved and to determine the next steps to eventually ensure the full implementation of Convention No. 87. The Worker members further underlined that, in its report, the Committee of Experts had examined the application of Convention No. 169 in ten countries, mostly located in Latin America. In the light of the issue of the exploitation of resources of land occupied by indigenous peoples who were facing particular discrimination, the Worker members expressed their desire to see the application of Convention No. 169 soon being considered by this Committee. They also stated that the difficult situation faced by independent trade unions in Algeria would have deserved to be addressed.
  23. The Employer members stated that, following the events that had taken place in the Committee last year, they had committed, as a show of good faith, to reaching an agreement on the final list of cases to be discussed. The Employer members had delivered on that commitment with the negotiation of the list that was before the Committee. While also regretting that certain cases could not be included in the final list, they would not outline detailed arguments about the cases that they would have liked to be supervised. Instead, with a view to approaching the issue in a constructive manner, the Employer members were looking forward to engaging in a constructive and positive discussion within the Committee and to hearing the important submissions from tripartite partners with respect to the cases being examined. The Employer members stated that they had the honour and the privilege to accept the list of 25 cases that the Committee would consider.
  24. Following the adoption of the list of individual cases to be discussed by the Committee, the Employer and Worker spokespersons conducted an informal briefing for Government representatives.

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## Working methods of the Committee

25. The Chairperson announced, in accordance with Part V(E) of document D.1, the time limits for speeches made before the Committee. These time limits were established in consultation with the Vice-Chairpersons and it was the Chairperson's intention to strictly enforce them in the interest of the work of the Committee. The Chairperson also called on the members of the Committee to make every effort so that sessions started on time and the working schedule was respected. Finally, the Chairperson recalled that all delegates were under the obligation to abide by parliamentary language. Interventions should be relevant to the subject under discussion and be within the boundaries of respect and decorum.
26. The Government member of Colombia, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), highlighted the importance of document D.1, which described how the work of the Committee should be conducted.
27. With regard to paragraph I(v), on "Automatic registration of individual cases: Modalities for selecting the starting letter for the registration of cases", GRULAC recalled that, as stated in the document, there had not been consensus on that paragraph. She recalled and endorsed the opinion of GRULAC at the informal tripartite consultations of the Working Group on the Working Methods of the Conference Committee on the Application of Standards, held in November 2011, at which GRULAC had indicated that it supported the implementation of a system in which the starting letter for the registration of individual cases was determined by drawing lots. That system was, in its opinion, more objective, fair and transparent. GRULAC had pointed out that the lots could be drawn at ILO headquarters, well in advance of the start of the Conference, in the presence of the secretariats of the Employers' and Workers' groups and the Regional Coordinators. At that time, the members of GRULAC had agreed, solely in order to maintain the consensus that had been reached, that the Office proposal should be implemented on an experimental basis for the 2011 Conference, always leaving open the possibility of amending the experimental system as of 2012. She stated that, as everyone was aware, that system was currently still in operation on an experimental basis, but that did not mean that GRULAC had withdrawn its proposal. The GRULAC proposal respected the principles of increased transparency and objectivity, and there was a constant need to strive to improve the working methods of the Committee.
28. As for paragraph I(vi), GRULAC confirmed its position, which was well known and which it had explained in the different settings that had provided it with an opportunity to make its case. Pointing out that the wording was that which had been agreed on by GRULAC in its statement delivered at the 317th Session of the Governing Body (March 2013), she reiterated that:

The results of the discussions of the Working Group on the Working Methods of the Conference Committee on the Application of Standards should unquestionably be brought to the attention of the Working Party of the Governing Body, which has been examining all issues related to the Conference with great competence.

29. She recalled that specific reference was made to that fact in the report of the Working Party to the 312th Session of the Governing Body in November 2011. This report indicated that "it was noted that the work of the Working Group on the Working Methods of the Conference Committee on the Application of Standards overlapped with the mandate of the Working Party, and that therefore the conclusions of the Working Group should be brought to the Working Party's attention" (GB.312/INS/13, paragraph 3).
30. She emphasized that this position, held mainly by GRULAC, was supported by the favourable legal opinion of the Office, according to document GB.313/WP/GBC/1 (March 2012). The Office stated that the issues dealt with by the tripartite Working Group

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of the Committee on the Application of Standards of the Conference “exceeded (i.e., went over and above) the matters covered by the provisions of Section H of the Standing Orders of the Conference”. The Office also stated that “the outcome of the work of the Working Group which has already been adopted by the Conference Committee and thus by the ILC can be submitted to this Working Group for review for any Standing Orders’ implications that it may have”.

31. She stressed that it should be kept in mind that it was not only GRULAC’s opinion that she was reiterating, since it was known that when the creation of the Working Party of the Governing Body was agreed to – with a formal structure and with broad responsibilities and terms of reference – no reservation had been expressed regarding any subject or any Conference Committee. For that reason she reaffirmed that GRULAC regretted having to repeat the same points when it was aware that within the tripartite structure it was committed to making comprehensive improvements to the Conference, without dismissing weaknesses or problems which should be addressed responsibly, with the aim of protecting the reputation, responsibility, credibility, transparency, tripartite balance and good use of the time assigned to this Committee, and consequently of the Conference.
32. As always, GRULAC would, if necessary, carefully follow up on all aspects related to the important subjects referred to above regarding the smooth functioning of the Committee. In view of these points, GRULAC supported the adoption of document D.1 on the working methods of the Committee.

## **B. General questions relating to international labour standards**

### **General aspects of the supervisory procedure**

#### ***Statement by the representative of the Secretary-General***

33. First of all, the representative of the Secretary-General recalled that this Committee had had a long-standing practice of focusing its discussions on a list of individual cases proposed by the representatives of the Employers and representatives of the Workers. Last year, the Committee had not been able to complete its mandate as a list had not been agreed upon. However, three important issues had arisen out of the Committee’s 2012 discussion: the process for selection of the list of cases; the status of comments by the Committee of Experts on the right to strike in assessing the implementation of Convention No. 87; and the mandate of the Committee of Experts with respect to the interpretation of Conventions when evaluating their application, and, in that regard, the relationship between the Committee of Experts and this Committee.
34. The decision taken by the Conference, upon the Committee’s recommendation, had resulted in a series of tripartite consultations and discussions in the Governing Body in November 2012 and March 2013, led by the Officers of the Governing Body, with the active support of the Director-General. The Committee of Experts had at its session in November–December 2012, devoted a significant part of its discussions to this issue, including an exchange of views with the Vice-Chairpersons of this Committee. Moreover, at the invitation of the Officers of the Governing Body, members of the Committee of Experts had exchanged views with constituents during the informal tripartite consultations held in February 2013. Furthermore, regarding the process for establishing the list of individual cases to be considered by the Committee at this session, progress had been

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achieved under other arrangements agreed upon between the Employer and Worker members.

35. In addition, the speaker indicated that the working methods of the Committee had been raised within the context of the broader discussion on the reform of the Conference process, held by the Working Party established by the Governing Body. The tripartite Working Group, set up by this Committee to discuss its working methods, had suggested at its last meeting in November 2011, that it might be reconvened, to follow up as necessary upon questions raised by the Working Party of the Governing Body. This matter could be considered by the Committee.
36. The speaker highlighted that the issues arising out of the Committee's 2012 report were primarily of an institutional and procedural nature. These issues were of critical importance to the ILO in terms of its role as a forum for effective international social dialogue with a view to developing and implementing international labour standards for decent work with sustainable economic development. As evidenced in the numerous papers and reports relating to the Committee's discussion in 2012, this had resulted in extensive tripartite reflection and discussion both informally and in the Governing Body. This could also serve as a possible precedent for more frequent exchanges in the future between the representatives of this Committee and the Committee of Experts.
37. The speaker underlined that there were certainly many matters left to discuss and resolve, including the question of the relationship between the interpretation and the application of Conventions and other matters related to the functioning of the supervisory system. However, this challenging year had led, and could continue to lead, to some useful outcomes and changes in practice. One of the important and most sustainable characteristics of the ILO as an organization was that it had been built, and maintained relevant, because of such conflicts, which reflected contemporary debates and concerns.
38. Turning to the way forward, the speaker highlighted that the constituents had agreed that having an authoritative and credible system, which enjoyed the support of all actors in the ILO, was absolutely essential to the future of the Organization. In addition, there was a clear commitment to ensure not only the preservation of the ILO standards system, but also its strengthening, through a tripartite process. This Committee, as the main ILO tripartite supervisory body, had the key role.
39. Regarding the General Survey of the Committee of Experts concerning labour relations and collective bargaining in the public service, the speaker recalled that its discussion would complement the 2012 discussion concerning fundamental principles and rights at work and the eight fundamental Conventions. The General Survey highlighted the difficulties encountered by workers in the public service as regards the right to freedom of association and collective bargaining. Meaningful social dialogue was underpinned by freedom of association and collective bargaining. Public service employees were an important workforce in ILO member States. Over the last decade, their conditions of work had undergone substantial changes, which in many countries had reduced the distinction between public service employees and those in the private sector. The significance of these changes had led the Employer members to propose the public sector as an item to be placed on the agenda of future sessions of the Conference.
40. Under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization (2008 Social Justice Declaration), the topic of the General Surveys had been aligned with the strategic objective to be discussed by the Conference in the context of its recurrent discussions, which this year was on social dialogue. This Committee would interact with the Committee for the Recurrent Discussion on Social Dialogue (CDS) and the outcome of

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the Committee's discussion on the General Survey would feed into the discussion of the CDS.

41. The speaker underlined that greater coordination of ILO activities had become a key component of ILO governance. At its March 2013 session, the Governing Body had decided to place two standard-setting items on the agenda of the Conference in 2014: one related to supplementing Convention No. 29; and the second concerning facilitating transitions from the informal to the formal economy. The Employer members had taken the initiative of proposing this latter item, which had been actively supported by the Worker members. This issue had also been addressed in 2012 in the recurrent item discussion, and the Conference's conclusions had referred to the organization of a meeting of experts on advancing fundamental principles and rights at work in the informal economy. These had been the seeds for the upcoming Tripartite Meeting of Experts on Facilitating Transitions from the Informal Economy to the Formal Economy, to be held in September 2013 as part of the preparatory process for the Conference discussion in 2014.
42. Turning to the question of the observance by Myanmar of Convention No. 29, the speaker recalled that there would be no special sitting of the Committee on this question, which was a significant development. The observance by Myanmar of Convention No. 29 had involved the most comprehensive combination of procedures available in the ILO's supervisory system, encompassing consideration by the Committee of Experts and this Committee, an article 24 representation with a referral to a tripartite committee, an article 26 complaint with a referral to a Commission of Inquiry, a resolution by the Conference in relation to the previously unused article 33 of the Constitution, and the establishment of a special sitting of this Committee to discuss the country's observance of the Convention. This case illustrated the importance, as well as the capacity, of tripartism and social dialogue in ensuring the impact of the supervisory system. It had been information and pressure from the trade union movement that had triggered consideration of the issue and ensured the continued progression of the matter through the various supervisory mechanisms. It was also a unique case, as the Governing Body took a leading role in following up on the implementation of the recommendations of the Commission of Inquiry. This case demonstrated that a great deal could be achieved for the advancement of labour rights when there was a comprehensive institutional response from the ILO backed by tripartite consensus.
43. Looking to the future, the speaker pointed to two instruments among the ILO body of standards for their relevance to the future orientation of the ILO standards policy, one of the pillars of a strengthened ILO standards system. Firstly, the Maritime Labour Convention, 2006 (MLC, 2006) which would enter into force on 20 August 2013, established minimum international standards for working and living conditions for seafarers. The countries that had thus far ratified it represented nearly 70 per cent of the world's gross tonnage of ships. This ambitious instrument took over the essence of 37 of the maritime labour Conventions adopted since 1920 and the related 31 Recommendations. The Convention contained requirements for ratifying Members to have a strong enforcement system to help ensure protection of seafarers' rights and compliance with the standards in this Convention, in particular its enforcement by all ratifying countries even with respect to foreign ships from non-ratifying countries.
44. To enable such a comprehensive Convention to secure the widest possible acceptability among governments, shipowners and seafarers, the MLC, 2006, relied on several novel features, including: devices that gave national legislators considerable discretion as to matters of detail, while still ensuring that the rights and principles laid down in all the areas covered by the Convention were properly implemented; giving a role in the enforcement process to the seafarers (through various complaint-handling systems) and to shipowners, who were given discretion in deciding how they would ensure that the details of the

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Convention were effectively implemented on their ships; strengthening national labour inspections through national ship certification systems that would help to concentrate national resources on the inspection of substandard ships; a simplified amendment procedure to ensure that the details of the Convention were kept up to date; and the elaboration of the Convention followed by its adoption with no votes against, through a continual process of tripartite dialogue based on consensus and freely made concessions. These novel features in the MLC, 2006, may be considered for the purpose of designing ILO standards that meet the requirements of the 2008 Social Justice Declaration.

45. The second recent instrument from which lessons could be drawn was the Social Protection Floors Recommendation, 2012 (No. 202). The preparation and adoption of this Recommendation had often been cited by constituents as an example of good institutional practice. With more than 5 billion people lacking adequate social security, the Recommendation called for the provision of essential health care and benefits, as well as basic income security constituting national social protection floors and recommended the implementation of social protection floors as early as possible in national economic development. There were many positive examples in Latin America, Asia and Africa that showed that some social protection for all was affordable nearly everywhere. The Recommendation explicitly stated that people employed in the informal, as well as the formal economy should benefit from social security. This would be an important element in the first discussion in 2014 of the standard-setting item on facilitating transitions from the informal to the formal economy. Aside from the ILO context, this Recommendation had sent a strong message regarding the need to extend social protection despite the ongoing economic crisis. Social protection floors were increasingly recognized as important tools for policy coherence both at the international and national levels.
46. The speaker highlighted that many other important complementary activities were ongoing to achieve on-the-ground change, particularly with regard to technical cooperation through the Decent Work Country Programmes and capacity-building programmes, including through the International Training Centre of the ILO in Turin. She noted the important work carried out by the Committee on Freedom of Association (CFA). This body had occasionally been called upon to examine complaints which could have been resolved through a rapid and effective intervention at the national level. To address this, mechanisms had been set up to offer mediation on the basis of the acceptance and attendance of the parties involved. This had been the case in Colombia, with the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT), which had not only allowed solutions to be found to problems already raised in formal complaints to the CFA, but had also enabled complaints of violations of freedom of association and collective bargaining to be examined instead at the national level. The conciliation proposals and the conclusions adopted within the framework of this type of mechanism were based, among others, on the relevant ILO Conventions and the principles of the CFA. Following the Colombian example and with the technical assistance of the Office, Panama had established a similar mechanism which had already achieved some results.
47. The speaker concluded by recalling that ILO Conventions should be seen and used as tools that could help in the development and realization of the social dimension of the future development agenda and framework. A great deal would depend on the manner in which these Conventions, and the related guidance from the supervisory bodies would be integrated into the overall ILO strategy, as well as the way in which the ILO and its constituents would communicate the relevance of the standards system. More broadly, the strengthening of the standards system needed to be coordinated with the reform process led by the Director-General, with the support of the Governing Body. International labour standards were an essential point of reference in this reform process. In addition to these opportunities at the global level, the ILO must meet the needs of its constituents, most evidently in times of crisis.



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## **Statement by the Chairperson of the Committee of Experts**

48. The Committee welcomed Mr Yozo Yokota, Chairperson of the Committee of Experts. He welcomed the opportunity to speak as evidence of the close and useful working relationship between the two Committees which carried out the supervision of international labour standards. These two Committees, one with a tripartite composition and the other composed of independent experts, had been working together to promote, protect and enhance the rights and quality of life of all the workers in the world.
49. Turning to the meeting of the last session of the Committee of Experts, the speaker indicated that the Committee of Experts had welcomed two new members from Germany and Spain, respectively. In addition, the Committee of Experts had the opportunity to exchange opinions in a special sitting with the Vice-Chairpersons of this Committee. While such meetings had been taking place almost every year, the special sitting during the 83rd Session of the Committee of Experts had been of particular importance in view of the events that had taken place during the last session of the Conference Committee and the subsequent informal tripartite consultations in September 2012 as well as the discussions that had taken place during the November 2012 session of the Governing Body.
50. On that occasion, the Employer Vice-Chairperson had underlined that the internal dialogue within the ILO's standards supervisory system had been of utmost importance for the proper functioning of the system. Regarding the issue of the right to strike, he had reiterated the long-held view of the Employers' group that the right to strike was not regulated by Convention No. 87 and that the ILO's constituents had not agreed on the inclusion of the right to strike when the Convention was adopted in 1948. The Employer Vice-Chairperson had further stated that the Committee of Experts had been mandated by the International Labour Conference in 1926 to function as a technical body and not as a judicial one. He had considered that the Governing Body had never decided to amend the stated terms of reference so as to expressly include the interpretation of international labour standards. He further stated that, under the ILO Constitution, the authority to interpret ILO Conventions was vested with the International Court of Justice (ICJ).
51. The Worker Vice-Chairperson had recalled that as early as 1928, the Conference Committee had considered, after noting that the Committee of Experts had been confining itself to examining the compliance of national laws and regulations with international Conventions, that it should examine more deeply the issue of effective application of the Conventions. He had further stated that the ILO supervisory bodies had recognized the right to strike and considered it to be a fundamental instrument available to workers' organizations for the defence of their economic and social interests: the Committee of Experts had considered the right to strike to be an essential corollary of the right to organize; this was also the view of the tripartite CFA, which had recognized this right in 1952.
52. The Committee of Experts had welcomed the frank and constructive views expressed by both Vice-Chairpersons and noted that since 1947 it had regularly expressed its views on its mandate and methods of work. In particular, it had repeatedly stressed its status as an impartial, objective and independent body and had regularly clarified that, in order to carry out its mandate of evaluating and assessing the application and implementation of ratified Conventions, it needed to consider and express its views on the legal scope and meaning of the provisions of these Conventions.
53. Referring to collaboration with other international organizations, the speaker indicated that the Committee of Experts had held an annual meeting with members of the United Nations Committee on Economic, Social and Cultural Rights in November 2012 on the theme of

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the supervision of labour rights in the informal economy. Moreover, in accordance with the arrangements made between the ILO and the Council of Europe, the Committee of Experts had examined 21 reports on the application of the European Code of Social Security, and as appropriate, its Protocol.

54. Turning to the methods of work of the Committee of Experts, the speaker indicated that while since 2001, this subject had been discussed in the Subcommittee on Working Methods, the Subcommittee had not met at its last session. Instead, a new Subcommittee on the Streamlining of Treatment of Certain Reports had been established. This Subcommittee had examined all the comments related to repetitions as well as the general observations and direct requests. It had then presented, for adoption in the plenary, its report to the Committee of Experts, by drawing attention to the most important issues raised during its examination. This new method had enabled the Committee of Experts to save time. It had therefore been suggested to reconvene it every year.
55. The speaker then addressed the issue of reporting obligations. At the last session, a total of 2,393 reports under articles 22 and 35 of the ILO Constitution had been requested and by the end of the session, 1,664 reports (67.83 per cent) had been received by the Office. Ten countries had failed to submit reports due for the past two or three years. The Committee was aware of the difficulties which arose out of a lack of adequate human and financial resources that could be properly addressed though the technical assistance of the Office. The late submission of reports had continued to be a problem. Moreover, the Committee had continued to face the problem of a large number of reports which had not contained replies to its comments. It had therefore once again requested all member States to make every effort to ensure that next reports were submitted within the time limits and contained all requested information.
56. Turning to the General Survey, the speaker indicated that this was the first one to be conducted on Convention No. 151, Convention No. 154, Recommendation No. 159, and Recommendation No. 163. While its main focus was on collective bargaining rights in the public administration, it also covered the following subjects: consultations, civil and political rights of public employees, the facilities to be granted to trade union representatives, protection against acts of discrimination and interference, and dispute settlement mechanisms.
57. In conclusion, the speaker thanked the Committee for giving him the opportunity to present the General Report of the Committee of Experts. He underscored the unanimous view of the members of the Committee of Experts that the two Committees were the two pillars of the ILO's supervisory system on which the rights, life, health, safety, personal aspiration and dignity of all workers of the world heavily depended. He informed the Committee of the Committee of Experts' decision to nominate Mr Abdul G. Koroma of Sierra Leone as its new Chairperson.
58. The Employer members and the Worker members, as well as all Government members who spoke, welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee.

### ***Statement of the President of the Conference***

59. The President of the Conference highlighted that the agenda of the Conference included very topical and relevant subjects, which were vital to these times and critical to the main objective of the ILO of social justice. These included questions of employment and social protection in the new demographic context, sustainable development, decent work and green jobs and social dialogue. Such subjects highlighted the pertinence of the ILO and underlined the direction its work would take as it approached its centenary. However, the

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ILO would be hampered in its attempts to promote social justice if the strong backbone provided by its supervisory system was in any way weakened. It was the Conference that adopted Conventions and Recommendations and it was the Conference, through this Committee, that provided the tripartite oversight into how countries were meeting their obligations. This was international governance at its best. The speaker expressed his appreciation, on behalf of the Officers of the Conference, for the positive contribution of the Committee each year.

60. The speaker emphasized that the Officers of the Conference would do all they could to facilitate and support the important work of the Committee. As was stated by the Chairperson of the Governing Body and the ILO Director-General during the presentation of their reports to the Conference, it was crucial to obtain full tripartite consensus and support for the supervisory system. The ILO was built on tripartite commitment, and it was necessary that this commitment be present in this sphere as well. The role of this Committee was to build on, and enhance, this tripartite commitment.
61. The Employer and Worker members welcomed the attendance of the President and Vice-Presidents of the Conference in the Committee.

### ***Statement by the Employer members***

62. The Employer members recalled that the supervisory system had made invaluable contributions for the promotion of fundamental workplace rights and constructive labour relations. A credible, balanced and well-functioning supervisory system was integral in guiding member States in their efforts to comply, both in law and practice, with international labour standards. The Employer members were fully committed to a proper and sustainably functioning supervisory system. This commitment included their dedication in engaging in clear and constructive discussions on the General Report of the Committee of Experts, as well as on the individual cases. Significantly, however, they had repeatedly raised a number of concerns about deficiencies within the system, which needed to be addressed in order to ensure its continued credibility and continued relevance.
63. The Employer members welcomed the Committee of Experts' statement in the 2013 General Report that a spirit of mutual respect, cooperation and responsibility had consistently prevailed over the years in the Committee of Experts' relations with the Conference Committee. They remained fully committed to preserving and strengthening the cooperation and coordination between these two Committees. The fact-finding and technical work of the Committee of Experts was very helpful and very important to the work of the Conference Committee. Without the work of the Committee of Experts, the Conference Committee could not do its work, and closer cooperation and coordination in this regard were welcomed. Frank and constructive dialogue between the Conference Committee and the Committee of Experts was vital to ensure the continued relevance of the supervisory system. The Employer members had appreciated the opportunity to engage in dialogue with several members of the Committee of Experts in February 2013, and hoped that this spirit of dialogue and cooperation would continue.
64. The Employer members welcomed the inclusion, in paragraphs 13–18 of the General Report, of the Employer members' concerns in relation to the scope of the mandate of the Committee of Experts, as well as the inclusion of the Employer members' deep concerns regarding the Committee of Experts' extension of that mandate, in order to draw conclusions about the right to strike, in relation to Convention No. 87. It was unfortunate that, despite the concerns raised by the Employer members and the research and information shared in support of these concerns, the Committee of Experts had chosen to respond as reflected in paragraph 27 of the General Report. The concerns raised about the scope of the mandate of the Committee of Experts provided an opportunity to engage in

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constructive dialogue on this topic. However, instead of responding to the merits and substance of the Employer members' concerns, the Committee of Experts had argued that the Employer members had accepted the interpretive role of the Committee of Experts as part of its mandate, citing statements made by spokespersons of the Employer members during the cold war or shortly thereafter, dating back to 1987 and 1993. This did not accurately describe the position of the Employer members historically, and more rigorous research could have been conducted in order to present a fair picture of the Employer members' position in the prior years. Failure to present the Employer members' position fairly was set against the efforts of the Employer members to be constructive in their dialogue. They had made every effort in good faith to present information regarding the Committee of Experts' mandate in a clear and accurate fashion, based on a legislative history and the applicable interpretive principles, and the relevant ILO documents, in order to engage in a constructive dialogue to find a way forward.

- 65.** As a result of the debate in the Conference Committee in 2012, the Employer members considered that there were several outstanding issues that required resolution, particularly concerning the mandate of the Committee of Experts, and regarding that Committee's interpretation of the right to strike as a component of Convention No. 87. The Employer members recalled that the Committee of Experts' mandate had been first established at the International Labour Conference in 1926, and at that time it had been expressly stated that its functions were entirely technical, with no judicial capacity. Further exploration of the role of the Committee of Experts had taken place at the Conference in 1947, where it had been stated that the Committee of Experts was appointed by the Governing Body for the purpose of carrying out a preliminary examination of the annual reports of governments. This mandate had not been changed since that time. Despite clear limits to this mandate, the Committee of Experts had interpreted a right to strike as a component of Convention No. 87, which was not supported by either the terms of this Convention or the preparatory work. The lack of consensus regarding the Committee of Experts' comments raised larger questions related to that Committee's supervisory role, its working methods and its observations, and therefore the Governing Body should be engaged to review the Committee of Experts' mandate.
- 66.** The Employer members reiterated their concern relating to how the mandate of the Committee of Experts was expressed to the tripartite constituents and the outside world, including their disappointment with the language of paragraphs 6 and 8 of the General Survey. In order to provide appropriate visibility to the mandate of the Committee of Experts, the Employer members had made repeated requests for inclusion, in the introductory portion of that Committee's report, of a short "statement of truth" which would explain this mandate. Despite the negative response to this suggestion, contained in paragraph 36 of the Committee of Experts' General Report of 2013, the Employer members hoped that the Committee of Experts would reconsider its position on this reasonable request.
- 67.** Turning to the issue of the mandate of the Committee of Experts to draw conclusions on the right to strike under Convention No. 87, the Employer members recalled that they had already provided their position on this subject in a comprehensive manner over many years. The Committee of Experts' response, in the introduction of the 2013 General Report, did not address the substance of this position. The response of the Committee of Experts appeared to have been that, since that Committee had decided a number of years ago that Convention No. 87 included the right to strike, it then had had to articulate restrictions on this right. This was an unsatisfactory response, as the Committee of Experts did not have, at any time, the competency or mandate to interpret or extend the scope of Convention No. 87. This was a deep concern for the Employer members, as their aim was to preserve the integrity of the supervisory system.

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- 68.** Out of the 63 observations concerning the application of Convention No. 87 in the 2013 report of the Committee of Experts, 55 discussed the right to strike. This issue of the right to strike, although not established in Convention No. 87, appeared to have become one of the major cornerstones of the observations of the Committee of Experts related to freedom of association. The practical result of this approach posed a challenge to the Conference Committee in terms of effectively managing cases concerning the application of Convention No. 87. Therefore, the Employer members emphasized that nothing in the Conference Committee's conclusions could be construed as an agreement to the existence of the right to strike in Convention No. 87.
- 69.** The Employer members reiterated that the role of the Committee of Experts was to conduct a technical and fact-finding function, as one of the two key pillars of the supervisory system, and this was fundamental to the work of the Conference Committee. However, it was in the Conference Committee that governments appeared and made oral statements, that tripartite constituents could consider member States' compliance with international labour standards, and that conclusions were drawn that provided direction to member States on how this compliance could be achieved. Reiterating their full commitment to the credibility and sustainability of the supervisory system, the Employer members indicated that they looked forward to constructive discussions on individual cases.
- 70.** Turning to section II of the 2013 General Report on compliance with obligations, the Employer members observed that while this section contained useful information on the general functioning of the standards supervisory system, it was much the same as in previous years. While a number of changes had been introduced over time to stabilize or improve the supervisory system, progress in that area did not seem to be up to expectations. The supervisory system appeared to be working, but each year serious shortcomings were identified in governments' cooperation, either due to failure to provide the relevant information or failure to adopt legislation to give effect to the international standards. The tripartite constituents in the Conference Committee and the Governing Body were responsible for making the necessary changes. As the Employer members had pointed out several times, the tripartite constituents had neglected their governance and advisory role in past decades, and it was now time for them to take concrete steps to put the system back on a solid and sustainable basis so that it could respond to genuine needs.
- 71.** The Employer members submitted six proposals in this regard.
- (i) Closer cooperation between the Conference Committee, the Committee of Experts and the Office
- 72.** The Employers welcomed the initial steps that had been taken to improve cooperation between the three key players in the supervision of standards, the Conference Committee, the Committee of Experts and the Office, in particular the informal consultations in February 2013 between members of the Conference Committees and members of the Committee of Experts alongside representatives of the Office. The purpose of those consultations had been to promote a better mutual understanding of the real situation and needs of both the providers and the users of the supervisory system. The Employer members trusted that this cooperation would be strengthened in the future. One important measure to reinforce links between the Committee of Experts and the constituents would be to involve the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV) in the briefing programme that was organized for new members of the Committee of Experts upon their arrival in Geneva. Another would be to allow ACT/EMP, ACTRAV, the IOE and ITUC to take part in the meeting of the Committee of Experts and the Vice-Chairpersons of the Conference Committee in December each year.

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(ii) A more participatory approach for the report of the Committee of Experts

**73.** The Employer members recalled that Report III (Part 1A) and (Part 1B) (the General Survey) were the most visible parts of the ILO's supervisory work. They had proposed changes to reflect inputs from the tripartite constituents, notably that there should be a possibility in the report of the Committee of Experts for employers, workers and governments to state their views on supervision-related issues, including the relevance of Conventions and special problems relating to their application. Readers of the reports should be made aware of the constituents' position on the implementation and interpretation of the Conventions, for instance in the context of "general observations". This would enhance the transparency and credibility of the supervisory system, and the Employer members called upon the Committee of Experts and the Office to consider making the necessary changes in the next report. Another possibility would be for the report of the Committee of Experts to be examined in draft form by the Governing Body or the Conference Committee and for a final annual report, containing both the reports of the Committee of Experts and the Conference Committee reports, to be published only after the Conference.

(iii) Addressing reporting failures in a more sustainable way

**74.** The Employer members observed that, as the ILO supervisory system was based on reports being sent in by governments at agreed intervals, the situation described in the report could not be considered satisfactory since barely more than two-thirds of the requested reports had been received. The Employers agreed with the Committee of Experts that the failure of governments to comply with their reporting obligations was partly due to their heavy workload in sending reports. The Employer members considered that the following specific steps needed to be initiated as soon as possible:

- (a) As regards evaluating the capacity of governments to implement and report on implementation before ratification, the Office should provide governments with training and comprehensive advice. They invited the Office to provide the Governing Body with specific ideas and information on the context of this proposal and the best way to address the issue.
- (b) The possible consolidation, integration and simplification of ILO Conventions should be dealt with under the ILO standards review mechanism (SRM) which, although agreed upon by the Governing Body, had not yet started functioning. They trusted that the mechanism would soon be operational.

(iv) Improving the focus of supervision by reducing the number of observations

**75.** Referring to the difference between the observations, which appeared in the report of the Committee of Experts, and the direct requests, which did not, the Employer members indicated that the difference between the two was one of degree rather than principle. Direct requests usually concerned a lack of information on secondary matters. However, many observations in the current report of the Committee of Experts were essentially requests for information and did not raise issues of compliance. The fact that this report contained more than 800 observations made it difficult for the Conference Committee to carry out a full review and to play a meaningful role in supervision. The Employer members suggested that a significant reduction could be envisaged in the number of observations in the future. This could be achieved by narrowing the eligibility criteria for observations, which would result in many existing observations being classified as direct requests. To strengthen the ILO's supervisory system it would also be desirable for the

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number of observations focused on crucial compliance issues to be more reasonable. Moreover, the Office should facilitate general access to direct requests on the ILO's website so as to give them a higher profile.

(v) **Measuring progress in compliance with ratified Conventions in a more meaningful way**

**76.** This year the Committee of Experts had identified 39 cases of progress in compliance with the fundamental Conventions in 30 countries. Most of the cases had to do with the application of Conventions Nos 138 and 182 on child labour and of Conventions Nos 87 and 98 on freedom of association and collective bargaining. There had also been a few cases of progress regarding Conventions Nos 29 and 105 on forced labour, as well as one instance of progress regarding Convention No. 100 and none regarding Convention No. 111 on discrimination. The Employer members requested the reason for that outcome.

**77.** The Employer members did not see the purpose of the differentiation that the Committee of Experts had made between cases of progress and cases of interest. More important was the issue of compliance, not whether the measures taken were sufficiently advanced to justify the expectation of further progress. The Committee of Experts could keep an internal record of cases of interest but, as it was not of much use to constituents, and to simplify the report, such cases should not be included in future reports. This also applied to cases of "good practice". Good practice and compliance were clearly two different matters. Identifying "good practices" was outside the mandate of the Committee of Experts, and should therefore not figure in its report, though it may well be of interest to the Office in its cooperation with constituents when promoting ILO Conventions.

**78.** The Employer members wished to make the selection of cases of progress a more useful procedure under the supervisory system. Measuring progress in applying ratified Conventions required the development of a simple methodology that involved: (i) recording cases of progress by individual Convention and by individual country; (ii) relating the number of cases of progress to the number of unsolved or new cases of non-compliance; and (iii) developing qualitative criteria for progress (for example, seriousness of the problem solved, number of workers or employers benefiting from the improvement). Consultations should be held between the Committee of Experts, the Conference Committee and the Office on the best approach to this issue.

(vi) **Revitalizing general observations as a tool in standards supervision**

**79.** The Employer members noted that, as in previous years, Part II of the report of the Committee of Experts did not contain any general observations on particular Conventions. General observations, if used properly, could draw attention to relevant issues and practices that went beyond the application of a Convention in a particular country, or could serve as a basis for a discussion of new trends in the application of a Convention. The general observations could then actually help member States to improve compliance with ratified Conventions. The Employer members therefore invited the Committee of Experts to make general observations that offered: (i) an analysis of the main problems encountered in applying Conventions and suggestions as to how they could be overcome; (ii) an assessment of progress in complying with Conventions according to criteria to be determined, such as the number of countries complying fully with a Convention, the number of problems solved, new problems that had arisen in interpreting or applying Conventions, etc.; (iii) an explanation of the scope and meaning of provisions that tended to be misconstrued or were difficult to understand; and (iv) the views of employers' and workers' organizations on the status of compliance, the understanding of the provisions and scope of a Convention.

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80. Turning to observations on selected countries, the Employer members expressed concern regarding the application of Conventions in several countries, including the application of Convention No. 131 by the Plurinational State of Bolivia, the application of Convention No. 87 by Serbia, the application of Conventions Nos 87 and 98 by Uruguay and the application of Conventions Nos 87 and 144 by the Bolivarian Republic of Venezuela.
81. In conclusion, the Employer members recognized the important role that the Committee of Experts played in the supervision of standards and requested that the ILO's supervisory system be reformed to make it more effective and sustainable.

### ***Statement by the Worker members***

82. The Worker members considered it necessary to clarify a number of important elements after hearing the fresh attacks on the work of the Committee of Experts. They had kept their initial statement brief so that they could focus on what should be the Conference Committee's priority, namely the list of individual cases, and give the official and unofficial processes in progress a chance to provide a way out of the crisis that had gripped the supervisory mechanisms in 2012. They recalled that the Governing Body had sole competence for settling the questions raised in that context.
83. In 2012, the Employers had denied that the basis of the right to strike or to collective action could be found in Convention No. 87 and had asserted that it was not in the mandate of the Committee of Experts to give any interpretation concerning the right to strike or its basis. The Worker members expressed their complete disagreement with that position and reaffirmed the confidence of workers throughout the world in all the ILO supervisory mechanisms. Over the course of time, on the basis of the ILO Constitution and joint tripartite analysis, these bodies had developed work which was undeniably useful for workers, employers and governments and for the strengthening of international labour law. The documents generated by those bodies were points of reference for the understanding and application of standards, ensuring social stability and peace both within and among member States, in order to avoid unfair competition based on social dumping. The Worker members stated that it was undeniable that the throwing into question by the Employers of the right to strike was part of a broad process of undermining of inter-professional and sectoral social dialogue.
84. With regard to the mandate of the Committee of Experts, the Worker members recalled that as long ago as 1928 the Conference Committee had considered, with respect to the observation that the Committee of Experts was merely analysing the concordance of national law with international Conventions, that consideration of the issue should not merely examine whether Conventions and national laws complied in their provisions but should examine in greater depth the question of the effective application of Conventions. Accordingly, the Worker members affirmed that it was for all the tripartite constituents to sustain the supervisory mechanisms to ensure the effective application of Conventions. In the absence of criminal or financial penalties at the international level, the application of international labour standards was only effective through supervisory mechanisms, whether regular or special. They underlined the key role of the Committee of Experts, whose independence, impartiality and objectivity were essential for preparing the work of the Conference Committee and ensuring the proper application of standards in law and in practice. They also underlined the role of the Committee of Experts in the establishment of a dialogue with governments through direct requests and also emphasized the pedagogical importance of its work.
85. The Worker members stressed that the Conference Committee provided another fundamental aspect of the supervisory mechanisms through the tripartite examination of individual cases, which constituted a means of pressure vis-à-vis defaulting or



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uncooperative States. They underlined that the various aspects of the supervisory mechanisms which had just been mentioned should be preserved in future. Those mechanisms, not only as provided for by the relevant articles of the ILO Constitution but also as they had evolved in the course of ILO Conference sessions or Governing Body meetings, provided workers with a guarantee for the respect of their rights and the hope of progress in the way those rights were applied.

- 86.** The Worker members expressed willingness to continue the discussions on the mandate of the Committee of Experts in 2013, but in the forums created for that purpose and in order to achieve sustainable responses that enabled the Committee on the Application of Standards to improve the way it conducted its work. The issue of the right to strike could possibly be dealt with by means of recourse to the ICJ or by activating the mechanism enshrined in article 37(2) of the Constitution. In that regard, the Worker members were of the view that it was not viable simply to criticize certain aspects of the functioning of the supervisory bodies. If those who made such criticisms were sure of their case, they should make use of the existing remedies.
- 87.** The Worker members then emphasized the extent to which tripartism underpinned the work of the Committee of Experts, which constituted one element of the tripartite supervision of the application of standards that was particularly founded on articles 19 and 22 of the Constitution. In that regard, the Governing Body, with its tripartite composition, played a crucial role, starting with approving the questionnaires on articles 19 and 22. Moreover, at the national level, the tripartite constituents had a unique opportunity to influence the work of the Committee of Experts through their reports and comments. The Committee of Experts therefore exercised its mandate within a very specific framework. In that connection, the Worker members stated that: the mandate of the Committee of Experts was the product of an ongoing process that was conducted and agreed upon by the Governing Body within the context of the objectives established by the Constitution and it was supported by the involvement of the tripartite partners on the ground, including the employers. Moreover, the experts' work could not be made dependent on an opportunistic interpretation based on the prevailing economic conditions and allowing for a flexible application of the standards at some times and a stricter interpretation at other times. In addition, the Committee of Experts could not amend its jurisprudence depending on constituents' differences of opinion, as that would threaten the stability and objectivity guaranteed by the composition and appointment process of the Committee of Experts.
- 88.** With regard to the right to strike, the Worker members emphasized that the Employer members had made it clear that they were not contesting the existence or legitimacy of the right to strike, but rather maintaining that that right could have no basis in supranational standards and must be regulated at the national level. The Worker members considered that such reasoning revealed the undeniable desire to weaken the trade union movement, social dialogue and, finally, collective bargaining. For those who had negotiated Conventions Nos 87 and 98, which contained the right to strike and to bargain collectively, all those rights were closely linked and formed the basis of the industrial relations systems used in the great majority of member States. The Worker members then stated that limiting the regulation of the right to strike at the national level alone would place the government concerned in an excessively strong position that could, for example, be used to destroy the trade union movement, which had not been the aim of the negotiators of those two Conventions.
- 89.** Concerning the six proposals made by the Employers' group with regard to the supervisory mechanisms, the Worker members made the preliminary observation that these proposals were connected with the discussions under way in the Governing Body and that it would therefore be beneficial to discuss them in the appropriate forum, namely the Governing

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Body. The Worker members did not wish for the Conference Committee to interfere in those discussions and hoped that it could finally concentrate on its work.

### **Statements by Government members**

90. The Government member of Australia, speaking on behalf of the group of governments of the industrialized market economy countries (IMEC) reaffirmed the high level of importance placed by the IMEC group on the supervisory system of the ILO and its key role in facilitating the implementation of and adherence to international labour standards when seeking to improve working conditions across the globe. The ILO supervisory system was unique in the international framework of human rights procedures and the Conference Committee had the responsibility to help ensure that the capacity, visibility and impact of the ILO supervisory system continued to evolve positively despite the inherent challenges. He thanked the outgoing Chairperson of the Committee of Experts, Mr Yokota, for his work and welcomed the new Chairperson, Mr Koroma, who, he hoped, would be able to attend the sessions of the Conference Committee in the future. The outstanding work and high level of expertise of the Committee of Experts was highly relied upon and the efforts to enhance dialogue between the Committee of Experts and the Conference Committee much appreciated.
91. He thanked the Committee of Experts for having clarified elements of their mandate. With respect to this mandate, he outlined the foreword to the General Survey noting that “The Committee’s opinions and recommendations are not binding within the ILO supervisory process and are not binding outside the ILO unless an international instrument expressly establishes them as such or the supreme court of a country so decides of its own volition.” He expressed the view that this clarifying statement, along with other points of explanation made in the General Survey and the General Report, were constructive for taking this issue forward. While it was a matter for the Committee of Experts alone to determine the scope of its comments, this year’s General Survey provided, however, a sound reference point for its future reports. IMEC governments remained committed to helping facilitate a resolution to these issues and looked forward to further tripartite consultations after the Conference.
92. For improving collaboration between the two Committees, he reiterated the suggestion to include the Conference Committee’s Chairperson from the previous session in the traditional yearly meeting of the Committee of Experts and the Employer and Worker spokespersons of the Conference Committee. Turning to the working methods of the Committee of Experts, he particularly noted establishment of a new Subcommittee on the Streamlining of Treatment of Certain Reports and considered that efficiency in its work would contribute to a better report and have positive effects for the Office and reporting governments. The continued follow-up of the cases of failure to fulfil reporting and other standards-related obligations was particularly important and technical cooperation was key to resolving problems as well as to enhancing the application of ratified Conventions in this regard. He supported a strengthened combination of the work by the ILO supervisory bodies and the Office’s technical assistance including the time-bound programmes for a better application of international labour standards which were mentioned in paragraphs 90–92 of the report, and was looking forward to next year’s assessment by the Committee of Experts of these programmes. Having noted that the Committee of Experts was still not operating at its full capacity, IMEC encouraged the Director-General to fill the three vacancies of the Committee of Experts quickly and give consideration to reducing the requirement of five candidates for each position. Reiterating IMEC’s appreciation of the work of the Office in supporting the ILO supervisory bodies, he called on the Director-General to ensure that the essential work of the International Labour Standards Department was among his top priorities so that it had adequate resources to meet its continually increasing workload, especially with respect to the fundamental Conventions.

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93. The Government member of China expressed the hope that the Conference Committee and the Committee of Experts would further improve their mutual understanding, so that they could also improve actions in relation to the supervision of standards. His Government had always attached a great deal of importance to the protection of the legitimate rights and interests of workers. The new Government had set out the goal to achieve a better society by the year 2020, the main objective of which was the improvement of the living conditions of the population, which naturally involved the improvement of working conditions and the rights of workers. On 1 May this year, the President met with trade unions with a view to ensuring that workers' rights be better protected. His country had adopted a range of measures including: (i) the promulgation of a special regulation on the protection of women workers in April 2013; (ii) the adoption of modifications to the Law on labour contracts, which would enter into force on 1 July 2013 and which contained better conditions concerning the assignment of workers and improvements in conditions relating to occupational safety and health; (iii) measures aimed at strengthening collective consultation mechanisms in order to set standards in consultation with the social partners and do away with conflicts before they would arise in the spirit of the Conventions concerning collective bargaining rights; (iv) the further development of international cooperation with the ILO, including a high-level seminar on the elimination of child labour with representatives of half of all the Chinese provinces and cities. The Chinese Government believed that the ratification of Conventions itself was not enough; their provisions had also to be effectively applied. China remained a developing country with many challenges in the world of work and would cooperate fully with the international community to overcome these difficulties. His Government was working towards overcoming some of the obstacles to the ratification of the MLC, 2006, and in the process of implementing many other Conventions which the country had ratified and expressed the hope that the ILO would be able to provide technical assistance to further strengthen the country's capacities in this regard.

## **C. Reports requested under article 19 of the Constitution**

### **General Survey concerning labour relations and collective bargaining in the public service**

94. The Committee held a discussion on the General Survey concerning labour relations and collective bargaining in the public service,<sup>6</sup> prepared by the Committee of Experts on the Application of Conventions and Recommendations.

#### **Opening statements**

95. The Worker members recalled that an important element of the General Survey was its connection with both the 2012 recurrent discussion on fundamental principles and rights at work and with the recurrent discussion this year on social dialogue. It was important for the Committee to agree on a powerful joint message to promote the ratification and effective application of the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). The Conventions were

<sup>6</sup> ILC, General Survey concerning labour relations and collective bargaining in the public service, *Collective bargaining in the public service: A way forward*, Report III (Part 1B), 102nd Session, Geneva, 2013.

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relatively well applied overall, which was encouraging for future ratifications. The good level of application was also due to trade union action in various countries. It was to be welcomed that the Committee of Experts had drawn up a list of good practices that could easily be replicated and could foster a better application of the standards, with a view to the optimum functioning of public services through the observance and application in law and practice of the ILO instruments on collective bargaining.

- 96.** They added that the General Survey was of great value in both institutional and legal terms. Nevertheless, the Committee of Experts had omitted to address certain issues, such as gender pay equality, the access of migrant workers to the public service and the practices observed in certain federal States that were not in compliance with the principles set out in the Conventions, even to the point of prohibiting collective bargaining by public sector workers. However, the General Survey did address such highly topical subjects as the liberalization of public services in reaction to economic problems, or on purely ideological grounds. It emphasized the impact of the economic crisis on collective bargaining, and the wage restrictions supposedly justified by the need to reduce public expenditure, or imposed by international or regional institutions, contrary to ILO standards. It highlighted the increased use of subcontracting, as a result of which workers assigned to public service duties did not enjoy the protection of Convention No. 151. The rise in precarious employment in the public sector was a matter of ever-increasing concern.
- 97.** The Worker members fully endorsed the conclusions reached by the Committee of Experts that: the implementation of the Conventions had been compromised in a number of countries in the context of the recent financial and economic crisis, and particular vigilance was needed in times of economic downturns to ensure their full application; the public service needed to be effective and efficient to ensure the rule of law, the effective exercise of citizens' rights and the improvement of their quality of life, and was therefore an essential factor in sustainable economic and social development; high-quality services were needed in all public institutions, as were properly qualified and motivated staff and a dynamic and depoliticized public governance and administrative culture free from corruption; and social dialogue in its different forms, and especially collective bargaining between trade union organizations and the public administration, was key to meeting the challenge of providing high-quality services and ensuring good democratic governance. Collective bargaining yielded benefits not only for public servants, but also for administrations, which were supported by unions in their efforts to implement the key principles of public governance in democratic States. It also served as an effective tool for sound human resource management, which in turn enhanced the quality of services provided to the public. The Worker members emphasized the undeniable links between Conventions Nos 151 and 154 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which were crucial instruments for democracy regardless of a country's level of development.
- 98.** The Worker members, referring to the scope of application of Convention No. 151, said that although the instrument was sufficiently clear and flexible to be adapted to the specific features of the public service, in many countries major categories of public employees were denied the rights and benefits set out in the instruments under discussion. These included, in particular, high-level employees whose functions were normally considered as policy-making or managerial, and employees whose duties were of a highly confidential nature. That category was generally interpreted too broadly, resulting in their being deprived of protection. Moreover, even though Convention No. 151 applied to civilian staff in the armed forces and staff attached to the police, questions arose regarding prison staff who, the Committee of Experts had recalled, did not constitute an acceptable exception from the provisions of the Convention. The Worker members also denounced the widespread attempts made to avoid the specific protection provided under Convention

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No. 151 through recourse to restructuring in the public administration and the ever broader use of precarious forms of employment and subcontracting for work that was nevertheless of a permanent nature and covered by the conditions of service of the public service. In some countries, precarious workers accounted for up to 50 per cent of public service personnel, which had a direct negative impact on the neutrality and independence of public services, as well as encouraging corruption and clientelism.

- 99.** With regard to the civil and political rights recognized for public employees, the Worker members emphasized the importance of the resolution concerning trade union rights and their relation to civil liberties adopted by the Conference in 1970, which enumerated the fundamental rights necessary for the exercise of freedom of association, including: the right to freedom and personal safety, freedom of opinion and expression, the right to fair trial by an independent and impartial court, and the right to protection of trade union property. They recalled that, with the sole exception of obligations relating to the status of public employees and the nature of their duties, human rights were applicable to public employees in the same way as to any other citizens. However, the Committee of Experts had noted with concern: the persistence, in a significant number of countries, of murders of trade union leaders and members and the violent suppression of demonstrations, also affecting public employees; the persistence of legal provisions in certain countries prohibiting political activities by public employees' organizations for the promotion of their specific objectives, even though such a prohibition was contrary to the principles of freedom of association; and the obstacles preventing public employees' organizations from publicly voicing their opinions on general economic and social policy matters which had a direct impact on their members' interests. The Worker members considered that the establishment of democracy required respect for the fundamental rights and civil and political liberties enshrined in the Universal Declaration of Human Rights and other fundamental international instruments, as well as the lifting of any restrictions that were incompatible with the implementation of Convention No. 151. The challenge was the effective implementation of those rights and principles in practice, and not only in law.
- 100.** With regard to protection against acts of interference and anti-union discrimination, the Worker members emphasized that the applicable penalties often had little deterrent effect, and that threats, transfers and dismissals of trade union leaders remained widespread. In certain countries, bonuses were offered to non-unionized workers, or access to certain posts was reserved for members of a specific union. They recalled that public service employees, and particularly their trade union representatives and leaders, needed to be afforded effective protection against any act of interference by the public authorities in the establishment, operation and administration of their representative organizations. A weak point of Convention No. 151 was the scope of the concept of "adequate protection" against acts of discrimination provided for in Article 4, which lay at the heart of all disputes relating to situations involving anti-union dismissals, including their prevention and compensation. Many procedures offered no recourse to workers against decisions by the administration that were often unilateral and discriminatory. Another major problem was the slowness of appeal procedures and of the reinstatement of dismissed trade union members. Methods of compensation should be designed to provide full reparation for the financial and professional damage suffered by public employees. These weak points imperilled the effective application of the rights set out in the Conventions.
- 101.** The Worker members added that the right of public employees' organizations to participate in the determination of their conditions of employment through consultation or collective bargaining, or both, was now recognized in the great majority of member States. Many countries were already in compliance with Article 7 of Convention No. 151, even though they had adopted differing methods and systems of consultation in accordance with their national circumstances and cultural and legal traditions. In general, the consultations held were in-depth, frank, full, detailed and without impediment. However, emphasis

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should be placed on the term “consultation”, which was broader in scope than “information”, encompassing as it did the notion of good faith, trust and mutual respect. The parties needed to be afforded sufficient time to express their views and to enter into broad discussions, before reaching an appropriate compromise. Consultations also needed to be held on all matters relating to terms and conditions of employment and all subjects of mutual interest in relation to personnel management. They should be held at all relevant levels and offer the guarantee that the specific concerns of workers in the public service were duly taken into account. They therefore called for the establishment, for the purposes of consultation procedures, of effective, well-targeted and organized dialogue.

**102.** The Worker members observed that collective bargaining gave rise to many problems in practice including, as indicated in the General Survey, the issues of good faith, which presupposed that all bargaining was undertaken with a view to reaching an agreement, the representativeness of trade union negotiators and the binding nature of the agreements concluded. They emphasized that the adoption and ratification of Conventions Nos 151 and 154 implied a common acceptance that terms and conditions of employment in the public service could not be decided upon unilaterally and that adequate procedures for that purpose needed to include the full participation of trade unions of public employees. Convention No. 154 allowed for special modalities of application for collective bargaining in the public service, which could be fixed by national laws or regulations or national practice, including by means of collective agreements, arbitration awards or other methods. Under Convention No. 154, the right to collective bargaining should cover, in addition to employees in the public administration, organizations representing permanent and temporary public sector employees and those engaged under civil or administrative contracts for the provision of services, contract workers and part-time employees. In certain countries, collective bargaining was not widely used for determining the terms and conditions of employment of public officials, who often had to accept the minimum conditions laid down by law. In some countries, there was no formal collective bargaining machinery in the public service, while in others the content of bargaining was very limited, with the government invoking its prerogative to regulate unilaterally a range of matters, which often included remuneration. Where there was bargaining and agreements were concluded, trade unions often experienced difficulty in having their binding nature recognized and their provisions respected. In other countries, bargaining with representative organizations was rebuffed by the authorities, which blamed delays in renewing union executive committees, even though the delays were often caused in practice by state bodies interfering in the election process. There was therefore a gap between law and practice, and the impact of the financial and economic crisis and the trend towards purely ideological liberalization should not be underestimated in that respect.

**103.** The Worker members emphasized that the very principle of free and voluntary bargaining meant that agreements had to be respected and that the authorities could not revoke or modify agreements that had been freely concluded. That also applied to the private sector. If agreements needed to be approved by the legislature, that process should not undermine their content, irrespective of the political majority in power. Bargaining within the meaning of Convention No. 154, as well as consultations under Article 7 of Convention No. 151, needed to cover terms and conditions of employment in the broadest sense and the relations between the parties, including vocational training and career development, dispute prevention and settlement machinery, non-discrimination and any measures agreed upon by the parties to improve the functioning of public institutions and the application of the principles of public management in democratic societies. However, a large number of trade unions reported the unilateral revision of collective agreements in the public sector and the adoption of laws without any prior consultation which unilaterally modified the terms and conditions of employment of public employees set out in collective agreements. Certain measures adopted under the pretext of responding to the economic crisis not only prevented further wage negotiations, but had even imposed wage cuts for the years to

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come, in defiance of the collective agreements in force. Many unions also complained of the presence and role of budgetary authorities in the collective bargaining process in relation to wages and clauses with financial implications. In certain countries, if public employers were not in compliance with the directives of the budgetary authorities, they were liable to penal sanctions.

- 104.** The Worker members endorsed the views of the Committee of Experts and the CFA concerning the impact of economic crises on collective bargaining and on the most appropriate means of responding to exceptional economic situations in the framework of the collective bargaining system in the public sector. However, certain principles needed to be generally recognized in that respect, including that collective agreements currently in force should be respected. Limitations on the content of collective bargaining imposed by the authorities in the light of economic stabilization or structural adjustment policies, particularly concerning wages, were only admissible on an exceptional basis, should be restricted to what was absolutely necessary, should not exceed a reasonable period of time, and should be accompanied by guarantees to protect workers' standard of living, especially those most severely affected. The Committee of Experts should place greater emphasis on the need for such limitations to be preceded by consultations with the employers' and workers' organizations. Collective agreements should be respected and economic stabilization measures should only be applied when existing collective agreements had expired with a view to preserving jobs and the continuity of enterprises and institutions, except in the case of serious and insurmountable difficulties, when exceptions could be accepted within the framework of social dialogue. Finally, in the event of crises, in relation to matters concerning the world of work and collective bargaining, mechanisms bringing together representatives of the highest state bodies and the most representative organizations of workers and employers should be established rapidly to address the economic and social consequences, paying particular attention to the most vulnerable categories. The principles set out in the Oslo Declaration adopted in April 2013 should be promoted globally, in the context of relations with international and regional organizations, and particularly the IMF, the OECD, the World Bank and the European Union.
- 105.** In conclusion, the Worker members hoped that the Committee would reach a consensus on strong and useful conclusions to be transmitted to the CDS. The conclusions could include an appeal for the widespread and rapid ratification and effective implementation of the standards on collective bargaining in the public service, including in countries that had already ratified the Conventions, where tripartite consultations should be held on updating and reinforcing the respective legislative provisions. ILO technical assistance should be made available for governments encountering difficulties in applying the standards, including on the legal issues raised in the General Survey, such as essential services and dispute resolution procedures. The Worker members also proposed the introduction of a four-year programme of action to promote collective bargaining in the public service, which could be based on the existing sectoral programme, the scope of which could be extended and sufficient resources allocated. They also called on the ILO to devote more attention as to the impact of precarious employment in the public service, and supported the proposal by the Committee of Experts that the impact of precarious forms of employment on trade union rights should be examined in a tripartite context. They called on the ILO to intensify its efforts in respect of labour administration and labour inspection, and all means of ensuring that social dialogue was strengthened and more widely respected. Finally, the Turin Centre could provide support and design training programmes focusing on the needs identified in the General Survey, as a means of contributing to the further development of democratic societies supported by high-quality public services.
- 106.** The Employer members expressed appreciation of the work of the Committee of Experts in preparing an overview of law and practice with respect to labour relations and collective bargaining in the public service, although the fact that fewer than half of the member

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States had provided the requested reports meant that it was not as representative as it might have been. They observed that, while the General Survey mainly dealt with labour relations and collective bargaining in the public sector, those matters were also highly relevant to the private sector. Private employers had an interest in a competent and cost-efficient public service, for which constructive labour relations and a clear regulatory framework were important preconditions.

- 107.** The Employer members emphasized that in their view Conventions Nos 151 and 154 were of equal value. They did not agree with the impression given by the Committee of Experts that the determination of working conditions through consultations, as provided for in Convention No. 151, was only a second-best solution in relation to collective bargaining, as envisaged in Convention No. 154. They also expressed strong doubts that, as claimed in the General Survey, with the adoption of Convention No. 154 the international community had recognized that collective bargaining constituted the preferred method of regulating working conditions for both the public and the private sectors.
- 108.** With reference to the foreword of the General Survey, the Employer members noted with interest the clarification that the views and recommendations of the Committee of Experts were not legally binding, which confirmed their position on that point. However, further statements in the foreword, in particular paragraphs 6 and 8, were ambiguous, misleading and weakened that initial clarification. That was particularly the case with the idea that the opinions and recommendations of the Committee of Experts were not binding within the ILO supervisory process or outside the ILO unless an international instrument expressly established them as such or the supreme court of a country so decided of its own volition. It was clear that, if an international instrument reflected the views or recommendations of the Committee of Experts, it was the international instrument that was binding, not the views of the Committee of Experts. Similarly, if a supreme court took up the views or recommendations of the Committee of Experts, or contradicted them, it was the judgment that became legally binding. The views of the Committee of Experts remained not legally binding.
- 109.** The Employer members also referred to the statement in paragraph 8 of the General Survey that, in so far as the views of the Committee of Experts were not contradicted by the ICJ, those views should be considered valid and generally recognized, which they considered to be an attempt by the Committee of Experts to give greater legal weight to its views. They believed that the Committee of Experts should seek to convince ILO constituents by delivering reasonable and balanced analyses and assessments, reflecting genuine expertise and responding to realities. There was a further misleading claim at the end of the same paragraph, which had also been made by the Committee of Experts in 1990, that the acceptance of such considerations was indispensable to maintaining the principle of legality, and consequently to the certainty of law required for the proper functioning of the ILO. That claim lacked any legal or factual basis. As the views of the Committee of Experts were not legally binding, the principle of legality and the certainty of law could not be affected by disagreement with their views. The Employer members called on the Committee of Experts to refrain in future from making such ambiguous statements.
- 110.** The Employer members, in light of the above, recalled their proposal that a very short “statement of truth” be reproduced at the very beginning of the reports of the Committee of Experts. They considered that the response by the Committee of Experts to that proposal was not convincing and that the inclusion of “clarifications” in the introduction of its reports was insufficient and could easily be overlooked. The Committee of Experts had nevertheless indicated that it might be prepared to consider such a proposal based on consensus. Informal discussions were therefore being held concerning the inclusion of a short “statement of truth” in the first pages of all of its reports.



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- 111.** With regard to the substance of the General Survey, the Employer members referred to a series of specific paragraphs in which, in their view, the Committee of Experts had gone beyond its mandate in a number of ways. They emphasized that it was the task of the Committee of Experts to undertake a technical examination of the state of compliance, and not provide opinions. For example, the description in paragraph 57 of the General Survey of the restriction on collective bargaining for public servants engaged in the administration of the State contained in Convention No. 98 as a “shortcoming” was beyond the mandate of the Committee of Experts, the role of which was to assess compliance with ratified Conventions, not the usefulness or suitability of their contents. In the view of the Employer members, Convention No. 151 could not necessarily be seen as extending the right to collective bargaining to all public servants beyond the restrictions in Convention No. 98, as it also envisaged the use of methods other than collective bargaining for the participation of representatives of public employees in the determination of their working conditions.
  - 112.** While welcoming the indication in paragraph 88 that the preparatory work for Convention No. 151 established that it “does not cover the right to strike”, the Employer members regretted the failure of the Committee of Experts to consider the preparatory work on the same issue for Convention No. 87, which also established that it would not deal with the right to strike. The impression was given of a failure to make consistent use of the preparatory work for ILO instruments, which was only considered when it supported the views of the Committee of Experts.
  - 113.** With reference to protection against acts of anti-union discrimination, the Employer members recalled that Article 4(1) of Convention No. 151 established a requirement to provide for “adequate protection against acts of anti-union discrimination”, while Article 4(2) listed particular acts to which such protection should apply. It was the view of the Employer members that, within that framework, it was for governments to decide on the potential risks of anti-union discrimination and the concrete measures to be taken, taking into consideration the specific national circumstances and the practicality and cost-efficiency of such protection. However, “adequate protection” did not necessarily mean “absolute protection”. Nor was there a requirement under the Convention to provide a higher level of protection against anti-union discrimination than against other types of discrimination, or a higher level of protection against anti-union discrimination for public service workers than for private sector workers. Some of the proposals for implementation made by the Committee of Experts in that connection went far beyond the requirements of Article 4. The Committee of Experts should fully recognize the flexibility encompassed in the term “adequate protection” and refrain from promoting an unduly restrictive understanding of that term.
  - 114.** The Employer members added that the measures mentioned by the Committee of Experts concerning protection against anti-union discrimination during recruitment, in the course of employment and in relation to dismissal, although they might be seen as examples of what governments could do in particular situations to implement the Convention, were not required by the Convention. The meaning of “adequate protection” in the context of recruitment was specifically explained in Article 4(2)(a) and, in the view of the Employer members, concerned acts of discrimination against workers because of possible trade union membership in the future, not because of trade union membership in the past. They reaffirmed that it was the responsibility of governments to make, in good faith and in the specific national context, their own assessment of what additional “adequate” protection might be required at the stage of recruitment. Normally, hiring procedures which ensured the selection of the best-suited candidate should be sufficient to avoid anti-union and other forms of discrimination. Additional measures would only be required where concrete risks existed; for instance, measures against “blacklisting” would only be necessary if that practice actually existed in a country. Moreover, the suggested measure of a “reversal of the burden of proof” was not only not required by the Convention, but would also appear

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to be an overly bureaucratic burden to an efficient recruitment process that was clearly inadvisable.

- 115.** The Employer members further observed that there was no basis in the Convention for the view expressed by the Committee of Experts that “provisions” needed to be adopted “against all acts of anti-union discrimination”. They disagreed with the statement in the General Survey that the unilateral termination of the employment of a public employee without giving a reason, provided that compensation prescribed by the law was paid, was not compatible with the Convention. There was no requirement under Article 4(2)(b) of the Convention for national legislation to prohibit dismissal without giving a reason, provided that public employees could effectively challenge dismissal on the grounds of anti-union discrimination before an independent institution, such as a labour court. Requiring public employers to give a reason in case of dismissal would be tantamount to importing the provisions of the Termination of Employment Convention, 1982 (No. 158), into Convention No. 151 without any justification. The Employer members also expressed strong disagreement with the proposal by the Committee of Experts that collective agreements might require the trade union confederation to give its consent to the dismissal of a public employee, as a right of veto for trade union confederations for dismissals would be potentially very damaging for any public service by giving trade unions undue control over personnel policy, and could lead to arbitrariness and cronyism. They added that reinstatement was not in general an appropriate or practical measure, and was not even required by Convention No. 158. Moreover, they recalled that the Convention did not differentiate between non-trade union members, trade union members or trade union officials and representatives, and did not establish any requirement for privileged protection for trade union members or officials and representatives.
- 116.** With regard to union security clauses which, as recalled by the Committee of Experts, were increasingly being contested by national supreme courts, the Employer members recalled their view that the State should not allow third parties to limit the fundamental freedoms of individuals, which would be the case if union security clauses were considered admissible in collective agreements. Furthermore, in relation to the financing of employees’ organizations by the State, to which the Committee of Experts raised “no objection in principle”, provided that it did not have the effect of allowing the State “to exercise control over” or favour “one union over another”, the Employer members questioned how an organization financed by the State could be independent of the State. In their view, employers’ and workers’ organizations, in both the private and public sectors, should not be financed by the State in order to ensure the necessary distance to represent their members’ interests effectively.
- 117.** The Employer members, referring to the facilities to be afforded to the representatives of recognized public employees’ organizations, emphasized that the requirement in Convention No. 151 concerned the granting of facilities to representatives, and not to organizations, as indicated by the Committee of Experts in paragraph 135. The latter claim constituted an interpretation which had no basis in the text of the Convention. In the view of the Employer members, governments were justified in limiting the provision of facilities to what was required to enable employees’ representatives to carry out their functions. With regard to the types of facilities that could be provided, the General Survey cited the Workers’ Representatives Recommendation, 1971 (No. 143), which was a non-binding instrument. It should be recalled that Convention No. 151 did not contain any indication of the relative importance of particular facilities. The views expressed by the Committee of Experts in that respect were not therefore helpful and lay outside its mandate. Moreover, the Employer members emphasized that the collection of trade union dues was a matter for trade unions themselves, without the involvement of employers. The Convention did not refer to any active involvement of employers in that respect, as in a check-off system.

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There were no grounds for privileging trade unions by establishing a right to an employer facility in that connection.

- 118.** The Employer members, concerning procedures for determining terms and conditions of employment other than collective bargaining, noted the reference by the Committee of Experts to principles established by the CFA. However, it was unclear in what context the CFA had made those statements, which appeared to relate more to negotiations than consultations and were therefore largely irrelevant in the context of Article 7 of Convention No. 151. They therefore called on the Committee of Experts in future General Surveys not to uncritically adopt non-technical views expressed by the CFA, which was not a body mandated to supervise the application of Conventions. With regard to the specific comments made in paragraph 192 concerning the system in Honduras under which public employees could submit “respectful statements”, although the Employer members agreed that such a system was not in accordance with Convention No. 98, they failed to understand the view expressed by the Committee of Experts that the system did not meet the requirements of Convention No. 151, which envisaged methods other than negotiation for the determination of terms and conditions of employment. The submission of “respectful statements” might be such a method and it was to be regretted that the Committee of Experts had not provided explanations in support of its views.
- 119.** With regard to collective bargaining in the public service, the Employer members considered that it would have been helpful if the Committee of Experts had considered the full range of participative methods available under Convention No. 151 and discussed their respective strengths and weaknesses. Instead, by placing such emphasis on collective bargaining, and even placing it on the same level of importance as democracy and free elections, the Committee of Experts was clearly exceeding its mandate and going beyond the requirements set out in Conventions Nos 151 and 154. Furthermore, in the section on developments in public administration, the multiple issues addressed by the Committee of Experts, including economics, administrative careers, free trade, loans and other financial issues exceeded both the scope of the General Survey and the Committee’s mandate.
- 120.** In relation to the scope and methods of application of the Conventions, the Employer members failed to understand the differentiation made by the Committee of Experts, which was not established in the Conventions, between members of the armed forces and civilian staff in the armed forces. In the view of the Employer members, the reason for the exclusion of members of the armed forces from the provisions of the Conventions was their importance in ensuring external security, but it could be argued that civilian staff in the armed forces were equally important in that regard. They also expressed doubts concerning the comment in paragraph 256 that the Conventions applied to workers in public enterprises, which in their view could not normally be regarded as a public authority.
- 121.** With regard to collective bargaining, the Employer members noted the indication in paragraph 271 that, during the preparatory work for Convention No. 154, it had been specified that “promotion” should be interpreted as not creating an “obligation” for a State to impose collective bargaining. The statement by the Committee of Experts in the next paragraph that the “voluntary nature” of collective bargaining might mean that States could provide that collective bargaining with representative organizations of public employees was obligatory was therefore a contradiction in terms, and an interpretation of Convention No. 154 that was totally at odds with its legislative history. In addition, in relation to the issue of negotiation with elected workers’ representatives and non-unionized workers, the Employer members believed that, providing that collective bargaining was promoted, it was for the workers to decide whom they wished to represent them. The existence of a higher number of agreements with non-unionized workers should not necessarily be seen

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as an indicator that governments were not taking appropriate measures to ensure that the position of trade unions in collective bargaining was not undermined.

- 122.** With reference to good faith, representativeness and the recognition of organizations, the Employer members, while agreeing that good faith by the parties to collective negotiation was important in achieving a meaningful outcome, did not accept that there was an obligation to bargain in good faith which implicitly presupposed an obligation to bargain. During the preparatory work for Convention No. 154, it had been said that good faith could not be imposed by law, but could only be achieved through the voluntary and persistent efforts of both parties. With regard to the recognition of organizations for collective bargaining purposes, it was disconcerting that the General Survey provided detailed explanations on recognition procedures and the criteria and thresholds for representativeness that would be acceptable. While it might be necessary to define rules on eligibility for collective bargaining at the national level, neither of the Conventions set out any such rules or obligations. Given the diversity of contexts for industrial relations, the specification of more concrete rules was not appropriate. The Committee of Experts was therefore making its own rules, rather than explaining those contained in the Conventions, and was therefore going beyond its mandate. In relation to the autonomy of the parties to collective bargaining and the principle of non-interference, the Employer members noted the criticism by the Committee of Experts of the excessive use of appeals respecting the constitutionality of collective agreements. While agreeing that the autonomy of the parties needed to be respected, the Employer members considered that this principle should also apply to the initial decision on whether or not to enter into negotiations.
- 123.** On the subject of collective bargaining procedures, the Employer members noted with interest the reference in footnote 197 to the preparatory work of Conventions Nos 151 and 154, during which it was agreed that the right to strike would not be dealt with. Accordingly, the Committee of Experts did not derive the right to strike from Conventions Nos 151 and 154. The Employer members called on the Committee of Experts to show the same respect for the preparatory work for Convention No. 87, which also showed that it did not deal with the right to strike.
- 124.** With regard to the content of collective bargaining, the Employer members emphasized that it should be for the workers and employers concerned to assess what was in their best interests to negotiate over. The list of subjects of bargaining suggested in the General Survey mainly reflected the priorities of workers. Greater efforts should have been made to include subjects of potential interest to employers, such as productivity increases, service improvements and cost-containing measures. Furthermore, the description in paragraph 337 of the lending conditions imposed on States by the international financial institutions was somehow distorted. It was not the lending conditions imposed that were affecting collective bargaining in public administrations, but the careless financial management by governments which had denied countries access to the normal credit markets and which was restricting the room for collective bargaining.
- 125.** With reference to the impact of the economic crisis on collective bargaining, the Committee of Experts had referred to an opinion by the CFA considering a three-year period of limited collective bargaining on remuneration a “substantial restriction”. While the Employer members agreed that, in line with the principle *pacta sunt servanda*, collective agreements should be fulfilled, they recalled that such agreements were concluded in a particular economic context. In unforeseen situations and extreme conditions, adaptations should be possible. Where the parties could not agree to adoptive measures, the State had the responsibility to take the necessary measures. The Committee of Experts failed to recognize that collective bargaining systems which proved unable to adapt to a crisis, or even aggravated the crisis, might require a more in-depth reform to make them more robust and sustainable in future. Neither of the Conventions considered

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set out any concrete rules on this subject. While there might be a need for advice, it could not therefore be derived from existing ILO Conventions. Once again, the Committee of Experts was giving opinions on economic policies and measures, which was outside its mandate and competence.

- 126.** On the subject of bargaining levels, the Employer members agreed with the indication in paragraph 351 that legislation imposing a level of bargaining raised problems of compliance with the Convention. However, it was unfortunate that most of the examples of collective bargaining systems referred to in the General Survey involved an obligation to bargain collectively, or other elements of compulsion, which gave the impression that compulsory collective bargaining in the public service was normal and even desirable. Coercion in relation to collective bargaining was incompatible with the principle of “voluntary negotiation” enshrined in ILO Conventions.
- 127.** Finally, the Employer members emphasized that, in “making a pressing appeal” to member States to ratify Conventions Nos 151 and 154 and giving its views on the importance of the two instruments, the Committee of Experts had exceeded its mandate and entered the sphere of politics, which was reserved for the ILO’s tripartite bodies. They once again called on the Committee of Experts to adhere to its technical mandate which, in the case of the General Survey, consisted of providing an overview of law and practice relating to the instruments under examination, including the status of compliance with those instruments by ratifying countries.
- 128.** Many Government and Worker members welcomed the General Survey, which they considered to be a very useful tool providing comprehensive information and guidance on issues that were of great importance in enhancing labour relations in the public service, and addressing issues that were of critical importance for public sector workers.
- 129.** The Government member of Ireland, speaking on behalf of the European Union and its Member States, as well as Bosnia and Herzegovina, Croatia, Iceland, The former Yugoslav Republic of Macedonia, Republic of Moldova, Montenegro, Serbia and Ukraine, welcomed the General Survey and considered that the information provided on national law and practice and the recommendations outlined would be very useful in finding a way forward. She recalled that employment relations in the public sector displayed a great variety across the European Union Member States. They were rooted in country-specific legal and institutional traditions, despite certain trends towards convergence, both between countries and between the public and private sector within each country. Within the diversity, the principle of freedom of association was a common denominator. The economic crisis had exercised some common pressures, but the process and severity of adjustments had differed between countries. She reaffirmed a strong commitment to the principles of freedom of association and collective bargaining, which were values fully shared by the European Union and its Member States, as well as the view that freedom of association and collective bargaining could only be fully developed in a democratic system in which civil liberties were respected. The aim of this discussion should be to provide strategic and action-oriented governance advice to the Office on the actions considered necessary and useful. The results of this discussion should feed into the recurrent discussion on social dialogue. The Office should concentrate on the identification of the challenges faced by member States. The capacity-building and assistance mechanisms at the disposal of the Office would significantly contribute to the full implementation of the social dialogue Conventions and the promotion of their ratification.
- 130.** The Government member of Australia, speaking on behalf of IMEC, reaffirmed the high level of importance placed by IMEC on the ILO supervisory system and its key role in facilitating the implementation of and adherence to international labour standards. The ILO supervisory system would be instrumental in ensuring a fair and balanced path towards

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economic recovery. The IMEC governments were committed to doing all they could, in cooperation with the social partners, to ensure the continued effectiveness of the Conference Committee, particularly in light of the events of the previous year. In that regard, with reference to the mandate of the Committee of Experts, he noted the statement in the foreword to the General Survey that the Committee's opinions and recommendations were "not binding within the ILO supervisory process and ... not binding outside the ILO unless an international instrument expressly establishes them as such or the supreme court of a country so decides of its own volition". He considered that this clarification, along with other explanations provided in the General Survey and the General Report, were constructive in taking this issue forward. While it was for the Committee of Experts alone to determine the scope of its comments, the General Survey this year provided a sound reference point for future reports. The IMEC governments were committed to facilitating a resolution of these issues and looked forward to further tripartite consultations after the Conference.

- 131.** The Government member of Colombia, speaking on behalf of the Governments of the Group of Latin American and Caribbean Countries (GRULAC), welcomed the General Survey on a subject of great interest. However, she noted that, in her view, the statement in paragraph 6 of the General Survey was highly debatable that the work of the Committee of Experts inevitably involved a degree of interpretation, as the Committee of Experts, in the same way as the other ILO supervisory bodies, lacked the legal competence to interpret ILO Conventions. That competence lay exclusively with the ICJ. She therefore renewed the call for the Committee of Experts not to exceed its mandate by interpreting Conventions, and added that in so doing it created legal uncertainty which might have the effect of discouraging States from ratifying Conventions. She also expressed concern at the statement in paragraph 6 that the opinions and recommendations of the Committee of Experts are not binding within the ILO supervisory process, and not binding outside the ILO unless an international instrument expressly established them as such, or the supreme court of a country so decided of its own volition. In hypothetical terms, such a statement was likely to increase legal uncertainty, and a document issued by the ILO should not create room for such hypotheses that were without basis or precedent. Moreover, there could be no basis for requiring a supreme court, in an autonomous and sovereign ruling in its capacity as the highest legal authority in a country, to share the non-binding opinions or recommendations of the Committee of Experts on any of the ILO Conventions. In such a case, what would be binding for the country concerned would not be the opinion or recommendation of the Committee of Experts, but the decision of the supreme court.
- 132.** With regard to paragraph 8 of the General Survey, she voiced deep concern at the reference to the statement by the Committee of Experts, previously made in 1990, that in so far as its views were not contradicted by the ICJ, they should be considered as valid and generally recognized. The Committee of Experts had reconsidered that statement in 1991, emphasizing that it did not consider that its opinions had the same authority as the decisions of a judicial body and that, in making its previous statement, its intention had been to highlight the fact that member States should not reject its opinions concerning the application of a provision of a ratified Convention while at the same time refraining from using the procedure established in article 37 of the ILO Constitution to obtain a definitive interpretation of the Convention in question. Making that reference in paragraph 8, without referring to the clarification of 1991, caused confusion and was unhelpful in trying to resolve the differences regarding the status of the views of the Committee of Experts. The Office should be very careful in publishing reports that did not contain all the necessary information for constituents to form their opinions in relation to international labour standards, as it placed at risk the principle of legality, and consequently of legal certainty for the proper functioning of the ILO.

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- 133.** The Government member of the Russian Federation considered that the General Survey was an excellent source of useful information. It described clearly those cases in which the right to bargain collectively in the public services, as recognized in ILO Conventions, was subject to restrictions, particularly in the current context of economic crisis. In that regard, failure to respect labour rights, including collective bargaining, should not be accepted on the pretext that it was necessary to overcome the effects of the crisis. He recalled the concern expressed by trade unions at the growing use of atypical forms of employment in the public sector, which could lead to a deterioration in workers' rights. Governments should be alert to the issue and strike a fair balance. He added that the Committee of Experts should follow the advice of the Employer members and not lay itself open to criticism that it was exceeding its technical mandate, particularly by avoiding addressing issues of an essentially political nature. He concluded that the General Survey was of interest to member States that had ratified the relevant Conventions and wished to improve their national legislation and policy in compliance with international labour standards.

***Application of the instruments in practice through different systems and under differing national conditions***

- 134.** Many speakers described the different systems for the application of the instruments on labour relations and collective bargaining in the public service, and highlighted the specific problems encountered at the national level. Several Government members noted improvements in consultation and bargaining in the public sector, even without ratification of the respective Conventions.
- 135.** The Government member of Morocco said that freedom of association for public officials had been legally recognized in his country since 1957. The new Constitution now embodied the right to collective bargaining and four tripartite national social agreements had been concluded between 1996 and 2011 to regulate a range of issues. Accordingly Morocco, which had already ratified Conventions Nos 98 and 154, had just deposited the instrument of ratification of Convention No. 151.
- 136.** The Government member of Tunisia indicated that the right to collective bargaining in the public sector had been widely respected since 1990 and was granted on an equal footing with the private sector. Tunisia had ratified Convention No. 154 and, in 2013, had become the first Arab State to ratify Convention No. 151. The Tunisian trade union movement had seen the creation of a multitude of organizations since 2012, which could raise questions as to their nature and representativeness. The Government hoped to receive ILO technical assistance to address those issues.
- 137.** The Government member of Algeria said that his country had introduced a new statute for the civil service in 2006, which had been the subject of extensive consultations between the Government and the most representative trade union in the sector. The statute guaranteed civil servants various rights, including freedom of opinion, freedom of association and the right to strike, along with protection against threats, abuse and defamation. Under the overall statute, 59 individual statutes had been adopted between 2008 and 2012. Civil servants participated in managing their own career progression through an institutional framework that included independent joint administrative committees, appeals bodies and technical committees. The institutional framework in the civil service included the Higher Council for the Civil Service, which was a dialogue body.
- 138.** The Government member of Libya described the efforts made in his country to update and develop its labour legislation. A draft Labour Code had been prepared, which took into account the Arab and international Conventions ratified by his country. The draft Labour Code would be submitted to the ILO for examination and any observations would be taken

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into account. A new bill on trade unions was also being prepared, which would provide for freedom of association. The Civil Service Law was also being updated and occupational safety and health legislation developed.

- 139.** The Government member of the Islamic Republic of Iran said that, although his country had not ratified the two Conventions, his Government had constantly strived to eliminate any form of discrimination against public sector employees, especially with regard to their terms and conditions of employment. Among other measures, an independent administrative court of justice had been established to examine all claims by public sector employees relating to their social and labour rights.
- 140.** The Government member of Kenya indicated that, while Kenya had not ratified Conventions Nos 151 and 154, a consultative process was being followed with the social partners concerning their ratification and the new Constitution established institutions and processes to ensure the observance of trade union rights and facilities in the public service.
- 141.** The Government member of Senegal observed that collective bargaining took place in her country in both the private and public sectors and had resulted in the conclusion of collective agreements at the establishment, enterprise, occupational and inter-occupational levels. Widespread unionization in the public sector contributed to the regular conclusion of agreements. A number of good practices, including the consultation of independent bodies, such as the National Committee for Social Dialogue, and the conclusion of the National Social Dialogue Charter, had been commended by the Committee of Experts. Some important measures had been adopted with respect to certain restrictions on the right to bargain collectively in the public sector. Although Senegal had not ratified Conventions Nos 151 and 154, the national legislation recognized the right to bargain collectively.
- 142.** The Government member of Cameroon said that, although her country had not yet ratified Conventions Nos 151 and 154, steps had been taken in practice to enable civil servants to exercise their rights. A number of decrees adopted in 2000 and 2001 set out the operational procedures of the Superior Council on the Public Service, where discussions were held on the revision of wages and social benefits, statutory rules regarding civil servants' careers, the functioning of the civil service disciplinary board and of joint administrative committees. The right to organize in the public service was governed by Act No. 68/LF/19 of 1968 on associations or trade unions not covered by the Labour Code, under which the establishment of a trade union of public servants was subject to approval by the Minister for Territorial Administration and Decentralization. That was not consistent with the provisions of Convention No. 87, which Cameroon had ratified, and the Government was accordingly in the process of revising the Labour Code and drafting a bill dealing specifically with trade unions that would allow them to be established on the basis of a simple declaration, as required by international standards. The Government was relying on technical support from the international community in several areas with a view to applying ILO standards more effectively.
- 143.** The Government member of the Democratic Republic of the Congo emphasized that, although it had not yet ratified the Conventions covered by the General Survey, his country applied the principles that they embodied. For example, the 2006 Constitution reaffirmed freedom of association as a citizens' right, and the regulations governing trade union activities in the public administration had been updated in 2013. Moreover, the new bill issuing the statute of the public service embodied the principle of collective bargaining in the public service.
- 144.** The Government member of South Sudan said that her country was taking measures towards the ratification of Conventions Nos 87 and 144. The transitional Constitution contained provisions on collective bargaining and freedom of association, and a Labour



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Advisory Working Group had been established to discuss issues relating to both the private and public sectors. She emphasized the importance of opening pathways for dialogue to achieve further progress and considered that strikes should be seen as a measure of last resort.

- 145.** The Government member of India stated that the right to unite for a common cause and freedom of association had been recognized and effectively protected in his country since the adoption of the Trade Unions Act, 1926. Collective bargaining had been an effective method used by trade unions in India for improving working conditions and collective agreements could be made enforceable if they were registered with the appropriate government. In his view, ratification was a governance issue, as member States could be at different stages of development and could be faced with diverse socio-economic realities. Non-ratification of some of the core or governance Conventions should not therefore be considered as absence of compliance with the principles enshrined in those instruments. His Government remained committed to the ILO Declaration on Fundamental Principles and Rights at Work and would continue to follow socially oriented policies upholding the principles of tripartism and social dialogue.
- 146.** The Government member of Sri Lanka indicated that, while collective bargaining and dispute settlement procedures existed in her country, as established in the Industrial Disputes Act, that was not the case in the public sector. The situation had been addressed by some remedial actions with ILO assistance, including the setting up of a tripartite committee to discuss issues relating to collective bargaining and dispute settlement in the public sector.
- 147.** The Government member of the Republic of Korea said that, in her country, the rights of association and collective bargaining for public officials and teachers were guaranteed by special laws, in accordance with ILO principles. Once established, in the Republic of Korea, a trade union was automatically granted the right to bargain collectively. Unions could request the Labour Relations Commission to settle labour disputes and resolve cases of unfair labour practices by employers. Moreover, employers had an obligation to engage in the bargaining process when so requested by a union. Due to this unique nature of the system, it was necessary to check whether union by-laws complied with the respective laws, and whether the union and the employer were the legitimate parties for collective bargaining in order to reduce unnecessary conflicts. In practice, there were over 100 unions of public officials and teachers operating in the country. Unlike other workers, the Constitution established the obligation of impartiality for public officials and teachers, while their employment security and working conditions were guaranteed by law. Public officials were career civil servants and the system aimed to ensure political impartiality by preventing them from being affected by political pressure. Public officials were therefore prohibited from engaging in political activities in favour of a specific political party or a politician.
- 148.** The Government member of Brazil said that the ratification of Convention No. 151 by his country represented a victory for the trade union movement in the public sector. Collective bargaining in the public sector had specific characteristics as a result of the dual function of the State as employer and public authority, with responsibility for allocating and managing the resources available. The Ministry of Labour and Employment, the Public Ministry of Labour and the ILO Office had organized a seminar in Brazil on democratizing the State, with the participation of the social partners, during which the Government had provided information on setting up forums for dialogue and bargaining in the public sector.
- 149.** The Government member of the Bolivarian Republic of Venezuela emphasized that his Government was socially oriented, progressive and supportive of trade unions and had always fully recognized collective bargaining in the public administration. With regard to

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the criticisms made of his country, he emphasized that care was needed to ensure that such comments were accurate, truthful, objective and based on collective interests for the benefit of public sector workers. Any difficulties that arose in relation to widespread trade union participation and collective bargaining were always dealt with by seeking collective solutions. Although his country had not ratified Conventions Nos 151 and 154, their provisions were taken into account. The national legislation contained provisions that were beneficial, advanced and progressive for the protection of workers and the recognition of the role of trade unions.

- 150.** The Government member of Cuba reaffirmed that there were no restrictions on the exercise of the right to bargain collectively in her country. Collective agreements were approved by workers' assemblies, and trade union representatives, workers and workplace administrations had complete autonomy and independence to submit, discuss and approve the subjects covered. Trade union representatives also participated in the process of drafting labour and social security legislation. The voluntary nature of the process of drafting, amending or revising collective agreements and the full autonomy of the parties in that process were confirmed by law. Arbitration would only apply when requested by the parties of their common accord, although that had not yet happened.
- 151.** The Government member of Colombia recalled that, following the adoption of Decree No. 1092 in 2012, over 30 workshops had been held, attracting many trade union participants and covering a large part of the public sector. A list of demands had been submitted and, after a long negotiation process, had led to the signing of a national agreement covering five thematic areas, including the amendment of Decree No. 1092, wages for the period 2013–14, strengthened careers in the public service, the participation of the social partners and the formalization of employment. The agreement had been the result of a constructive process and was welcomed by the Government.
- 152.** The Government member of the Czech Republic indicated that the relevant Conventions had been discussed by the Czech tripartite partners, although no consensus had been reached regarding their possible ratification. Among the major points of discussion were: the mechanism through which trade unions might be consulted in the case of draft legislation affecting working conditions or terms of employment, where the legislative initiative had been taken by actors other than the Government; the modalities of dispute settlement; and the relationship between collective bargaining on remuneration and the preparation and adoption of the state budget.
- 153.** The Government member of Germany explained that collective bargaining in the public sector in his country was a complex issue. He added that his Government agreed entirely with the main goals of Convention No. 151 and, with regard to freedom of association, all the necessary conditions were fulfilled for employees in the public sector, as the Constitution established the right to improve and promote working conditions and to join an association. However, those provisions only applied to the working conditions of workers and employers. The terms and conditions of employment of civil servants were regulated by the Government. The Constitution allowed no room for manoeuvre in that respect, for which reason his country was not in a position to ratify Convention No. 151. Germany also approved of the goals of Convention No. 154 and considered that the determination of working conditions should be left to the parties to collective agreements to the greatest possible extent. Nevertheless, as the terms and conditions of employment of civil servants were laid down by law, and not collective bargaining, under the terms of the Constitution, the ratification of Convention No. 154 could not be envisaged.
- 154.** Many of the Worker members who took the floor made an urgent call for governments to pursue the widespread ratification of Conventions Nos 151 and 154 and to take effective

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action for their implementation in practice. They expressed support for the call for an ILO sectoral programme of action on labour relations in the public service.

- 155.** A Worker member of Italy, speaking on behalf of Public Services International, considered that there was a concerted global attack on the public sector, with austerity measures and privatization being used to weaken trade unions and workers' rights. Anti-union tactics had now spread from the private to the public sector and included: the loss of autonomy of trade unions through government interference in their election processes; smear campaigns against trade unions and their leaders; the criminalization and prosecution of protest action; the creation, at all levels, of new trade unions for the political control of workers; the deregulation of public employment; and the de-institutionalization of social dialogue and tripartism, and their replacement by policies imposed by employers and selective dismissals. There were examples in many countries of the denial of registration of trade unions in the public sector, their suppression by governments, killings without the prosecution of those responsible, attacks resulting in decreased union membership, the deterioration of wages and pensions for public sector and health workers, strict anti-strike laws and threats for participating in demonstrations. Substantial categories of public employees were denied the right to bargain or were subjected to severe restrictions. The practices of outsourcing, short-term contracts and consultancy contracts, which were now increasingly present in the public sector, were breaking the mould of an independent public service that delivered high-quality public services for inclusive, transparent and democratic societies that were free of corruption. A Worker member of Nicaragua, speaking on behalf of Education International, highlighted the fundamental role of freedom of association and collective bargaining for the education sector, both public and private. The Committee of Experts recognized that teachers in the public sector should enjoy the right to collective bargaining, whether or not they were public servants. Those who fulfilled technical and administrative functions in the education sector should also enjoy the same right. The ILO-UNESCO Recommendation concerning the Status of Teachers contained a requirement that both the salaries and working conditions of teachers should be determined through negotiation.
- 156.** A Worker member of Argentina, speaking on behalf of the Latin American and Caribbean Official Workers' Confederation (CLATE), emphasized the need to guarantee the effective exercise of the right to collective bargaining in the public sector, as public employees in Latin America were frequently still dependent on the unilateral will of the Government. It was particularly important to guarantee stable employment with a view to protecting public employees from the tendency of governments to resort to mass dismissals with every change of administration and avoiding trade union persecution and discrimination. With regard to the resolution of disputes in the public service, he emphasized that the State should not be both judge and jury. If a strike in the public sector was declared illegal, that should not be done by the Government, but by an independent body which had the confidence of the parties involved. An observer, speaking on behalf of the Confederation of University Workers of the Americas, added that non-teaching staff at public universities in Latin America were one of the sectors with the highest rates of trade union membership. However, he warned that any move to transfer the costs of a crisis created in the private sector onto the public sector should be opposed, and emphasized that Latin American workers expected support from the region's governments.
- 157.** Several Worker members described specific cases in which the rights of public employees to participate in the determination of their terms and conditions of employment had come under attack and emphasized that while, before the crisis, the use of precarious forms of employment had been increasing, it was now well rooted and spreading widely across the public and private sectors. As a result, opportunities for workers to join unions and bargain collectively had dropped considerably. For example, in the United Kingdom, there was an increase in the use of fixed-term contracts, and an even greater increase in the use of

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agency staff, who had no real rights to collective bargaining or employment protection. The Government had removed collective bargaining on pay and working hours for teachers some decades ago. Teachers' unions could only make "representations" to an independent body, which itself merely made "recommendations" to the Government, which took the final decision. In Denmark, recent negotiations for the renewal of the collective agreements of teachers had been settled in advance between the Government and public employers in the local authorities. During the negotiations, the employers had locked out all teachers for four weeks, with the lockout being ended by a Government decree which corresponded to the demands of employers, but did not take into account the views of the workers. The Government and public sector employers had been able to use Government powers to alter the bargaining system in the public sector. In Ireland, in February 2013, some 800 bank workers had lost their jobs overnight as a result of a law terminating their employment. This law had closed down the bank which, for several years, had been the property of the State, and had unilaterally withdrawn the collective agreement, including the rights that it established concerning termination of employment. In the United States, systematic attacks had been made in some states on collective bargaining in the public sector, particularly in Wisconsin where, in 2011, the Governor and legislature had generated a budgetary crisis and then used that crisis to ban almost all collective bargaining in the public sector. However, the General Survey had failed to capture those developments, or even to mention Wisconsin. In Australia, which had escaped the worst of the global economic crisis and austerity measures, there had also been attacks on the fundamental rights of public employees. For example, in both Queensland and New South Wales, legislative measures had been adopted which moved their respective Governments further away from compliance with Convention No. 87 by restricting the already limited rights in the public service to take industrial action, without genuine prior consultation with the relevant unions. In France, where the public services were the guarantors of republican values, independence and secularism, social cohesion and the exercise of fundamental rights and the fight against inequality, they were under attack from all sides and the general reform of public policies had led to massive job losses. Collective bargaining in the public service was above all consultative, and in no way binding on the employer. The wage freeze for public servants decided upon in 2010 had been the result of a unilateral decision by the State as employer. In Germany, a general prohibition of the right to strike was in violation of article 9(3) of the German Constitution. It was therefore unacceptable that a ruling of the Constitutional Court prevented certain categories of workers from striking in the public sector and that the country had refused to ratify Conventions Nos 151 and 154. In Belarus, social dialogue existed at all levels, as the Labour Code provided for collective bargaining, and 96 per cent of the working population were covered by collective agreements. However, the country was facing problems common to many other countries, including budgetary cuts, the ageing of the population and the acquisition by foreign investors of enterprises previously owned by the State, which wiped out the collective agreements concluded previously.

- 158.** Several Worker members from Asian countries agreed that public sector collective bargaining rights and labour relations had come under attack as globalization had led governments to engage in downsizing and the casualization of public sector employees, for example through subcontracting. While it was important to emphasize the right to collective bargaining for public employees, collective bargaining alone had no power without the fundamental and basic right to strike. The employment of public servants on a temporary, recurrent, fixed-term or part-time basis gave rise to discrimination among civil servants, as employees who could not bargain collectively received lower wages, did not receive pensions and did not benefit from the social security measures and other rights enjoyed by civil servants employed on a permanent basis. These forms of employment had a negative impact on the exercise of trade union rights, as demonstrated in Indonesia by the arrest of three members of the Confederation of Indonesia Prosperity Trade Unions (KSBSI) in early 2013, following a strike called to protest against the dismissal of

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363 outsourced workers. In the Republic of Korea, despite the fact that labour law was based on the principle of the autonomy to establish trade unions, the authorities had cancelled the registration of the Korean Government Employees' Union (KGEU) three times since 2009 on the grounds that its membership included dismissed workers. In so doing, the Government had in practice denied collective bargaining for public officials for the last five years. It had also threatened to cancel the registration of the Korean Teachers and Education Workers' Union (KTU). The Government determined the wages and working conditions of public sector workers through budgetary directives, thereby denying the right to bargain on these issues, while the exercise of trade union rights was all but impossible for precarious public sector workers. The central administration and public sector employers had also engaged in systematic union busting through the unilateral cancellation of collective agreements, the development of pro-company unions and physical and psychological intimidation. Hundreds of public sector workers had been dismissed in retaliation for union activities.

- 159.** Several Worker members from Latin American countries observed that the attitude of the Employer members towards the General Survey showed just what trade unions were up against in their efforts to defend the interests of public sector employees. Ever since the 1980s, the dismantling of the State had been the prime concern of governments throughout the world, with the privatization, outsourcing and flexibilization of public services. Despite the emphasis placed by the General Survey on the need to respect civil liberties in order to promote freedom of association, the trade union movement was being penalized in Latin America and trade union leaders were persecuted and their human rights violated. There was a significant delay in discussing collective bargaining in the public administration in the Bolivarian Republic of Venezuela. If collective bargaining in the public administration was to have a future, there needed to be increased participation by the social partners in the planning, implementation, evaluation and follow-up of public policy. In Peru, a Civil Service Bill had been tabled on which there had been no prior consultation with the trade unions. The Bill proposed to remove both the right to bargain collectively and the right to strike, while encouraging the dismissal of employees. Because there had been no social dialogue on the subject, Peruvian workers had gone on strike, which was the only means left to workers to uphold their labour demands. In Colombia, 15 years after the ratification of Conventions Nos 151 and 154, the workers had succeeded in persuading the Government to regulate collective bargaining through a legislative decree, under which a national agreement had been concluded. However, restrictions and difficulties hampered the exercise of freedom of association in the country. When Decree No. 1092 of 2012 had eventually been adopted, it failed to meet the expectations of the workers, as it contained gaps and excessive prohibitions. Under the Decree, the administration could unilaterally determine the nature of any dispute and most issues were excluded from bargaining. It was hoped that the Decree would be amended appropriately and that agreement would be reached through social dialogue in determining the terms and conditions of employment of public employees in the light of ILO instruments. In the vast majority of public institutions in Colombia, the increasingly precarious nature of employment effectively prevented genuine collective bargaining. In Chile, Convention No. 151 had been ratified in 2000 following an extensive process of collective consultation at the national level. However, since then no progress had been made in amending the national legislation to give effect to the Convention. The constitutional prohibition on public officials joining trade unions, engaging in collective bargaining and going on strike remained in place, as did the related administrative penalties, including dismissal. Several draft laws would also strengthen exceptions, such as the State Domestic Security Act, under which the disruption of public services was a criminal offence. Furthermore, over 11,000 public officials had been arbitrarily dismissed for political reasons since 2010 and anti-union practices had become widespread. Temporary and precarious work had increased and currently affected 70 per cent of public employees. A series of Bills to restructure numerous public services had recently been tabled, which would involve changing the working and contractual

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conditions of thousands of workers, encouraging outsourcing and privatization processes and increasing the precariousness of public officials. The views of the trade unions had not been taken into account.

- 160.** The Employer member of Denmark, in response to the Worker member of Denmark, explained that, pursuant to the collective agreement signed by both parties in the teaching sector, the right to strike or lockout could be exercised as a legal means of resolving a conflict arising during collective bargaining, but only following a secured period of negotiations. For the employers, it was a matter of priority to change the collective agreement in respect of working time. The parties had failed to reach agreement and the lockout had been declared. After 28 days of conflict, involving about 50,000 teachers and nearly 500,000 pupils, the Government had ended the conflict by decree. No complaints had been submitted to the labour court by trade unions in this respect.
- 161.** The Employer member of Austria, with reference to paragraph 59 of the General Survey, said the CFA had no role in assessing compliance with ILO Conventions or in explaining their contents. He added that the views expressed by the Committee of Experts concerning “high-level employees”, including the need to interpret the notion of confidentiality and the terms “policy-making or managerial functions” restrictively, were outside its mandate. He called on the Committee of Experts to refrain from questioning the content of Conventions and replacing it with its own views.

### **Concluding remarks**

- 162.** The Employer members recalled that the preparation of General Surveys was a very important function of the Committee of Experts, and reiterated their appreciation for this work. The outcome of the present discussion should reflect several elements. Firstly, the purpose of General Surveys was to provide an overview of law and practice in relation to the Conventions examined. Remarks addressing the usefulness of specific provisions of these Conventions, or calls for their ratification fell outside the scope of General Surveys and should therefore be avoided. Secondly, the Committee of Experts should avoid citing the views of the CFA in light of the latter’s mandate and role. While the CFA occupied an important place in the work of the ILO, its comments were directed at specific national situations which could not be generalized. Moreover, the Committee of Experts should avoid calling for actions unrelated to compliance with Conventions or which exceeded their scope. In recognition of the important work of the Committee of Experts as a key component of the ILO supervisory system, the Employer members encouraged it to adhere to its technical mandate by providing an overview of the law and practice of the instruments examined in General Surveys, including the status of compliance in ratifying countries.
- 163.** The Worker members recalled the events that had marked the work of the Conference Committee in 2012 and the difficult circumstances that had since prevailed. In this regard, dialogue was more necessary than ever and the discussions held within the Conference Committee formed part of the follow-up within the Governing Body. While it was unlikely that a solution would be found during the current session of the Conference, work was under way in this respect outside the Conference Committee. The Worker members had high hopes of finding an acceptable and balanced tripartite solution in order to preserve the role of the ILO as the organization that set standards and was vested with sufficient powers to guarantee their application in both law and in practice. It was not therefore appropriate to open or continue that debate within the Conference Committee, which was mandated to address issues of application. In conclusion, the Worker members reaffirmed their unconditional support for the ILO’s primary mandate, which was to promote social justice and implement the fundamental principles and rights at work.

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**164.** In his reply to the discussion on the General Survey, the Chairperson of the Committee of Experts emphasized the active role played by trade unions in various countries in the promotion of the principle of freedom of association and collective bargaining. He observed that many Worker members had expressed concern at the negative impact of economic and financial crises on the rights and interests of workers in general, and more specifically the enjoyment of freedom of association and collective bargaining in the public sector. A significant number of Worker members had provided helpful information about serious cases of discrimination against and interference with trade union management and activities in the public sector. They had emphasized the requirement for legal provisions to ensure freedom of association and collective bargaining in the public sector to be accompanied by their effective implementation. The role of the ILO supervisory mechanisms was crucial in this respect.

**165.** Turning to the points of criticism of the General Survey by the Employer members, he considered that they were very thought-provoking and legally interesting. They would be brought to the attention of the members of the Committee of Experts at its next session, and could be discussed during the special sitting of the members of the Committee of Experts and the two Vice-Chairpersons of the Conference Committee. Nonetheless, he wished to address briefly certain points raised by the Employer members. Concerning the mandate of the Committee of Experts, the position of the Committee of Experts was clearly explained in its General Report of 2013 and particularly paragraph 33(a), which read: “The terms of reference of the Committee of Experts call for it to examine a range of reports and information in order to monitor the application of Conventions and Recommendations. In fulfilling this responsibility, the Committee must bring to the attention of the Conference Committee on the Application of Standards any national laws or practices not in conformity with the Conventions, including the severity of certain situations. This logically and inevitably requires an assessment, which in turn involves a degree of interpretation of both the national legislation and the text of the Convention”. By this statement the Committee of Experts showed that it was well aware that the views of the Committee of Experts were not legally binding and that the power of authoritative, legally binding interpretation of the Conventions was vested with the ICJ under article 37 of the ILO Constitution. Turning to the right to strike, he pointed out that the views of the Committee of Experts had been extensively developed in the Chapter dealing with Convention No. 87 in the 2012 General Survey, and particularly in paragraphs 117–122. Concerning the legislative history, the position of the Committee of Experts had been briefly explained in paragraph 118. With regard to the point raised by the Employer members concerning the question of why the Committee of Experts had referred, in paragraph 308 and footnote 197 of the 2013 General Survey, to the preparatory work concerning Conventions Nos 151 and 154, but had not respected the preparatory work in the same way for Convention No. 87, he indicated that careful analysis and discussion were required during the next session of the Committee of Experts in order to provide a reply to this point.

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**166.** A brief summary and the outcome of the discussion on the General Survey concerning labour relations and collective bargaining in the public service were presented by the Officers of the Committee on the Application of Standards to the CDS on 8 June 2013. The text of the outcome is set out below.

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## **Outcome of the discussion on the General Survey concerning Labour Relations and Collective Bargaining in the Public Service**

**167.** Upon consideration of the General Survey concerning the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154), prepared by the Committee of Experts on the Application of Conventions and Recommendations in light of the 2008 Declaration on Social Justice for a Fair Globalization, the Committee on the Application of Standards took note of the rich discussion that took place and the diversity of views reflected on the different issues raised by the General Survey and agreed on the following outcome of its discussion, which it would like to bring to the attention of the CDS:

The Committee welcomed the comprehensive General Survey prepared this year by the Committee of Experts which touches upon many important issues relevant to the public service today. The Committee on the Application of Standards expressed its strong attachment to the principles of freedom of association and collective bargaining and emphasized that these rights can only be fully developed in a democratic system in which civil liberties are respected.

The Committee recalled that Convention No. 151 permits ratifying States to choose between collective bargaining mechanisms for the public service and other methods which would allow representatives of public employees to participate in the determination of their terms and conditions of employment, for example consultation.

Convention No. 154, on the other hand calls for the progressive promotion of collective bargaining in all branches of activity, and permits special modalities of application for the public service. The Convention can be applied through diverse national labour relations systems.

The Committee highlighted that collective bargaining in the public, as in the private sector should be conducted in accordance with the principles of free, voluntary and good faith negotiation.

Collective bargaining in the public service can maximize the impact of the responses to the needs of the real economy and be of particular importance during times of economic crisis.

Collective bargaining contributes to just and equitable working conditions, harmonious relations at the workplace and social peace. By facilitating adaptation to economic and technological changes and the needs of administrative management, it represents an effective instrument for ensuring an efficient public administration, which in turn is important to ensure conditions conducive for sustainable enterprises and citizen rights.

Collective bargaining may cover a broad range of subjects of interest both to workers and to employers, including: fundamental rights, wages and working conditions, maternity protection, gender equality, family responsibilities, productivity, workplace adaptations and much more.

The Committee observed that governments could benefit from advice on, and sharing experience with respect to different collective bargaining mechanisms which assist in the adaptation of systems for the promotion of collective bargaining appropriate to national conditions. Support for capacity-building and assistance mechanisms by the Office can significantly contribute to the full implementation of these standards and towards the promotion of their ratification.



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## **D. Report of the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART)**

- 168.** The Worker members supported the recommendations of the CEART report, which had noted several trends pointing to a deprofessionalization of teachers. First, there was an influx of unqualified teachers in many countries, partially as a result of emergency short-term measures to close the teacher gap. Such short-term solutions had become established practice, leading to a lack of qualified teachers. In some central African countries, for example, only a small percentage of teachers possessed full qualifications. This trend was also accompanied by the rising perception that teaching did not require qualifications or training, but could be delivered by anyone following a script. A second trend picked up by the CEART report was the increasing use of short-term contracts, with reduced pay and benefits in relation to regular teachers. Such employment conditions were in line with the structural adjustment strategies promoted by international financial institutions seeking to reduce public spending, as well as misguided efforts to create better “accountability” of teachers through increased employment insecurity. A further trend was the increasing gap between teachers’ pay and remuneration in other sectors. The CEART report noted the continuing decline of teacher salaries, and in some countries teachers had difficulty accessing their pay, especially in rural locations. This not only deterred people from entering the profession, but dissuaded teachers from remaining in it. The economic crisis had exacerbated this situation, especially in Europe, where in a number of countries, teacher salaries and benefits had declined. Moreover, cuts in teacher salaries were carried out without negotiation.
- 169.** The further trend the CEART report had noted was the restriction of teachers’ professional autonomy. Curricula were narrowing, teacher preparation time was being reduced, and “teaching-the-test” curricula were prescribing not only what to teach, but how to teach. This was linked to the rapid spread of standardized testing, which was imposed as a means of quality assurance. Schools and teachers were being assessed by learning outcomes, and some of these assessments were high-stake evaluations linked to merit pay schemes and school ranking and funding. Regrettably, teacher assessment policies were often established without consulting teachers. Although social dialogue mechanisms often existed to deal with such matters, they were not always used. Finally, the CEART report had noted the increased use of private sector management approaches in education, which ranged from the use of private sector techniques and practices to the outright use of private entities to design, deliver, and manage education services. All of these trends had led to a reduced influence and status of teachers as professionals. The OECD had recently concluded that countries with high educational performance were more likely to work constructively with teachers as professional partners in shaping education policy. Social dialogue was therefore a powerful tool for education reform, especially in times of crisis.
- 170.** The Employer members noted that the CEART report allowed the Committee on the Application of Standards to examine work issues in the highly important education sector. His group agreed with the CEART’s conclusion that education opportunities should not be sacrificed to the demands generated by the economic crisis. The Employer members shared the objectives of developing a professional teaching force with good working conditions. Further trends which needed to be taken into account were the increasing use of information and communication technology in teaching and learning; increased demand for higher education; increasing teacher and student mobility; and the growing pressure to align higher education with the demands of the workplace. These trends required teachers to be passionate, up to date and motivated. Violence in schools was a worrying trend which undermined teacher performance, and should be rapidly dealt with at the national level.

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- 171.** According to the Employer members, the CEART report noted that social dialogue should be used positively to deal with measures necessary under the financial crisis affecting numerous countries. The strength of social dialogue was the numerous forms it could take; it could not be forced and did not necessarily mean collective bargaining agreements. As the Employer members had pointed out at the 316th Session of the Governing Body (November 2012) , they did not agree with the language used in the recommendation concerning an allegation made by the National Teachers' Federation of Portugal, which stated that austerity measures should not be used as an excuse to "violate" principles of the Recommendations concerning the status of teachers. Such a term was inappropriate for a non-binding instrument. It was furthermore not within the CEART's mandate to make recommendations about austerity measures without a full understanding of the context. The Employer members also did not agree that part-time teaching was the same as precarious employment, as paragraph 27 of the report suggested. The speaker concluded by stressing the continued relevance of the 1966 and 1997 Recommendations and the need for regular tripartite discussions on the vital subject which they covered.
- 172.** A representative from Education International indicated that in Honduras, the lack of social dialogue and the implementation of anti-union policies significantly affected the quality of education and teachers' unions. This was reflected by the disrespect of teachers' status, the freezing of salary increases, the non-payment of wages, the suspension of exams for the posts of teachers, and the recruitment of people with no proper training and qualifications. The approval of a law by the Honduran government on social security for teachers, replacing the former pension system that was more favourable to teachers, coincided with an ongoing campaign of vilification and persecution of teachers. In this respect, teachers' union leaders had been subject to threats and denial of union leave. In March 2011, a teacher union activist had been killed in a demonstration. It was furthermore feared that Antonio Casaña, President of the Professional Association of School Teachers of Honduras (COPRUMH), might be dismissed for attending the present Committee.
- 173.** The Government member of Sudan noted the importance of sound collective bargaining in the public service.

## **E. Compliance with specific obligations**

- 174.** The Chairperson explained the working methods of the Committee for the discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations.
- 175.** The Worker members indicated that the failure of member States to respect their reporting obligations was regrettable and constituted a serious situation. The Governments concerned had to comply with their obligations as soon as possible and the Office had to provide assistance to them to this end.
- 176.** The Employer members insisted that non-compliance with the obligation to send reports hampered the operation of the supervisory system. The majority of reports – 69.53 per cent of those requested under article 22 of the ILO Constitution and 89.78 per cent of those requested under article 35 – had been received. However, ten countries had not submitted reports that had been due for two years. For the system to function properly, reports needed to be presented periodically with high-quality information, and countries needed to consider the implication of ratifying a Convention carefully, as they were also responsible for reporting on its application. To that end, technical assistance from the Office should be maintained in order to lighten governments' workloads in terms of reporting obligations.

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- 177.** In examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, the Committee applied the same working methods and criteria as last year.
- 178.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 51 (failure to supply reports for the past two years or more on the application of ratified Conventions), 57 (failure to supply first reports on the application of ratified Conventions), 60 (failure to supply information in reply to comments made by the Committee of Experts), 116 (failure to submit instruments to the competent authorities), and 125 (failure to supply reports for the past five years on unratified Conventions and Recommendations) of the Committee of Experts' report to supply information to the Committee in a half-day sitting devoted to those cases.

### **Submission of Conventions, Protocols and Recommendations to the competent authorities**

- 179.** In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19, paragraphs 5–7, of the ILO Constitution. These provisions required member States within 12 or, exceptionally, 18 months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.
- 180.** The Committee noted from the report of the Committee of Experts (paragraph 114) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: Cambodia, Colombia, Cyprus, Ethiopia, Ghana, Turkmenistan and Uzbekistan. In addition, the Conference Committee received information about the submission to the national Parliament from the Government of Ukraine.

### **Failure to submit**

- 181.** The Committee noted that, in order to facilitate its discussions, the report of the Committee of Experts mentioned only the governments which had not provided any information on the submission to the competent authorities of instruments adopted by the Conference for seven sessions at least (from the 91st Session in June 2003 to the 100th Session in June 2011, because the Conference did not adopt any Conventions and Recommendations during the 93rd (2005), 97th (2008) or 98th (2009) Sessions. This time frame was deemed long enough to warrant inviting Government delegations to the special sitting of the Conference Committee so that they may explain the delays in submission.
- 182.** The Committee noted the regret expressed by several delegations at the delay in providing full information on the submission of the instruments adopted by the Conference to parliaments. Some governments had requested the assistance of the ILO to clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.
- 183.** The Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national parliaments. It also recalled that the Office could provide technical assistance to facilitate compliance with this constitutional obligation.

**184.** The Committee noted that 33 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is, **Angola, Bahrain, Bangladesh, Belize, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, El Salvador, Equatorial Guinea, Fiji, Guinea, Haiti, Iraq, Kyrgyzstan, Libya, Mozambique, Papua New Guinea, Peru, Rwanda, Saint Lucia, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Tajikistan and Uganda.** The Committee hoped that appropriate measures would be taken by the governments and the social partners concerned so that they could bring themselves up to date, and avoid being invited to provide information to the next session of this Committee.

## Supply of reports on ratified Conventions

**185.** In Part II of its report (Compliance with obligations), the Committee had considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2012 meeting of the Committee of Experts, the percentage of reports received was 67.8 per cent, (67.8 per cent for the 2011 meeting also). Since then, further reports had been received, bringing the figure to 78.9 per cent (as compared with 77.4 per cent in June 2012 and 77.3 per cent in June 2011).

## Failure to supply reports and information on the application of ratified Conventions

**186.** The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Burundi, Equatorial Guinea, San Marino, Sierra Leone and Somalia.**

**187.** The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries:

State	Conventions Nos
Bahamas	– Since 2010: Convention No. 185
Equatorial Guinea	– Since 1998: Conventions Nos 68, 92
Kazakhstan	– Since 2010: Convention No. 167 – Since 2011: Convention No. 185
Kyrgyzstan	– Since 2006: Convention No. 184 – Since 2010: Convention No. 157
Sao Tome and Principe	– Since 2007: Convention No. 184
Seychelles	– Since 2007: Conventions Nos 147, 180
Vanuatu	– Since 2008: Conventions Nos 87, 98, 100, 111, 182 – Since 2010: Convention No. 185

**188.** It stressed the special importance of first reports on which the Committee of Experts based its first evaluation of compliance with ratified Conventions.

**189.** In this year's report, the Committee of Experts noted that **40** governments had not communicated replies to most or any of the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of **387** cases (compared with 537 cases in December 2011). The Committee was informed that, since the meeting of the Committee of Experts, 14 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.

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190. The Committee noted with regret that no information had yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2012 from the following countries: **Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Gambia, Grenada, Guinea-Bissau, Guyana, Kiribati, Libya, Mali, Mauritania, Mongolia, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Syrian Arab Republic, Tajikistan, Thailand and Zambia.**

191. The Committee noted the explanations provided by the Governments of the following countries concerning difficulties encountered in discharging their obligations: **Angola, Democratic Republic of the Congo, Mauritania and Seychelles.**

### **Supply of reports on unratified Conventions and Recommendations**

192. The Committee noted that **339** of the **768** article 19 reports requested on Convention No. 151, Recommendation No. 159, Convention No. 154 and Recommendation No. 163 had been received at the time of the Committee of Experts' meeting. This is **44.14** per cent of the reports requested.

193. The Committee noted with regret that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Brunei Darussalam, Democratic Republic of the Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Ireland, Libya, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan and Vanuatu.**

### **Communication of copies of reports to employers' and workers' organizations**

194. Once again this year, the Committee did not have to apply the criterion: "the Government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the ILO under articles 19 and 22 have been communicated".

### **Application of ratified Conventions**

195. The Committee noted with particular interest the steps taken by a number of governments to ensure compliance with ratified Conventions. The Committee of Experts listed in paragraph 81 of its report new cases in which governments had made changes to their law and practice following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. There were 39 such cases, relating to 30 countries; 2,914 cases where the Committee of Experts was led to express its satisfaction with progress achieved since it began listing them in 1964. These results were tangible proof of the effectiveness of the supervisory system.

196. This year, the Committee of Experts listed in paragraph 84 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 240 such instances in 109 countries.

197. At its present session, the Conference Committee was informed of other instances in which measures had recently been or were about to be taken by governments with a view to

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ensuring the implementation of ratified Conventions. While it was for the Committee of Experts to examine these measures, the present Committee welcomed them as fresh evidence of the efforts made by governments to comply with their international obligations and to act upon the comments of the supervisory bodies.

## Specific indications

198. The Government members of **Angola, Bangladesh, Democratic Republic of the Congo, Mauritania** and **Seychelles** had promised to fulfil their reporting obligations as soon as possible.

## Case of progress

199. The Committee welcomed the discussion of this case of progress and the exchange that took place on the application by **Iceland of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)**. The Committee praised the Government's ambitious approach to promote employment opportunities for persons with disabilities. This approach involved the social partners who established the Vocational Rehabilitation Fund (VIRK) to give effect to the provisions of a collective agreement adopted at the national level in 2008. The Committee considered this case as an example of good practice. It commended the Government for its comprehensive efforts to improve access to the labour market for persons with disabilities. The Committee invited the Government to continue to report on progress made in the implementation of the Convention.

## Special cases

200. The Committee considered it appropriate to draw the attention of the Conference to its discussion of the cases mentioned in the following paragraphs, a full record of which appears as Part Two of this report.
201. As regards the application by **Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee noted the written and oral information provided by the Government representative and the discussion that ensued.
202. The Committee recalled that the outstanding issues in this case concerned the need to ensure the right of workers to establish organizations of their own choosing and organize their activities and programmes free from interference by the public authorities in law and in practice. The Committee further highlighted the long outstanding recommendations from the Commission of Inquiry for amendments to be made to Presidential Decree No. 2 dealing with trade union registration, Decree No. 24 concerning the use of foreign gratuitous aid and the Law on Mass Activities.
203. The Committee noted the information provided by the Government on the work of the Tripartite Council for the Improvement of Legislation on the Social and Labour Sphere and, in particular, its decision to support the amendment of Decree No. 2 by repealing the 10 per cent minimum membership requirement for the establishment of trade unions at the enterprise level. The Committee further noted the Government's stated commitment to social dialogue and cooperation with the ILO.

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204. The Committee noted with regret new allegations of violations of freedom of association in the country, including allegations of interference in trade union activities, pressure and harassment. In particular, while observing that the Government stated that there were no registration refusals in 2012, the Committee took note of the allegations of the refusal to register the Belarus Independent Trade Union (BITU) primary organization at “Granit” enterprise and the subsequent indication by the Government that this matter was addressed by the Tripartite Council.
205. The Committee observed with deep regret that no new information was provided by the Government nor has any tangible result been achieved in implementing the recommendations made by the Commission of Inquiry of 2004.
206. Recalling the intrinsic link between freedom of association, democracy, the respect for basic civil liberties and human rights, the Committee urged the Government to intensify its efforts to bring the law and practice into full conformity with the Convention, in close cooperation with all the social partners and with the assistance of the ILO. The Committee urged the Government to immediately take all measures necessary to ensure that all workers and employers in the country may fully exercise their rights to freedom of expression and of assembly. The Committee invited the Government to accept a direct contacts mission with a view to obtaining a full picture of the trade union rights situation in the country and assisting the Government in the rapid and effective implementation of all outstanding recommendations of the Commission of Inquiry. It expected that the Government would submit detailed information on proposed amendments to the abovementioned laws and decrees to the Committee of Experts at its meeting this year and trusted that it would be in a position to note significant progress with respect to all remaining matters at its next session.
207. As regards the application by **Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the statement made by the Government representative and of the discussion that followed.
208. The Committee observed that the outstanding issues in this case concerned numerous and grave allegations of the violations of the basic civil liberties of trade unionists, including arrest, detention and assaults and restrictions of freedom of expression and of assembly. The Committee further observed the issues relating to a number of discrepancies between the labour legislation, in particular the Public Order (Amendment) Decree (POAD), the Employment Relations Promulgation and the Essential National Industries Decree, and the provisions of the Convention. The Committee further recalled the resolution adopted by the ILO Governing Body in November 2012 calling on the Government to accept a direct contacts mission under previously agreed terms of reference based on conclusions and recommendations of the ILO Committee on Freedom of Association in Case No. 2723.
209. The Committee noted the Government’s statement that the draft Constitution ensured protections for human and socio-economic rights and the independence of the judiciary and the Government was intensively preparing for democratic elections in September 2014. It further noted the Government’s commitment to: finalize the review of the labour legislation with the social partners within the framework of the Employment Relations Advisory Board (ERAB) so as to bring it into conformity with ratified international labour Conventions; and ensure that all cases of breaches of Fijians’ fundamental rights would be investigated and independently prosecuted by the independent Office of the Director of Public Prosecutions. The Government representative indicated that they would welcome the visit of the ILO direct contacts mission on mutually acceptable terms of reference in December 2013.

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210. The Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike recognized in Convention No. 87.
211. The Committee noted with concern the recently adopted Political Parties Decree and certain provisions of the draft Constitution that were alleged to pose risks to the exercise of freedom of association and the basic civil liberties of trade unionists and the officers of employers' organizations. Recalling the intrinsic link between freedom of association, expression, and assembly, on the one hand, and democracy and human rights on the other, the Committee urged the Government to undertake an ex officio independent investigation without further delay into the alleged acts of assault, harassment and intimidation against Felix Anthony, Mohammed Khalil, Attar Singh, Taniela Tabu and Anand Singh and to drop the charges against Daniel Urai and Nitendra Goundar. The Committee urged the Government to amend the POAD so as to ensure that the right to assembly may be freely exercised and expected that the ERAB would complete its review of the laws and decrees so that the necessary amendments would be made by the end of the year in order to put them into full conformity with the Convention.
212. The Committee recalled with regret that the direct contacts mission was not able to take place as scheduled in September 2012. Encouraged by the Government's latest indication that it would welcome the return of the direct contacts mission, the Committee expressed the firm hope that the mission, as mandated by the ILO Governing Body, would take place as soon as possible so that it could report back to the Governing Body in October 2013.
213. The Committee persevered in the hope that the mission would be able to assist the Government and the social partners in finding solutions to all the outstanding matters raised by the Committee of Experts. It requested the Government to provide a detailed report for the Committee of Experts' examination this year and expressed the firm expectation that next year it would be in a position to observe the substantial and concrete progress made.
214. As regards the application by **Uzbekistan of the Worst Forms of Child Labour Convention, 1999 (No. 182)**, the Committee took note of the oral and written information provided by the Government representative and the discussion that followed.
215. The Committee noted the issues raised by the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) relating to the systematic mobilization of children by the State in the cotton harvest, including the extensive use of labour of teenagers, young persons and adults in all regions of the country, as well as the substantial negative impact of this practice on the health and education of school-aged children obliged to participate in the cotton harvest.
216. The Committee noted the information provided by the Government outlining the laws and policies put in place to combat the forced labour of, and hazardous work by, children. This included the order issued by the Prime Minister in August 2012 banning the use of children under 15 and the adoption of a plan of additional measures for the implementation of Convention No. 29 and Convention No. 182 in 2012, including measures to maintain monitoring for the prevention of forced child labour. The Committee also noted the Government's statement that it had established a tripartite inter-ministerial working group with a view to developing specific programmes and actions aimed at fulfilling Uzbekistan's obligations under ILO Conventions. Lastly, the Committee noted the Government's statement that the use of compulsory labour was punishable with penal and administrative sanctions and that in this regard, concrete measures were being taken by the labour inspectorate officials to prosecute persons for violations of labour legislation.



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217. The Committee noted the information from the Government, as well as other sources, that as a result of the measures taken, school children under 15 years of age had not been mobilized during the cotton harvest in 2012. It nevertheless observed with serious concern information provided by several speakers, including representatives of governments and the social partners, that school children between the ages of 16 and 18 continued to be mobilized for work during the cotton harvest. The Committee reminded the Government that the forced labour of, or hazardous work by, all children under 18 constituted one of the worst forms of child labour. It therefore urged the Government to take the necessary measures, as a matter of urgency, to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for all children below the age of 18.
218. The Committee noted the Government's indication that it was willing to engage in broad technical cooperation with the ILO, which would consist of awareness-raising measures and capacity building of the national social partners and various stakeholders, and would also include monitoring of the 2013 cotton harvest with ILO-IPEC technical assistance. In this regard, the Committee requested the Government to accept an ILO high-level monitoring mission during the 2013 cotton harvest, that would have full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to enable the Committee of Experts to assess the implementation of the Convention at its 2013 session. Noting the Government's statement that it would be amenable to the terms of reference put forward by the ILO in this respect, the Committee urged the Government to pursue its efforts to undertake, in the very near future, a round-table discussion with the ILO, UNDP, UNICEF, the European Commission and the representatives of national and international organizations of workers and employers.
219. The Committee requested the Government to include in its report to the Committee of Experts due in 2013, comprehensive information on the manner in which the Convention was applied in practice, including, in particular, enhanced statistical data on the number of children working in agriculture, their age, gender, and information on the number and nature of contraventions reported and penalties applied. The Committee expressed the hope that it would be able to note tangible progress in the very near future.

## Participation in the work of the Committee

220. The Committee wished to express its gratitude to the 32 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.
221. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries and the fulfilment of their constitutional obligations to report: **Bahamas, Bahrain, Brunei Darussalam, Burundi, Comoros, Congo, Côte d'Ivoire, Djibouti, El Salvador, Fiji, Guinea, Haiti, Iraq, Ireland, Kazakhstan, Kiribati, Kyrgyzstan, Libya, Mali, Mongolia, Mozambique, Papua New Guinea, Peru, San Marino, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Thailand, Uganda and Zambia.** The Committee decided to mention the cases of all these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
222. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: **Belize, Dominica, Equatorial Guinea, Grenada, Guinea-Bissau, Guyana, Rwanda, Saint Lucia, Saint Kitts and Nevis, Sao Tome and Principe, Tajikistan and Vanuatu** were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the

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appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

## **F. Adoption of the report and closing remarks**

- 223.** The Committee's report was adopted as amended.
- 224.** The Government member of Libya, while acknowledging that no information had been provided with respect to the issues addressed in paragraph 190 of the report, indicated that his country should not have been listed in paragraph 221 of the report as he had been present throughout the Committee's discussions.
- 225.** The Employer members indicated that their closing remarks differed from those of the previous year when no cases had been discussed and when there had been a failure by everyone concerned. The situation this year could not be more different, since there had been no failure. The Employer members had promised that there would be a list of individual cases, and they had kept their promise. Moreover, the list had been finalized in a timely manner, giving everyone time to prepare adequately. The long list had also been much shorter than the previous year, with only 40 cases, which meant that it was more likely that Governments on the long list would appear before the Committee. This year, 25 individual cases and one case of progress (Iceland) had been discussed. The case of Rwanda had not been discussed as the delegation of that country had not been accredited to the Conference. The Committee's schedule had been kept and the discussions had ended on time. They also expressed satisfaction that the discussions had ended with a case of progress.
- 226.** They emphasized that each of the 26 cases had concluded with agreed conclusions, which had not been easy to accomplish, particularly with regard to cases under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), involving issues pertaining to the right to strike. While the Employer members had repeated their views regarding the right to strike on numerous occasions, the Committee had still managed to agree on conclusions through constructive dialogue. They added that there had been no failure this year, and that expectations had been exceeded.
- 227.** During the discussion of the General Survey, the Employer members had expressed appreciation of the work of the Committee of Experts, but they had also raised in detail the specific areas where they had disagreed with the Committee of Experts, or where they had considered that it had exceeded its mandate. Since the failure of 2012, a series of informal consultations had been held, most recently in February 2013, which had included six members of the Committee of Experts, who had raised two issues with regard to the work of the Conference Committee. In the first place, they had raised the question of whether the Conference Committee was properly supervising cases if it had conclusions that avoided issues that the social partners disputed, such as whether Convention No. 87 contained a right to strike. Secondly, they had questioned the extent to which the Employer members disagreed with the views expressed by the Committee of Experts, other than on the right to strike, as no feedback had previously been provided. The experts had therefore asked the Employer members to indicate where they challenged or disagreed with the views of the Committee of Experts. And that was exactly what the Employer members had done in their detailed comments on the General Survey, with particular reference to paragraphs 6, 7 and 8 of the General Survey. Those comments had already been made during the informal discussions and on other occasions, and therefore constituted nothing new. The Employer members had also reiterated their call for a short simple "statement of truth" at the beginning of the reports of the Committee of Experts, as a disclaimer, and had

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reiterated their concerns with regard to the mandate of the Committee of Experts and the content of the General Survey.

- 228.** They concluded by declaring that they remained committed to maintaining an effective supervisory mechanism, which was the envy of all other supervisory bodies in the United Nations system. They considered that the discussions in the Committee had been interesting, lively and had attracted much attention. They had enjoyed the constructive dialogue with the Worker and Government members, and the Office.
- 229.** The Worker members recalled that their primary objective had been to reach agreement with the Employer members on the list of 25 cases to be examined by the Committee, on the condition that no veto would be made by either of the parties in the choice of the proposed cases and that no Convention could be excluded, subject to respecting a geographical and thematic balance between fundamental, priority and governance Conventions. The second objective of the Worker members had been to be able to adopt common conclusions agreed to by the Employer and Worker members. That was the only working hypothesis that could be envisaged for the proper functioning of the supervisory bodies. And that presupposed, on the one hand, that the issues relating to the incidents that had occurred in 2012 would not be addressed within the Committee out of respect for the processes that were being followed officially within or outside the Governing Body, with the assistance of eminent persons keen to preserve the standard-setting role of the ILO and the supervisory procedures. That had also presupposed that the Committee was able to address all of the cases on the list agreed to with the Employer members in a climate which had up to then been very promising. It was therefore to be welcomed that it had been possible to discuss the individual cases and cover all the Conventions included on the list, including one of the two cases of progress.
- 230.** The Worker members wished to emphasize that this year they had saved the supervisory machinery. By working to maintain the standards system and to defend the very important role of the Conference Committee, their intention had been to give every chance to the processes that were under way to find a way out of the crisis. The positive outcome of the discussions had been made possible not only because of their efforts, but also because of the very important concessions that had been made by the Worker members, which should not be repeated from year to year, nor be interpreted as an admission of weakness. That was illustrated by the decision to remove from the list the case of Colombia, despite the fact that it had been on the list since well before 2012, and that it had not been possible to discuss it since 2009, in spite of the systematic violation of Conventions Nos 87 and 98 and the climate of impunity that reigned for those responsible for the murders of trade unionists. The present session of the Conference had offered the opportunity for contacts between all the parties concerned under the direction of the Director-General of the ILO. Those contacts had shown that everyone was willing to continue the dialogue on Colombia within the tripartite dialogue committee. Much still remained to be done, but a positive signal had been sent that should be noted in the report of the Conference Committee, which should be kept informed in an appropriate manner of the follow-up to the contacts.
- 231.** Other concessions had been made by the Worker members in relation to the issue of the interpretation of Convention No. 87 with a view to preventing a repetition of the failure of 2012, which would have been fatal to the work of the Committee. This year, 2013, had therefore been a pivotal year, and what had happened could neither be repeated nor generalized. Indeed, the concessions made had not always been understood within the Workers' group, nor by the Employers' group, which had persevered in its intention to reopen the question of the mandate of the Committee of Experts and the legal basis for the right to strike. The intention of the Worker members had been to examine the cases related to Convention No. 87 with moderation, recalling the important principles set out in the instrument, over and above the question of strikes and the mandate of the Committee of

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Experts. In many of the cases, it had therefore been recalled that freedom of association was a human right and a prerequisite for collective bargaining and healthy social dialogue which was of benefit to employers, workers and social peace. The pressure exerted by the Employer members had forced the Worker members to make concessions that went to the very heart of their beliefs so as not to jeopardize the objective of agreeing on conclusions for all of the cases. Nevertheless, Convention No. 87 was one of the international instruments in which the Worker members found the basis for the right to strike and to take action in support of their claims, which were often the only and the final weapon available to workers whose calls went unheeded and whose rights were denied, even though they were set out in national law. And yet, outside national law, the source of those rights was being denied. But, if a government was not willing to respect the rights of workers that were set out in international instruments, why would it adopt legislation at the national level recognizing the possibility for workers to use such a weapon against itself through its economic or social policy? That type of reasoning resulted in an imbalance in the forces at play in favour of governments and a war against unions and social dialogue decreed by a small group of actors who mistook the social model. No economy could be productive without high-quality work which guaranteed the support of the workers for the plans of their employers. Workers who were not respected would not respect their work!

- 232.** In 2013, the Worker members had therefore had to accept a procedure that was similar to the issue already raised in 2012 by the Employer members concerning the inclusion of a disclaimer in the report of the Committee of Experts. The conclusions of some cases relating to the application of Convention No. 87 therefore included the wording that “the Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in Convention No. 87”. It should be noted in this regard that the Committee had never commented in its conclusions on the basis of the right to strike and the Employer members were the only ones to disagree on this point. If the Employer members wanted to go further in challenging the mandate of the Committee of Experts and the right to strike, they should seek a solution in other tools available in the ILO Constitution, such as the recourse to article 37(2). In this regard, everything was possible except a new blockage and a new war of attrition.
- 233.** Returning to the discussion of the General Survey, the Worker members welcomed the fact that the Committee had presented the outcome of the discussion to the Committee for the Recurrent Discussion, as that was an essential link. It made it possible to reaffirm the importance of collective bargaining in all sectors, both private and public, in these times of crisis and attempts to reform labour law based on austerity. A failure on this point would have been fatal not only to the ILO, but also for the different industrial relations systems based on a balanced social dialogue between workers and employers at the interprofessional, sectoral and enterprise levels.
- 234.** The Worker members then addressed several individual cases that had been examined by the Committee. With regard to the case of Iceland (Convention No. 159), it had confirmed the beneficial contribution of examining a case of progress. This contribution was also of a qualitative nature, as it had afforded the opportunity to address two very current issues with efficiency and common sense: increasing the overall participation rate in the labour market through the reintegration of persons with reduced capacity and the added value of social dialogue, as the participation of social partners in the search for solutions for employment promotion was a key success factor. Iceland was a country with high unionization rates and high collective bargaining coverage which operated together ensuring an inclusive social policy and high-performance employment protection legislation.
- 235.** Three cases had been mentioned in special paragraphs in the report of the Committee: Uzbekistan (Convention No. 182), Belarus (Convention No. 87) and Fiji (Convention

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No. 87). For these three cases, constructive conclusions focused on concrete actions had been adopted. For Uzbekistan, the Government had agreed to engage widely in technical cooperation with the ILO and a high-level monitoring mission would be organized during the cotton harvest. It was to be hoped that the Government would do everything possible to combat child labour effectively and that, at its next session, the Committee of Experts would be in a position to take note of progress on this case. With regard to the case of Belarus, the Committee had invited the Government to accept a direct contacts mission with the goal of achieving a comprehensive overview of the situation of trade union rights in the country and to help the Government to implement the recommendations of the Commission of Inquiry of 2004. It was to be regretted that the Government had clearly stated that it wished to reflect on whether the Committee's conclusions were acceptable or well founded. As for the case of Fiji, the Worker members expressed the hope that another direct contacts mission, of which the Government had said that it was in favour, could be organized as soon as possible so that a report could be submitted to the Governing Body in 2013. They noted however that the Government had taken the floor after the adoption of the conclusions to express reservations and that it would send in its comments later. The Worker members hoped that the workers of Fiji would not again be deprived of their freedom upon their return to their country.

**236.** Moreover, in five cases, direct contacts missions had been decided on as in the case of Saudi Arabia, where the mission would have as an objective to assess the situation on the ground with regard to discrimination and help the parties to continue to realize tangible progress. Such a mission should be capable of working on legislative issues, while at the same time having regard to the daily reality of the persons concerned, including through interviews. In 11 other cases, technical assistance missions were foreseen, or a reinforced and extended technical assistance mission in the case of Paraguay (Convention No. 29). The Government of Egypt had also been encouraged to seek technical assistance, so that the law on freedom of association could be adopted as soon as possible. Furthermore, high-level missions had been proposed for certain serious and long-standing cases, but particularly since the beginning of social dialogue with the concerned governments could be seen through the information provided. In this regard, considering the severity of the situation, the cases of Swaziland and Zimbabwe needed to be followed up. Finally, an offer to exchange cases of good practice had been made to Chad concerning Convention No. 144.

**237.** With regard to Greece, which concerned the slow destruction of collective bargaining, and Spain relating to the austerity policy, which was having disastrous and counter-productive effects on employment, the Worker members emphasized that the conclusions had not failed to make the link with the Oslo Declaration. They therefore considered that governments should defend the European social model that had enabled them to sustain the impacts of the crisis and could not hide behind the argument of European economic governance to avoid the application of ratified ILO Conventions. Building on the Oslo Declaration, governments should promote decent work and employment creation through macroeconomic policies favouring real economies and an enterprise-friendly environment stimulating competitiveness and sustainable development.

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**238.** The Chairperson thanked the Vice-Chairpersons, the Reporter of the Committee and all the delegates and the secretariat for their work, highlighting the constructive atmosphere in which the work of the Committee had taken place and recalling that the cases examined had involved concrete situations and the work of the Committee would have practical consequences on the lives of workers.

Geneva, 18 June 2013

*(Signed)* Noemí Rial  
Chairperson

David Katjaimo  
Reporter

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## Annex 1

INTERNATIONAL LABOUR CONFERENCE

C. App./D.1

102nd Session, Geneva, June 2013

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### Committee on the Application of Standards

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## Work of the Committee

### I. Introduction

This document sets out the manner in which the work of the Committee on the Application of Standards is carried out. It is submitted to the Committee for adoption when it begins its work at each session of the Conference, in particular to enable the Committee to approve the latest adjustments made in its work. The work undertaken by the Committee is reflected in a report. Since 2007, in response to the wishes expressed by ILO constituents, the report has been published both in the *Record of Proceedings* of the Conference and as a separate publication, to improve the visibility of the Committee's work.<sup>1</sup>

Since 2002, ongoing discussions and informal consultations have taken place concerning the working methods of the Committee. In particular, following the Governing Body's adoption of a new strategic orientation for the ILO standards system in November 2005,<sup>2</sup> consultations began in March 2006 regarding numerous aspects of this system,<sup>3</sup> including the question of the publication of the list of individual cases discussed by the Committee. A tripartite Working Group on the Working Methods of the Committee was set up in June 2006 and has met 11 times since then. The last meeting took place on 12 November 2011. On the basis of these consultations, and the recommendations of the Working Group, the Committee has made certain adjustments to its working methods. An overview of these adjustments is detailed below.

Since 2006, an early communication to governments (at least two weeks before the opening of the Conference) of a preliminary list of individual cases for possible discussion by the Committee concerning the application of ratified Conventions has been instituted. Since 2007, it has been the practice to follow the adoption of the list of individual cases with an informal information session for Governments, hosted by the Employer and Worker Vice-Chairpersons, to explain the criteria used for the selection of individual

<sup>1</sup> The reports thus published can be found at:  
[http://www.ilo.org/global/standards/WCMS\\_183447/lang--en/index.htm](http://www.ilo.org/global/standards/WCMS_183447/lang--en/index.htm).

<sup>2</sup> See documents GB.294/LILS/4 and GB.294/9.

<sup>3</sup> See para. 22 of document GB.294/LILS/4.

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cases.<sup>4</sup> Changes have been made to the organization of work so that the discussion of individual cases could begin on the Monday morning of the second week, and improvements have been introduced in the preparation and adoption of the conclusions relating to cases. In June 2008, measures were adopted to address those cases in which Governments were registered and present at the Conference, but chose not to appear before the Committee; the Committee now has the ability to discuss the substance of such cases.<sup>5</sup> Specific provisions have also been adopted concerning the respect of parliamentary rules of decorum.<sup>6</sup>

In November 2010, the Working Group discussed the possibility for the Committee to discuss a case of a government which is not accredited or registered to the Conference.

Since June 2010, important arrangements have been implemented to improve time management.<sup>7</sup> In addition, modalities have been established for discussion of the General Survey of the Committee of Experts on the Application of Conventions and Recommendations, in light of the parallel discussion of the recurrent report on the same subject under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization.

At its last meeting in November 2011, the tripartite Working Group reached the following main conclusions:

- (i) Adoption of the list of individual cases: at the time, it was agreed that the Employer and Worker spokespersons would meet informally before the 101st Session (2012) of the Conference to elaborate a process to improve the adoption of the list and would report on the outcome of their consultations.<sup>8</sup>
- (ii) Balance in the types of Conventions among the individual cases selected by the Conference Committee: the importance of this issue was reaffirmed, notwithstanding the difficulties in achieving diversity in the types of Conventions selected for discussion. The issue would be kept under review, including by exploring the option of establishing a quota system which could mandate the selection of cases per each type of Conventions.
- (iii) Possibility for the Conference Committee to discuss cases of progress: it was recalled that there had been long-standing consensus on the inclusion of a case of progress in the Conference Committee's report, but that the practice had been temporarily suspended in 2008 due to concerns about time management. The issue would be kept under review.

<sup>4</sup> See below Part V, B.

<sup>5</sup> See below, Part V, D, footnote 20.

<sup>6</sup> See below, Part V, F.

<sup>7</sup> See Part V, B – Supply of information and automatic registration – and E.

<sup>8</sup> For the 102nd Session (June 2013), discussions have taken place between the Employers' group and the Workers' group in the context of the follow-up to the decision adopted by the International Labour Conference, at its 101st Session (2012), on certain matters arising out of the report of the Committee on the Application of Standards; see *Provisional Record* No. 19, Part 1 (Rev.), International Labour Conference, 101st Session, Geneva, 2012, para. 208.



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- (iv) Possible improvements in the interaction between the discussion on the General Survey by the Committee on the Application of Standards and the discussion on the recurrent item report by the Committee for the Recurrent Discussion: it was recognized that until the new discussion modalities which had been agreed upon took effect in 2014,<sup>9</sup> the process followed during the 100th Session (June 2011) should be continued during the 101st Session (May–June 2012). This process had proved to be satisfactory.
  - (v) Automatic registration of individual cases: Modalities for selecting the starting letter for the registration of cases: There was consensus to continue the experiment begun in June 2011 when the Committee had used the A + 5 model to undertake the automatic registration of individual cases based on a rotating alphabetical system, to ensure a genuine rotation of countries on the list.
  - (vi) Other questions: The question of the impact of the deliberations of the Working Party on the Functioning of the Governing Body and the International Labour Conference on the work of the tripartite Working Group: It was recalled that the tripartite Working Group reported to the Conference Committee on the Application of Standards. However, the work of the Conference Committee could also be influenced by the Working Party on the Functioning of the Governing Body and the International Labour Conference. In such circumstances, it was decided that, although there was no need for the tripartite Working Group to meet in March 2012, it might be useful to retain the option for it to meet in the future, to follow-up as necessary upon questions raised by the Working Party.<sup>10</sup>

## II. Terms of reference of the Committee

Under its terms of reference as defined in article 7 of the Standing Orders of the Conference, the Committee is called upon to consider:

- (a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;

<sup>9</sup> At the 309th Session of the Governing Body (November 2010), the Steering Group on the Follow-up to the Social Justice Declaration took the view that the review of the General Survey by the Conference Committee on the Application of Standards should take place one year in advance of the recurrent discussion by the Conference. This required a shift from the existing arrangement under which the General Survey and the recurrent discussion report on the same theme were submitted to the Conference in the same year. As a transition measure, the Governing Body decided in March 2011 that no General Survey on instruments related to employment should be undertaken for the purposes of the next recurrent discussion on employment that will take place in 2014.

<sup>10</sup> At the meeting of the Working Party on the Functioning of the Governing Body and the International Labour Conference during the 316th Session (November 2012) of the Governing Body, Governments reiterated that the findings of the informal Working Group on the Working Methods of the Committee on the Application of Conventions and Recommendations should be fed into the discussions of the Working Party. At the meeting of the Working Party during the 317th Session (March 2013) of the Governing Body, the Group of Latin American and Caribbean Countries recalled its proposal for the question of improving the working methods of the Committee to be discussed by the Working Party, but the Employers' group, the Workers' group and a number of other Government groups did not agree with that proposal, stating that, at that stage, the question should be discussed in a different context; see GB.316/INS/12, para. 12, and GB.317/INS/10, para. 8.

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- (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;
  - (c) the measures taken by Members in accordance with article 35 of the Constitution.

### **III. Working documents**

#### **A. Report of the Committee of Experts**

The basic working document of the Committee is the report of the Committee of Experts on the Application of Conventions and Recommendations (Report III (Parts 1A and B)), printed in two volumes.

Volume A of this report contains, in Part One, the General Report of the Committee of Experts (pages 5–44) and, in Part Two, the observations of the Committee concerning the sending of reports, the application of ratified Conventions and the obligation to submit the Conventions and Recommendations to the competent authorities in member States (pages 45–857). At the beginning of the report there is a list of Conventions by subject (pages v–x), an index of comments by Convention (pages xi–xviii), and by country (pages xix–xxvii).

It will be recalled that, as regards ratified Conventions, the work of the Committee of Experts is based on reports sent by the governments.<sup>11</sup>

Certain observations carry footnotes asking the government concerned to report in detail, or earlier than the year in which a report on the Convention in question would normally be due, and/or to supply full particulars to the Conference.<sup>12</sup> The Conference may also, in accordance with its usual practice, wish to receive information from governments on other observations that the Committee of Experts has made.

In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee's behalf.<sup>13</sup> A list of these direct requests can be found at the end of Volume A (see Appendix VII, pages 905–917).

The Committee of Experts refers in its comments to cases in which it expresses its satisfaction or interest at the progress achieved in the application of the respective Conventions. In 2009, 2010 and again in 2011, the Committee clarified the general approach in this respect that has been developed over the years.<sup>14</sup>

In accordance with the decision taken in 2007, the Committee of Experts may also decide to highlight cases of good practices to serve as a model for other countries to assist

<sup>11</sup> See paras 42–46 of the General Report of the Committee of Experts.

<sup>12</sup> See paras 72–74 of the General Report of the Committee of Experts.

<sup>13</sup> See para. 64 of the General Report of the Committee of Experts.

<sup>14</sup> See paras 79 and 83 of the General Report of the Committee of Experts. See also Annex II of the present document.

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them in the implementation of ratified Conventions and furtherance of social progress.<sup>15</sup> At its session of November–December 2009, the Committee of Experts has provided further explanations on the criteria to be followed in identifying cases of good practices by clarifying the distinction between these cases and cases of progress. No specific cases of good practices have been identified by the Committee of Experts this year.

Furthermore, the Committee of Experts has continued to highlight the cases for which, in its view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions, following-up on the practice established by the Conference Committee in this regard since 2005.<sup>16</sup>

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns the Labour Relations (Public Service) Convention, 1978 (No. 151), the Collective Bargaining Convention, 1981 (No. 154), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), and the Collective Bargaining Recommendation, 1981 (No. 163).

## **B. Summaries of reports**

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification of reporting. In this connection, it adopted changes along the following lines:

- (i) information concerning reports supplied by governments on ratified Conventions (articles 22 and 35 of the Constitution), which now appears in simplified form in two tables annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (Appendices I and II, pages 861–875);
- (ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year concerning labour relations and collective bargaining in the public service) appears in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B) (Appendix IV, pages 239–244);
- (iii) summary of information supplied by governments on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference (article 19 of the Constitution), which now appears as Appendices IV, V and VI to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (pages 886–904).

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

<sup>15</sup> See paras 85–87 of the General Report of the Committee of Experts.

<sup>16</sup> See paras 88–89 of the General Report of the Committee of Experts.

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## **C. Other information**

In addition, as and when relevant information is received by the secretariat, documents are prepared and distributed containing the substance of:

- (i) supplementary reports and information which reached the International Labour Office between the meetings of the Committee of Experts and the Conference Committee;
- (ii) written information supplied by governments to the Conference Committee in reply to the observations made by the Committee of Experts, when these governments are on the list of individual cases adopted by the Conference Committee.

## **IV. Composition of the Committee, right to participate in its work and voting procedure**

These questions are regulated by the Standing Orders concerning committees of the Conference, which may be found in section H of Part II of the Standing Orders of the International Labour Conference.

Each year, the Committee elects its Chairperson and Vice-Chairpersons as well as its Reporter.

## **V. Schedule of work**

### **A. General discussion**

1. *General Survey.* In accordance with its usual practice, the Committee will discuss the General Survey of the Committee of Experts, Report III (Part 1B). This year, for the fourth time, the subject of the General Survey has been aligned with the strategic objective that will be discussed in the context of the recurrent report under the follow-up to the 2008 Social Justice Declaration. As a result, the General Survey concerns labour relations and collective bargaining in the public service, while the recurrent report on social dialogue will be discussed by the Committee for the Recurrent Discussion on the strategic objective of social dialogue. In order to ensure the best interaction between the two discussions, it is proposed to maintain the adjustments in place since 2011 to the working schedule for the discussion of the General Survey – they are reflected in the document C.App/D.0. As was the case during the last two sessions of the Conference, the Selection Committee is expected to take a decision to allow the official transmission of the possible output of the discussion of the Committee on the Application of Standards to the Committee for the Recurrent Discussion. In addition, the Officers of the Committee on the Application of Standards could present information regarding their discussion of the General Survey to the Committee for the Recurrent Discussion.

2. *General questions.* The Committee will also hold a brief general discussion which is primarily based on the General Report of the Committee of Experts, Report III (Part 1A) (pages 5–44).

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## **B. Discussion of observations**

In Part Two of its report, the Committee of Experts makes observations on the manner in which various governments are fulfilling their obligations. The Conference Committee then discusses some of these observations with the governments concerned.

### ***Cases of serious failure by member States to respect their reporting and other standards-related obligations***<sup>17</sup>

Governments are invited to supply information on cases of serious failure to respect reporting or other standards-related obligations for stated periods. These cases are considered in a single sitting. Governments may remove themselves from this list by submitting the required information before the sitting concerned. Information received both before and after this sitting will be reflected in the report of the Conference Committee.

#### ***Individual cases***

A draft list of observations (individual cases) regarding which countries will be invited to supply information to the Committee is established by the Committee's Officers. The draft list of individual cases is then submitted to the Committee for approval. In the establishment of this list, a need for balance among different categories of Conventions as well as geographical balance is considered. In addition to the abovementioned considerations on balance, criteria for selection have traditionally included the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote (see Appendix I);
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;
- comments received by employers' and workers' organizations;
- the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
- the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
- the likelihood that discussing the case would have a tangible impact.

Moreover, there is also the possibility of examining one case of progress as was done in 2006, 2007 and 2008.

<sup>17</sup> Formerly "automatic" cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005).

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## **Supply of information <sup>18</sup> and automatic registration**

1. *Oral replies.* The governments are requested to take note of the preliminary list and prepare for the eventuality that they may be called upon to appear before the Conference Committee. Cases included in the final list will be automatically registered and evenly distributed by the Office, on the basis of a rotating alphabetical system, following the French alphabetical order. This year, the registration will begin with countries with the letter “P”, thus continuing the experiment started in 2011.

Cases will be divided in two groups: The first group of countries to be registered following the above alphabetical order will consist of those cases in which a double footnote was inserted by the Committee of Experts and are found in paragraph 73 of that Committee’s report. The second group of countries will constitute of all the other cases on the final list and they will be registered by the Office also following the abovementioned alphabetical order. Representatives of governments *which are not members* of the Committee are kept informed of the agenda of the Committee and of the date on which they may be heard:

- (a) through the *Daily Bulletin*;
- (b) by means of letters sent to them individually by the Chairperson of the Committee.

2. *Written replies.* The written replies of governments – which are submitted to the Office prior to oral replies – are summarized and reproduced in the documents which are distributed to the Committee (see Part III, C and Part V, E). These written replies are to be provided at least **two days** before the discussion of the case. *They serve to complement the oral reply and any other information already provided by the government, without duplicating them.* The total number of pages is not to exceed **five pages**.

## **Adoption of conclusions**

The conclusions regarding individual cases are proposed by the Chairperson of the Committee, who should have sufficient time for reflection to draft the conclusions and to hold consultations with the Reporter and the Vice-Chairpersons before proposing them to the Committee. The conclusions should take due account of the elements raised in the discussion and information provided by the Government in writing. The conclusions should be adopted within a reasonable time limit after the discussion of the case and should be succinct.

## **C. Minutes of the sittings**

No minutes are published for the general discussion and the discussion of the General Survey. Minutes of sittings at which governments are invited to respond to the comments of the Committee of Experts will be produced by the secretariat in English, French and Spanish. It is the Committee’s practice to accept corrections to the minutes of previous sittings prior to their approval by the Committee, which should take place 36 hours at the most after the minutes become available. In order to avoid delays in the preparation of the report of the Committee, no corrections may be accepted once the minutes have been approved.

<sup>18</sup> See also section E below on time management.

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The minutes are a summary of the discussions and are not intended to be a verbatim record. Speakers are therefore requested to restrict corrections to the elimination of errors in the report of their own statements, and not to ask to insert long additional passages. It would be helpful to the secretariat in ensuring the accuracy of the minutes if, wherever possible, delegates would hand in a written copy of their statements to the secretariat.

#### **D. Special problems and cases**

For cases in which governments appear to encounter serious difficulties in discharging their obligations, the Committee decided at the 66th Session of the Conference (1980) to proceed in the following manner:

1. *Failure to supply reports and information.* The various forms of failure to supply information will be expressed in narrative form in separate paragraphs at the end of the appropriate sections of the report, and indications will be included concerning any explanations of difficulties provided by the governments concerned. The following criteria were retained by the Committee for deciding which cases were to be included:

- None of the reports on ratified Conventions has been supplied during the past two years or more.
- First reports on ratified Conventions have not been supplied for at least two years.
- None of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution has been supplied during the past five years.
- No indication is available on whether steps have been taken to submit the Conventions and Recommendations adopted during the last seven sessions of the Conference<sup>19</sup> to the competent authorities, in accordance with article 19 of the Constitution.
- No information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration.
- The government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated.
- The government has failed, despite repeated invitations by the Conference Committee, to take part in the discussion concerning its country.<sup>20</sup>

<sup>19</sup> This year the sessions involved would be the 91st (2003) to 100th (2011).

<sup>20</sup> In conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008), for the implementation of this criterion, the following measures will be applied:

- In accordance with the usual practice, after having established the list of cases regarding which Government delegates might be invited to supply information to the Committee, the

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2. *Application of ratified Conventions.* The report will contain a section entitled “Application of ratified Conventions”, in which the Committee draws the attention of the Conference to:

- cases of progress (see Appendix II), where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee;
- discussions it had regarding certain cases, which are mentioned in special paragraphs of the report;
- continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

## **E. Time management**

- Every effort will be made so that sessions start on time and the schedule is respected.
- Maximum speaking time for speakers are as follows:
  - Fifteen minutes for the spokespersons of the Workers’ and the Employers’ groups, as well as the Government whose case is being discussed.
  - Ten minutes for the Employer and Worker members, respectively, from the country concerned to be divided between the different speakers of each group.
  - Ten minutes for Government groups.
  - Five minutes for the other members.

Committee shall invite the governments of the countries concerned in writing, and the *Daily Bulletin* shall regularly mention these countries.

- Three days before the end of the discussion of individual cases, the Chairperson of the Committee shall request the Clerk of the Conference to announce every day the names of the countries whose representatives have not yet responded to the Committee’s invitation, urging them to do so as soon as possible.
- On the last day of the discussion of individual cases, the Committee shall deal with the cases in which Governments have not responded to the invitation. Given the importance of the Committee’s mandate, assigned to it in 1926, to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions, a refusal by a Government to participate in the work of the Committee is a significant obstacle to the attainment of the core objectives of the International Labour Organization. For this reason, the Committee may discuss the substance of the cases concerning Governments which are registered and present at the Conference, but which have chosen not to be present before the Committee. The debate which ensues in such cases will be reflected in the appropriate part of the report, concerning both individual cases and participation in the work of the Committee. In the case of governments that are not present at the Conference, the Committee will not discuss the substance of the case, but will bring out in the report the importance of the questions raised. In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.



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- Concluding remarks are limited to ten minutes for spokespersons of the Workers' and the Employers' groups, as well as the Government whose case is being discussed.
  - However, the Chairperson, in consultation with the other Officers of the Committee, could decide on reduced time limits where the situation of a case would warrant it, for instance, where there was a very long list of speakers.
  - These time limits will be announced by the Chairperson at the beginning of each sitting and will be strictly enforced.
  - During interventions, a screen located behind the Chairperson and visible by all speakers will indicate the remaining time available to speakers. Once the maximum speaking time has been reached, the speaker will be interrupted.
  - In view of the above limits on speaking time, Governments whose case is to be discussed are invited to complete the information provided, where appropriate, by a written document, not longer than five pages, to be submitted to the Office at least two days before the discussion of the case (see also section B above).
  - In the eventuality that discussion on individual cases is not completed by the final Friday, there is a possibility of a Saturday sitting at the discretion of the Officers.

#### **F. Respect of rules of decorum and role of the Chairperson**

All delegates have an obligation to the Conference to abide by parliamentary language and by the generally accepted procedure. Interventions should be relevant to the subject under discussion and should avoid references to extraneous matters.

It is the role and task of the Chairperson to maintain order and to ensure that the Committee does not deviate from its fundamental purpose to provide an international tripartite forum for full and frank debate within the boundaries of respect and decorum essential to making effective progress towards the aims and objectives of the International Labour Organization.

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## Appendix I

### Criteria for footnotes <sup>1</sup>

At its November–December 2005 session, in the context of examining its working methods, and in response to the requests coming from members of the Committee for clarification concerning the use of footnotes, the Committee of Experts adopted the following criteria (paragraphs 36 and 37):

The Committee wishes to describe its approach to the identification of cases for which it inserts special notes by highlighting the basic criteria below. In so doing, the Committee makes three general comments. First, these criteria are indicative. In exercising its discretion in the application of these criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, these criteria are applicable to cases in which an earlier report is requested, often referred to as a “single footnote”, as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as “double footnote”. The difference between these two categories is one of degree. The third comment is that a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) in cases where there has been a recent discussion of that case in the Conference Committee on the Application of Standards.

The criteria to which the Committee will have regard are the existence of one or more of the following matters:

- the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers’ health, safety and well-being as well as any adverse impact, including at the international level, on workers and other categories of protected persons;
- the persistence of the problem;
- the urgency of the situation; the evaluation of such urgency is necessarily case-specific, according to standard human rights criteria, such as life-threatening situations or problems where irreversible harm is foreseeable; and
- the quality and scope of the government’s response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

At its 76th Session, the Committee decided that the identification of cases in respect of which a special note (double footnote) is to be attributed will be a two-stage process: the expert initially responsible for a particular group of Conventions may recommend to the Committee the insertion of special notes; in light of all the recommendations made, the Committee will take a final, collegial decision on all the special notes to be inserted, once it has reviewed the application of all the Conventions.

<sup>1</sup> See paras 67, 68, 69, 70 and 71 of the General Report of the Committee of Experts (102nd Session, Report III (Part 1A)).

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## Appendix II

### Criteria for identifying cases of progress <sup>1</sup>

At its 80th Session (November–December 2009), at its 81st Session (November–December 2010), and at its 82nd Session (November–December 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

- (1) The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment **the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters** which, in its view, have not been addressed in a satisfactory manner.
- (2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.**
- (3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.
- (4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.
- (5) If the satisfaction or interest relates to the adoption of legislation or to a draft legislation, the Committee may also consider appropriate follow-up measures for its practical application.
- (6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

Since first identifying cases of **satisfaction** in its report in 1964, <sup>2</sup> the Committee has continued to follow the same general criteria. The Committee expresses satisfaction in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

- to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and
- to provide an example to other governments and social partners which have to address similar issues.

<sup>1</sup> See paras 79 and 83 of the General Report of the Committee of Experts (102nd Session, Report III (Part 1A)).

<sup>2</sup> See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

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Within cases of progress, the distinction between cases of satisfaction and cases of **interest** was formalized in 1979.<sup>3</sup> In general, cases of interest **cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;
- judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
- the Committee may also note as cases of interest the progress made by a State, province or territory in the framework of a federal system.

<sup>3</sup> See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

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## **Annex 2**

INTERNATIONAL LABOUR CONFERENCE  
102nd Session, Geneva, June 2013

C.App./D.6

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**Committee on the Application of Standards**

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### **Cases regarding which governments are invited to supply information to the Committee**

The list of the individual cases on the application of ratified Conventions  
appears in the present document.

The text of the corresponding observations concerning these cases  
will be found in document C.App./D.6/Add.1.

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## Index of observations regarding which governments are invited to supply information to the Committee

Report of the Committee of Experts  
(Report III (Part 1A), ILC, 102nd Session, 2013)

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<b>Country</b>	<b>Convention No.</b> (The page numbers in parentheses refer to the English version of the Report of the Committee of Experts)
Bangladesh	87 (page 56)
Belarus	87 (page 63)
Cambodia	87 (page 72)
Canada	87 (page 74)
Chad	144 (page 517)
Dominican Republic	111 (page 455)
Egypt	87 (page 91)
Fiji	87 (page 96)
Greece	98 (page 106)
Guatemala	87 (page 110)
Honduras	98 (page 120)
Islamic Republic of Iran	111 (page 480)
Kenya	138 (page 329)
Republic of Korea	111 (page 496)
Malaysia	29 (page 243)
Mauritania	81 (page 588)
Pakistan	81 (page 593)
Paraguay	29 (page 261)
Saudi Arabia	111 (page 508)
Senegal	182 (page 390)
Spain	122 (page 653)
Swaziland	87 (page 173)
Turkey	98 (page 191)
Uzbekistan	182 (page 405)
Zimbabwe	87 (page 215)

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### ***Cases of progress***

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<b>Country</b>	<b>Convention No.</b> (The page numbers in parentheses refer to the English version of the Report of the Committee of Experts)
Iceland	159 (page 635)
Rwanda	138 (page 389)

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102nd Session of the International Labour Conference, June 2013  
 Committee on the Application of Standards – Working schedule for the examination of individual case

Saturday 8 June morning	Monday 10 June morning	Tuesday 11 June morning	Wednesday 12 June morning	Thursday 13 June morning	Friday 14 June morning
<p><u>Honduras:</u> Convention No. 98</p> <p><u>Islamic Republic of Iran:</u> Convention No. 111</p>	<p><u>Kenya:</u> Convention No. 138</p> <p><u>Uzbekistan:</u> Convention No. 182</p>	<p><u>Swaziland:</u> Convention No. 87</p> <p><u>Chad:</u> Convention No. 144</p>	<p><u>Bangladesh:</u> Convention No. 87</p> <p><u>Belarus:</u> Convention No. 87</p>	<p><u>Dominican Republic:</u> Convention No. 111</p> <p><u>Egypt:</u> Convention No. 87</p>	<p><u>Guatemala:</u> Convention No. 87</p> <p><u>Malaysia:</u> Convention No. 29</p>
Saturday 8 June afternoon	Monday 10 June afternoon	Tuesday 11 June afternoon	Wednesday 12 June afternoon	Thursday 13 June afternoon	Friday 14 June afternoon
	<p><u>Pakistan:</u> Convention No. 81</p> <p><u>Paraguay:</u> Convention No. 29</p>	<p><u>Turkey:</u> Convention No. 98</p> <p><u>Zimbabwe:</u> Convention No. 87</p>	<p><u>Cambodia:</u> Convention No. 87</p> <p><u>Canada:</u> Convention No. 87</p>	<p><u>Spain:</u> Convention No. 122</p> <p><u>Fiji:</u> Convention No. 87</p>	<p><u>Mauritania:</u> Convention No. 81</p> <p><u>Rwanda:</u> Convention No. 138</p>
Saturday 8 June evening	Monday 10 June evening	Tuesday 11 June evening	Wednesday 12 June evening	Thursday 13 June evening	Friday 14 June evening
	<p><u>Senegal:</u> Convention No. 182</p>	<p><u>Saudi Arabia:</u> Convention No. 111</p>	<p><u>Republic of Korea:</u> Convention No. 111</p>	<p><u>Greece:</u> Convention No. 98</p>	<p><u>Iceland:</u> Convention No. 159</p>





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**INTERNATIONAL LABOUR CONFERENCE**

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**102nd Session, Geneva, June 2013**

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**Observations  
of the Committee of Experts on the Application  
of Conventions and Recommendations**

**Individual cases**



## Forced Labour Convention, 1930 (No. 29)

### Malaysia

(Ratification: 1957)

The Committee notes the communication from the International Trade Union Confederation (ITUC) dated 31 August 2011, as well as the Government's reports dated 15 September 2011 and 8 November 2012.

*Articles 1(1), 2(1) and 25 of the Convention.* 1. *Trafficking in persons.* The Committee previously noted the adoption of the Anti-Trafficking in Persons Act, 2007 which, pursuant to sections 12–15, prohibits trafficking in persons and provides for a penalty of imprisonment of up to 20 years. The Committee requested information on the application of the Act in practice.

The Committee notes the ITUC's statement that Malaysia is a destination, and to a lesser extent, a source and transit country for men, women and children subject to trafficking in persons, particularly for forced prostitution and forced labour. The ITUC alleges that prosecution for forced labour trafficking is rare at best, indicating that several NGO's had reported potential labour trafficking cases to the Government, but no arrests or investigations were reported.

The Committee notes the statistical information provided by the Government concerning the application of the Anti-Trafficking in Persons Act. The Government indicates that, as of May 2011, 226 persons had been charged with the offence of trafficking in persons (pursuant to section 12 of the Act), and 98 persons had been charged with trafficking in persons by means of threat or force (pursuant to section 13 of the Act). The Committee also notes the Government's indication that, with regard to trafficking in persons, there have been 355 cases investigated and 339 persons charged, with 253 cases pending trial, 13 persons discharged and 33 persons convicted, although the Committee observes an absence of information on the specific penalties applied to those convicted. The Government further indicates that 844 trafficking victims were issued protection orders (provided to trafficking victims in need of protection, pursuant to section 51 of the Act), and 2,289 persons were issued interim protection orders of 14 days (issued by a magistrate, pursuant to section 44 of the Act, while an investigation takes place). The Committee further notes the information in the Government's report that the National Action Plan on Trafficking in Persons (2010–15) was launched on 30 March 2010. This National Action Plan is composed of nine main goals, including improving the relevant legal framework; implementing integrated action among enforcement agencies; providing victims with protection and rehabilitation services that conform with international standards; combating labour trafficking; and providing training to personnel involved in implementing the Anti-Trafficking in Persons Act. **The Committee urges the Government to pursue its efforts to combat trafficking in persons, including within the framework of the National Action Plan on Trafficking in Persons (2010–15), and to provide information on the specific measures taken in this regard, as well as on the results achieved. It requests the Government to continue to provide information on the application of the Anti-Trafficking in Persons Act in practice, including the number of investigations, prosecutions and convictions. Moreover, recalling that Article 25 of the Convention provides that the illegal exaction of forced or compulsory labour shall be punishable by penalties that are really adequate and strictly enforced, the Committee requests the Government to provide information on the specific penalties imposed on persons convicted under the Anti-Trafficking in Persons Act.**

2. *Vulnerable situation of migrant workers with regard to the exaction of forced labour.* The Committee notes the statement in the ITUC's communication that some workers who willingly enter Malaysia in search of economic opportunities subsequently encounter forced labour at the hands of employers or informal labour recruiters, including workers from Indonesia, Nepal, India, Thailand, China, the Philippines, Cambodia, Bangladesh, Pakistan and Viet Nam. The ITUC indicates that these migrant workers are employed on plantations and construction sites, in textiles factories, and as domestic workers, and experience restrictions on movement, deceit and fraud in wages, passport confiscation and debt bondage. Regarding domestic workers, the ITUC indicates that conditions for these workers are particularly troubling, and that some domestic workers are not paid for three to six months. Moreover, the ITUC alleges that the Memorandum of Understanding (MoU) between Malaysia and Indonesia covering the employment of Indonesian domestic workers explicitly allows for the confiscation of workers' passports. The ITUC further alleges that the Government has failed to report any criminal prosecutions of employers who subject workers to conditions of forced labour or labour recruiters who use deceptive practices and debt bondage to compel migrant workers into involuntary servitude.

The Committee notes the Government's indication that, in May 2012, it conducted a training for labour inspectors, in collaboration with the ILO Tripartite Action to Protect Migrant Workers from Labour Exploitation Project (the ILO TRIANGLE Project). The Committee also notes the information from the International Organization on Migration (IOM) in a document entitled "Labour Migration from Indonesia" that in June 2009, the Government of Indonesia enacted a moratorium on placing domestic workers in Malaysia. However, this moratorium was lifted following the signature of a new MoU in May 2011 between the Governments of Indonesia and Malaysia (superseding the prior MoU of 2006). This MoU stipulates that Indonesian domestic workers have the right to retain their passports while in Malaysia, shall be entitled to one rest day a week and shall have their wages commensurate with the market. The Committee further notes the information from the IOM, that as of 2009, there were approximately 2.1 million migrant workers in Malaysia. This report states that official estimates indicate that there are approximately 700,000 irregular migrant workers in the country, although other estimates are much higher. This report further indicates that migrant workers in Malaysia may be subject to unpaid wages, passport retention, heavy workloads and confinement or isolation. In addition, the Committee notes that in October 2011, the Government of Cambodia signed a suspension on sending Cambodian domestic workers to Malaysia.

The Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly where they are subjected to abusive employer practices, such as retention of passports, non payment of wages, deprivation of liberty and physical and sexual abuse. Such practices might cause their employment to be transformed into situations that could amount to forced labour. **The Committee therefore urges the Government to take the necessary measures to ensure that migrant workers, without distinction of nationality or origin, are fully protected from abusive practices and conditions that amount to the exaction of forced labour. The Committee requests the Government to provide information in its next report on measures adopted specifically tailored to the difficult circumstances faced by migrant workers, including measures to prevent and respond to cases of abuse of migrant workers, as well as to ensure that sufficiently effective and dissuasive penalties are applied to persons who subject these workers to conditions of forced labour. The Committee also requests the Government to indicate, in its next report, whether there are plans to include guarantees similar to those contained in the MoU with the Government of Indonesia in bilateral agreements with other**

countries, as well as information on the implementation of such agreements in practice.

The Committee is raising other points in a request addressed directly to the Government.

## Paraguay

### (Ratification: 1967)

The Committee notes the Government's report and its annexes, as well as the comments made by the International Trade Union Confederation (ITUC) and the National Confederation of Workers (CNT), dated 31 August 2011, which were forwarded to the Government on 6 and 15 September 2011, respectively.

*Articles 1(1) and 2(1) of the Convention. Debt bondage of indigenous communities in the Chaco.* For many years, the Committee's comments have been addressing the situation of the many indigenous workers in agricultural ranches in the Paraguayan Chaco, who are victims of debt bondage. On the basis of several comments made by workers' organizations, the discussion of this case by the Conference Committee on the Application of Standards in 2008 and the report *Debt bondage and marginalization in the Chaco of Paraguay*, prepared in the context of the technical assistance provided to Paraguay by the ILO Special Action Programme to Combat Forced Labour (SAP-FL), the Committee expressed concern at the mechanisms which result in the debt bondage of indigenous workers who are trapped in situations of forced labour. It also emphasized that the fact that these workers do not have any land increases their vulnerability.

In its previous comments, the Committee noted that the Government had taken a number of measures, including the creation of the Commission on Fundamental Rights at Work and the Prevention of Forced Labour (Resolution No. 230 of 27 March 2009), which developed an action plan including: awareness-raising activities and training for labour inspectors; the establishment of an office of the Department of Labour in the locality of *Teniente Irala Fernandez* (central Chaco); and the adoption with the support of the ILO of the Decent Work Country Programme, in which the eradication of forced labour is an important component. The Committee emphasized that these measures are a first step, but that they must be reinforced and lead to systematic action commensurate with the gravity of the problem.

In its latest report, the Government refers to the relief activities undertaken in the context of the National Programme for Indigenous Peoples (PRONAPI). PRONAPI also prepared a questionnaire intended to compile data on the living conditions of indigenous communities. The Government enumerates a number of awareness-raising activities undertaken in 2009 and 2011 by the Commission on Fundamental Rights at Work and the Prevention of Forced Labour, as well as the training activities for labour inspectors and workers' and employers' organizations. The latter Commission established a Subcommission in July 2011 in the Chaco region, the mandate of which includes receiving complaints concerning violations of labour rights, promoting the dissemination of fundamental rights at work and preparing a regional action plan on fundamental rights and the prevention of forced labour. The Subcommission met twice in 2011. The Government adds that, up to May 2011, the Ministry of Justice and Labour carried out over 50 inspections of agricultural ranches in the Chaco and that no situation of forced labour was detected. Minutes were drawn up and fines imposed for violations of labour legislation relating to the registration of workers and the payment of wages.

The Committee notes the comments of the Central Confederation of Workers-Authentic (CUT-A), forwarded by the ITUC. The CUT-A, based on interviews held with representatives of indigenous organizations of the Chaco, emphasizes that the problem of forced labour in agricultural ranches and factories in the Chaco persists, and that the State has not adopted effective measures to eliminate these practices. The trade union insists on: the marginalization of indigenous communities, which have been forgotten by the State; the system of permanent debt in which major agricultural enterprises keep workers from these communities, thereby preventing them from seeking alternatives; the discrimination of which these workers are victims, as they systematically receive wages that are lower than those of other workers and, in many cases, are not even paid half of the minimum wage; the corruption which prevents the public authorities from discharging their duties appropriately, including when dealing with complaints, and also prevents the restitution of ancestral lands; and the inadequacy of the resources available to the Ministry of Justice and Labour to protect indigenous communities.

The Committee notes all of this information. It observes that the activities undertaken up to now by the Commission on Fundamental Rights at Work and the Prevention of Forced Labour are mainly related to awareness raising, and that those carried out in the context of the PRONAPI are concerned with food self sufficiency. **The Committee strongly encourages the Government to pursue its efforts with a view to combating the forced labour of indigenous workers in the Chaco. It hopes that measures will be taken that will allow the Subcommission on Fundamental Rights at Work and the Prevention of Forced Labour in the Chaco region to adopt a regional plan of action to strengthen the measures taken by the various bodies involved in combating forced labour, both with regard to prevention and repression, and the protection of victims. It requests the Government to ensure that this plan responds to the situation of vulnerability of indigenous workers so as to protect them against the debt mechanisms that result in debt bondage. The Committee also refers the Government to the comments that it is making under the Indigenous and Tribal Peoples Convention, 1989 (No. 169).**

The Committee notes that a number of inspections have already been undertaken in the Chaco region and that none of them detected situations of forced labour. However, the Committee observes that, in their comments, the ITUC and the CNT and the CUT-A confirm the persistence of forced labour in the Chaco region. **The Committee emphasizes the need to strengthen the labour inspectorate, and particularly the office of the Labour Department in the locality of Teniente Irala Fernandez as well as the Subcommission on Fundamental Rights at Work and the Prevention of Forced Labour in the Chaco region, the mandate of which includes receiving complaints concerning violations of labour rights. The Committee requests the Government to take the necessary measures to ensure that these bodies have at their disposal adequate human and material resources as well as access to appropriate training so as to identify victims and to enable them to assert their rights; deal effectively with the complaints received and conduct relevant investigations; and travel rapidly and effectively in the areas at risk.**

*Article 25. Imposition of effective penalties.* The Committee emphasizes that the effective imposition of penalties in the event of violations of labour legislation is an essential element in combating forced labour, as it is characterized by the accumulation of several violations of labour law, which must

be penalized as such. Moreover, taken together, these labour law violations constitute the criminal offence of forced labour, which must themselves be criminalized and give rise to penal sanctions.

(a) *Administrative sanctions.* **The Committee once again requests the Government to provide information on the number of cases in which the inspection services have detected infringements of sections 47, 176 and 231 of the Labour Code respecting the protection of wages, including with regard to compliance with the minimum wage and the operation of work stores. Please provide information on the fines imposed on employers and on the compensation granted to workers. The Committee refers in this respect to the comments made on the application of the Protection of Wages Convention, 1949 (No. 95).**

(b) *Penal sanctions.* With reference to its previous comments, the Committee notes the Government's indication in its report that no complaint of forced labour has been made. The Committee recalls that, under the terms of *Article 25* of the Convention, penal sanctions must be imposed and strictly enforced upon those found guilty of the exaction of forced labour. **The Committee requests the Government to provide information on the measures adopted to raise the awareness of the Office of the Public Prosecutor with regard to the issue of debt bondage and to strengthen its cooperation with the labour inspection services in this respect. The Committee also requests the Government to indicate the provisions of the penal legislation which may be used to prosecute persons exacting forced labour and, where appropriate, to ensure that the national legislation contains sufficiently precise provisions so that the competent authorities can criminally prosecute and penalize those responsible for such practices.**

*Article 2(2)(c). Obligation to work imposed on non-convicted detainees.* For many years, the Committee has been emphasizing the need to amend the Act on the prison system (Act No. 210 of 1970), under the terms of which work in prison shall be compulsory for persons subjected to security measures in a prison establishment (section 39 read in conjunction with section 10 of the Act). The Committee recalled in this respect that, under the terms of *Article 2(2)(c)* of the Convention, only prisoners who have been convicted in a court of law may be subjected to the obligation to work. The Committee observes that in the past the Government indicated that the provisions of the Act on the prison system would be amended or repealed, first within the framework of the adoption of a Prison Code, then through the adoption of a new Code of Penal Procedure. The Committee notes that the Government has not provided any information in its latest report on the progress made in the adoption of a new Code of Penal Procedure. It has provided a copy of the internal rules of the *Esperanza* prison unit, to which only convicted prisoners are sent. **As this matter has been the subject of the Committee's comments for many years, the Committee trusts that the Government will not fail to take the necessary measures to bring the national legislation into conformity with the Convention by ensuring that prisoners awaiting judgment and persons detained without being convicted are not subject to the obligation to perform prison work. The Committee particularly emphasizes the need to amend the Act of 1970 on the prison system since, according to the information available on the website of the Ministry of Labour and Justice, of the 6,146 persons who are detained, only 1,772 have been convicted in a court of law.**

The Committee is raising other points in a request addressed directly to the Government.

# Labour Inspection Convention, 1947 (No. 81)

## Mauritania

*(Ratification: 1963)*

The Committee notes the communication made by the Government delegation within the Committee on the Application of Standards at the 101st Session of the International Labour Conference in June 2012, and the Government's report received at the Office on 12 September 2012. It also notes the observations from the General Confederation of Workers of Mauritania (CGTM) dated 30 August 2012.

*Articles 3, 6, 10, 11, 14, 16, 20 and 21 of the Convention. Status, recruitment, training, powers, activities and material means of the labour inspectorate. Annual inspection report.* The Committee notes with **interest** the information contained in the Government's report to the effect that 40 labour inspectors and labour controllers were recruited in 2009 and received a two-year period of training at the National School of Administration (ENA) before being subsequently appointed to the ten regional inspectorates in the country. In addition, about ten training workshops have been organized by the ILO since 2008 in the context of the ADMITRA and PAMODEC projects, in addition to the training given at the Tunis and CRADAT centres; the labour inspectorate has been equipped with a methodological guide which has enabled an increased number of inspections in the field; and a "toolkit" for labour inspectors has been devised by the Dakar office and will be distributed to inspectors in the course of this year. The Government also refers to improvements in the equipment of the regional labour inspectorates through a World Bank project (the PRECASP project) but does not state whether this equipment has already been distributed to the regional services.

However, the Committee notes with **regret** that once again no annual report has been received which would enable the Committee to evaluate the application of the Convention in practice, despite the undertaking made by the Government representative in the Committee on the Application of Standards to send to the ILO all annual reports of the labour inspectorate in addition to an evaluation of the impact of the strengthening of human and material resources on the application of the laws and regulations in Mauritania. It also notes with **regret** that the Government merely reiterates, for the third time, its intention to put a stop, in conjunction with the Ministry of Finance, to the unequal treatment received by labour inspectors, who have been the only public servants who have not received an allowance granted by a decree of 2007 to all other branches of the administration.

Despite the adoption in 2007, after several years of preparation, of special regulations for the labour administration establishing the status of labour inspectors and controllers, the Committee notes that, according to the CGTM, labour inspectorates do not have the independence necessary for the performance of their duties, since they depend on a Directorate of Labour which can "use" labour inspectors, transfer them or lay them off. According to the CGTM, no cases have ever been seen in which labour inspectorates of their own initiative, as provided for by law, have dealt with a violation, infringement or reprimand concerning an employer as part of establishing better labour relations within enterprises. The CGTM refers to cases of occupational disease such as silicosis, which, it claims, is taking a serious toll in the National Industrial and Mining Company (SNIM), and cyanide and lead poisoning which are allegedly decimating the workforce of the Mining and Copper Company (MCM), and also refers to apparatus used at the autonomous port of Nouakchott, which allegedly causes frequent fatalities among dockers. Moreover, according to the CGTM, labour inspection staff do not have satisfactory conditions of work, and even less motivation, to enable them to perform their duties. Rather, they are simply seeking a means of subsistence and are not feared by any employer. The CGTM notes the dire lack of financial and material resources necessary for the labour inspectorate to do its work effectively, to the extent that labour inspectors are obliged to make use of the services of private individuals for the drafting and printing of their reports, including infringement reports. Lastly, the CGTM emphasizes that the level of qualifications of inspectors is low owing to the fact that recruitment is carried out under conditions which lack transparency and impartiality.

**The Committee requests the Government to send any comments which it considers appropriate in response to the observations from the CGTM. It also requests the Government to supply further details of the progress of the World Bank project for improving the equipment of the regional directorates, and on the impact of the methodological guide to inspections drawn up with ILO support, sending copies, where applicable, of any relevant documents or reports.**

**The Committee requests the Government once again to take steps as soon as possible to ensure that allowances are paid to labour inspectors that take account of the specific nature of their duties, and to keep the Office informed of any further developments in this respect.**

**Noting the Government's indication that a Decent Work Country Programme (DWCP) for Mauritania is due to be signed in the coming months, the Committee again requests the Government to make use of this programme to take all necessary steps to reinforce the labour inspectorate, with technical support from the ILO, with a view to establishing a labour inspection system that operates on the basis of the provisions of the Convention as regards scope (Articles 1 and 2); duties (Article 3); organization under the supervision of a central authority (Article 4); cooperation with other bodies and with employers and workers or their organizations (Article 5); status and conditions of service of labour inspectors (Article 6); requisite qualifications for recruitment and training (Article 7); criteria for determining the number of inspectors (Article 10); material and logistical resources needed for the performance of their duties (Article 11); inspectors' prerogatives (Article 12); their powers (Articles 13 and 17); and their obligations (Articles 15, 16 and 19); and also in terms of the central authority's obligation to publish and to communicate to the ILO an annual report on the work of the inspection services under its control (Article 21).**

**In order to establish a labour inspection system which meets the social and economic objectives pursued by the Convention, the Committee requests the Government also to ensure, as far as possible, the implementation of the measures described in the general observations made by the Committee in 2007 (on the need for effective cooperation between the labour inspectorate and judicial bodies), in 2009 (on the availability of statistics concerning industrial and commercial workplaces liable to labour inspection and the number of workers covered, as basic information for an evaluation of the application of the Convention in practice), and in 2010 (on the publication and content of an annual report on the operation of the labour inspection services).**

## Pakistan

**(Ratification: 1953)**

The Committee notes the Government's reply of 12 March 2012 in response to the comments provided by the Pakistan Workers Confederation (PWC), which were received on 21 November 2011.

*Articles 1, 2, 3(1)–(2), 6, 7, 9, 10, 11, 12, 16, 17, 20 and 21 of the Convention. Implementation of a new labour inspection policy and revision of labour laws.* The Committee notes the information provided by the Government in response to the comments of the PWC on the implementation of a labour inspection policy, which had been developed in the 2006 and 2010 documents on labour inspection policy. In particular the 2006 document envisaged various measures, including the establishment of computerized registries, the implementation of the "one inspector, one enterprise" approach, capacity building for labour inspectors, the increase in preventive measures, the introduction of risk assessment and the recruitment of qualified technical experts. The Government indicates that, following a constitutional amendment, the subject of labour has been delegated to the provincial legislative powers. The Committee notes that the concurrent list of legislative powers in schedule IV of the Constitution, which had displayed labour as a concurrent subject, was declared void, along with the 18th Constitutional Amendment of 2010. The Government further notes in its report that the provinces are about to adopt labour legislation and are drafting new labour laws, in accordance with their own local requirements, including in the field of occupational safety and health (OSH) and the rationalization of their labour laws in the context of the ILO Decent Work Country Programme (DWCP). It adds that the provinces are consequently responsible for the adoption or implementation of all measures in connection with the 2006 and 2010 documents on labour inspection policy. Furthermore, under the terms of the 18th Constitutional Amendment, there will be a coordination mechanism at the federal level, replacing the national inspection authority that had previously been planned.

***The Committee would be grateful if the Government could clarify the extent to which the provinces, following the Constitutional Amendments of 2010, are still subject to legally binding guidance given at the federal level in the field of labour, including on labour inspection, and the extent to which competence in the field of labour in this respect will remain at the federal level.***

***The Committee asks the Government to specify the implementation measures that have been taken at provincial level with regard to the subjects and points raised by the Committee previously in relation to the 2006 and 2010 labour inspection policy documents and if so to specify those measures.***

***It would be grateful if the Government could provide copies of any labour laws adopted in the provinces and indicate any other legal texts which, in accordance with Parts I and II of the report form, implement the provisions of the Convention at the provincial level. It finally requests the Government to provide information on the mandate and operation of the coordination mechanism at the federal level, and any institutional arrangements envisaged and/or created in this respect.***

The Committee notes with *interest* the information provided by the Government in response to the longstanding concerns raised by the PWC in relation to the cession of labour law enforcement in the provinces of Punjab and Sindh. The PWC alleged that their labour inspection system became inoperative following the adoption of restrictive policies in these provinces, under which labour inspection visits required prior permission by the employer concerned, and that inspections had been abandoned in favour of an exclusively voluntary self-declaration mechanism. The All Pakistan Federation of United Trade Unions also drew attention in previous comments to the restricted inspection policy at the federal level, including the banning of inspection in industry by the previous Government, thus causing an increase in child labour.

The Government explained in its report that inspection had been banned in the industrial units of Punjab under the Punjab Industrial Policy 2003, which had introduced the procedure of self-declaration for employers. However, this procedure did not appear to be achieving the desired results, due to a lack of cooperation from employers. Finally, the Government transmitted to the Office a notification from the Punjabi Government and indicated that the Government of Punjab had withdrawn the Punjab Industrial Policy 2003, thus allowing regular inspections once again. The Government adds that the Government of Punjab organizes seminars, in collaboration with local chambers of commerce, to highlight the benefits of inspection under various labour laws.

***The Committee asks the Government to clarify whether the restrictive policy banning labour inspections has also been abandoned in the province of Sindh and/or in other provinces, and if not, to indicate the measures taken at the competent level to bring the labour inspection policy into line with the requirements of the Convention so that labour inspectors can perform their duties in accordance with the provisions of the Convention.***

*Parts I and II of the report form. Implementation of the Convention at the provincial level.* The Committee notes the brief description of the labour inspection system in the provinces of Punjab and Sindh provided in reply to its previous comments. It notes the division of competencies between labour inspectors and labour officers, which may vary according to the undertaking liable to inspection, and the indications concerning the hierarchy of labour inspection staff.

***Noting that the Amendment to the Constitution may result in changes in the organization and legal framework applicable to the labour inspection system in the provinces, the Committee expresses its wish to receive more information, in accordance with Parts I and II of the report form, including, but not limited, to:***

- the organizational structure (if possible with an organizational chart) and administrative arrangements; the central authority at the provincial level competent for labour inspection in each province;***
- the legislative framework for labour inspection at the provincial level, including any laws on labour inspection, concerning the status, powers and obligations of labour inspectors in each province;***
- statistics on the number of labour inspection staff per office in each province; and***
- the material means available, such as office facilities, means of transport, for inspections and applicable reimbursement rules.***

*Articles 20 and 21. Publication of an annual inspection report.* The Committee recalls its longstanding comments in which it emphasized the need to

publish an annual inspection report. It recalls in this respect that the regular communication of the annual report to the Office enables the ILO supervisory bodies to assess the performance and difficulties that arise in establishing and implementing the labour inspection system, and to support the Government's efforts to meet the objectives laid down in the ILO's instruments. It also recalls that the annual report provides the social partners, and public and private bodies concerned, with the opportunity to better understand the work and objectives of the labour inspectorate, as well as the problems it faces, and to contribute their views on how it could be improved (General Survey on labour inspection, 2006, paragraphs 331 and 332). In its previous comments, it also requested information on the extent to which tools for the registration and processing of the relevant data (e.g. enterprise registries) were implemented. The Government indicates in this respect that the Chief Inspectors of Factories in the provinces maintain a register of enterprises, and that provincial Governments are advised to publish inspection reports annually. In addition, it provides statistics on factory inspection, the warnings issued and the number of prosecutions by district. ***The Committee asks the Government to take the necessary steps to ensure that annual inspection reports are published by each province containing detailed and up-to-date information on the subjects covered by Article 21.***



# Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

## Bangladesh

(Ratification: 1972)

*Workers' and employers' organizations' comments.* The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee notes the Government's reply to the comments submitted by the International Trade Union Confederation (ITUC) on 4 and 31 August 2011 concerning allegations of arrests, harassment and detention of trade unionists and trade union leaders, notably in the garment sector. In this respect, the Committee notes that the Government indicates that: (1) the police and the law-enforcing agencies did their duties pursuant to the law and, according to them, there have not been illegal threats, police harassment or arrest and detention of trade unionists, and no death or illegal arrest has happened intentionally; the victims, if any, were accused for their misdeeds and criminal activities; (2) the law enforcement agencies had to interrogate some violence-creating persons to protect public property and to clear the blockade organized in the garment sector, but they did not harass anyone, nor did they have the aim of harassing trade union leaders or disrupting trade union activities; (3) law enforcement agencies are performing their duties under directives and close supervision of the Ministry of Home Affairs; (4) as to the alleged killings in an export processing zone (EPZ), agitated workers attacked members of the police, some of whom were seriously injured as a result (the police used water cannon, tear-gas shells and rubber bullets and a worker died of a heart attack while passing nearby); and (5) workers and employers in the garment sector are not fully aware of the benefits of implementing the principles of the Convention and training should be provided to them in this regard. As to the alleged refusal by the Registrar of Trade Unions to register new unions, the Government indicates that, although trade union activities were totally stopped during the Emergency period (from January 2007 to December 2008), the Labour Act 2006 establishes some legal and reasonable requirements for union registration and, if these are fulfilled, there is no reason to refuse registration of new trade unions. This registration procedure is logical and justified to maintain the discipline in the industrial relations field.

With respect to its request to indicate the status of the court case concerning the Bangladesh Garments and Industrial Sramik Federation (BGIWF) registration, the Committee notes the Government's indication that the Department of Labour submitted the case for the cancellation of the registration of the BGIWF for violation of its constitution and unfair labour practice to the labour court in 2008 (No. 51 of 2008), that the case is still pending and that the next hearing will be on 18 September 2012. ***In this respect, the Committee expresses the firm hope that the ongoing procedure will conclude in the near future and requests the Government to indicate in its next report the status of the registration of the BGIWF.***

The Committee notes the comments submitted by the ITUC on 31 July and 31 August 2012 concerning allegations of murder of a trade unionist, a union leader and two striking workers, violence and harassment of trade unionists in the pharmaceutical and EPZs, as well as the refusal to register unions in several sectors, including the telecom and garment sectors. ***The Committee requests the Government to take the necessary measures without delay to carry out investigations concerning these serious allegations with a view to determining responsibilities and punishing those responsible, and to provide information in this respect.***

*Right to organize in EPZs.* In its previous comments, the Committee requested the Government to provide information and statistics on the number of workers' welfare associations (WWAs) established in EPZs and on steps taken to amend legislation so that EPZ workers may fully exercise the rights guaranteed by the Convention. In this respect, the Committee notes the Government's indication that referendums on WWAs were carried out in 246 out of 309 enterprises, and that 154 enterprises had formed WWAs up to 8 January 2012. The Government also states that these WWAs are actively performing their activities as collective bargaining agents. The Government indicates that the Bangladesh Export Processing Zone Authority (BEPZA) has been taking all the required steps to ensure the full implementation of the new EPZ Workers' Welfare Associations and Industrial Relations Act 2010 (EWWAIRA) by issuing letters and distributing the Act to enterprises of EPZs for establishing WWAs. The Committee notes the allegation of the ITUC that at their peak, there were roughly 90 WWAs in EPZs, and that it is not clear whether the results of the referendums are reliable and reflect a fully informed vote on the part of the workers. The ITUC alleges that WWAs have been unable to function because employers failed to follow the law (e.g. refusing to provide meeting space, refusing to allow workers to hold meetings, refusing to review grievances, refusing to bargain) and BEPZA has failed to enforce it. The ITUC alleges that, as the initial trade union leaders have left or have been fired, new leaders have not taken their places. The ITUC further alleges that the formation of many WWAs in EPZs has been at the initiative of BEPZA which, through management of the affected enterprises, circulated a document to the workers to "demand" formation of WWAs; the entire procedure was allegedly effectively dictated by BEPZA in consultation with the respective employers. The ITUC claims that such a process is not consistent with workers' right to establish and join organizations of their own choosing. ***The Committee requests the Government to provide its observations on the ITUC's comments.***

The Committee further recalls that it had previously commented on the EPZ Workers' Associations and Industrial Relations Act 2004, which contained numerous and significant restrictions and delays in relation to the right to organize in EPZs, and that it had noted with deep regret the adoption of the EWWAIRA which does not contain any real improvement in relation to the previous legislation and which does not address any of its previous comments.

***In these circumstances, the Committee once again requests the Government to take all the necessary measures to bring the following provisions of the EWWAIRA into conformity with the Convention:***

- section 16, which provides that a WWA will not be allowed in industrial units established after the commencement of the Act until a period of three months has expired after the start of commercial production in the concerned unit. The Committee notes the Government's indication that this period is required for the initial understanding and preparation of both management and workers in order to ensure their rights and responsibilities;
- section 17(1), which provides that there can be no more than one WWA per industrial unit. The Committee notes the Government's indication that this requirement ensures more discipline and more harmonious industrial management within a company;
- sections 6, 7, 9 and 12, which establish excessive and complicated minimum membership and referendum requirements for the establishment of a WWA (a WWA may be formed only when a minimum of 30 per cent of the eligible workers of an industrial unit seek its formation, and this has been

verified by the Executive Chairperson of BEPZA, who shall then conduct a referendum on the basis of which the workers shall acquire the legitimate right to form an association under the Act, only if more than 50 per cent of the eligible workers cast their vote, and more than 50 per cent of the votes cast are in favour of the formation of the WWA). The Committee notes the Government's indication that sections 6, 7, 9 and 12 were introduced to ensure willingness and spontaneous participation of the workers in organizing referendums and to ensure more transparency and accountability;

- section 9(2), which confers excessive powers to the Executive Chairperson of BEPZA concerning the approval of the Constitution Drafting Committee of the WWA. The Committee notes the Government's indication that the Executive Chairperson has always approved the Constitution Drafting Committee within five days, as required by section 9(2) which demonstrates that no excessive power is conferred to the Executive Chairperson;
- section 8, which prevents a referendum from being held for the establishment of a WWA in the workplace for a period of one year, after a first attempt failed to gather sufficient support. The Committee notes the Government's indication that this delay is required to ensure proper understanding among the workers and organize them more effectively;
- section 27, which permits the deregistration of a WWA at the request of 30 per cent of the workers, even if they are not members of the association, and prevents the establishment of another WWA for one year after the previous one was deregistered. The Committee notes the Government's indication that section 27 was enacted to prevent mala fide intentions, misleading and misuse of power by WWA members, which may affect workers' welfare. To the knowledge of the Government, there has been no case of deregistration of a WWA;
- sections 28(1)(c), (e)–(h) and 34(1)(a), which provide for the cancellation of the registration of a WWA on grounds which do not appear to justify the severity of this sanction (such as violation of any of the provisions of the association's constitution). The Committee notes the Government's indication that the aim of section 28 is to safeguard the interest of the workers in general, to ensure a congenial atmosphere among the workers as well as smooth production in an enterprise. As to section 34, it ensures transparency and accountability of WWAs;
- section 46(3) and (4), which provides for severe restrictions of strike action, once authorized, and section 81(1) and (2) which establishes a total prohibition of industrial action in EPZs until 31 October 2013. The Committee notes that the Government indicates that section 46(3) and (4) has secured a smooth production atmosphere for greater interest of the company as well as workers;
- section 10(2), which prevents a WWA from obtaining or receiving any funds from any outside source without the prior approval of the Executive Chairperson of BEPZA;
- section 24(1), which establishes an excessively high minimum number of associations to establish a higher-level organization (more than 50 per cent of the WWAs in an EPZ), and section 24(3), which prohibits a federation from affiliating in any manner with federations in other EPZs and beyond EPZs;
- sections 20(1), 21 and 24(4), which do not seem to afford guarantees against interference with the right of workers to elect their representatives in full freedom (e.g. the procedure of election is to be determined by BEPZA); and
- section 80, which provides that WWAs are now prohibited from establishing any connection to any political parties or non-governmental organizations (NGOs). The Committee notes the Government's indication that since BEPZA encourages the welfare of all workers and addresses their grievances through industrial relations officials, counsellors, conciliators, arbitrators, EPZ labour tribunals and EPZ labour appellate tribunals, connections with NGOs and political parties may delay the process of settlement of grievances. Furthermore, the Government emphasizes that workers may approach directly the Executive Chairman of the BEPZA, the labour tribunal and the labour appellate tribunal for settlement of their complaints, if any. The Committee recalls once again that provisions imposing a general prohibition on political activities by trade unions for the promotion of their specific objectives, and provisions which restrict the freedom of trade unions to administer and utilize their funds as they wish for normal and lawful trade union purposes are contrary to the principles of freedom of association.

Moreover, the Committee noted section 38(4) concerning check-off facilities which stipulates that "the executive council at the beginning of the calendar year shall, with the accounts statement of the previous year, submit for approval the current year's revenue budget containing income expenditure to the Executive Chairman or to an officer authorized by him". The Committee notes, once again, the Government's indication that this section will ensure the transparency and accountability of WWAs. **The Committee once again requests the Government to indicate the scope of application of this new subsection 4 of section 38 and its impact on check-off facilities.**

The Committee further noted that a federation of WWAs cannot be legally formed until BEPZA has issued regulations. According to the ITUC, these regulations have yet to be issued. The Government indicates that, in order to streamline the formation of federations, BEPZA is preparing the necessary rules and regulations according to the Act. BEPZA has always supported the formation of WWA federations; but has yet to receive any formal request from a WWA to form a federation fulfilling requirements of the Act. **The Committee once again requests the Government to indicate the measures taken or envisaged to issue the regulations concerning the right of WWAs to establish and join federations, in accordance with Article 5 of the Convention.**

*Other discrepancies between national legislation and the Convention.* In previous comments, the Committee noted the adoption of the Bangladesh Labour Act 2006 (the Labour Act), which replaced the Industrial Relations Ordinance of 1969, and noted with deep regret that the Labour Act did not contain any improvements and, in certain regards, contained even further restrictions which were contrary to the provisions of the Convention. The Committee took note of the Government's statement that a tripartite labour law review committee to identify the gaps and discrepancies in the Labour Act and suggest the necessary amendments had been constituted. The Committee notes that the Government indicates that the revision of the Labour Act with comments of all levels of stakeholders is under process by a 22-member high-power Tripartite Labour Law Review Committee (TLRQ) headed by the State Minister of Labour and Employment. The draft amendments have been submitted to the Tripartite Consultative Council (TCC) on 9 February 2012. The Committee notes that some of the proposed amendments would provide improvements to the current Labour Act (for example, by including "research institutions" into the scope of application of the Labour Act (section 1(4)); by repealing the provision requiring the Director of Labour to send the list of officers of a trade union to the employer (section 178(3)); and by offering the possibility of electing up to 20 per cent of the members of an executive committee from persons not employed in the establishment where the trade union is formed (section 180(b))). However, the proposed amendments do not take into account most of the observations previously raised by the Committee. The Government indicates that the draft amendments are being reviewed further and will be submitted again to the TCC for finalization. **In these circumstances, the Committee expresses the firm hope that the review process of the Labour Act referred to above will be finalized in the near future and will take into account the following discrepancies between the Labour Act and the Convention:**

- the need to repeal provisions excluding managerial and administrative employees from the right to establish workers' organizations (section 2(49) and (65) of the Labour Act) as well as new restrictions of the right to organize of firefighting staff, telex operators, fax operators and cipher assistants (exclusion from the provisions of the Act based on section 175). The Committee notes that the Government indicates that telex and fax operators are allowed to exercise their trade union rights. **The Committee requests the Government to indicate the legal provisions that grant trade union**

### **rights to the abovementioned workers;**

- the need to either amend section 1(4) or adopt new legislation so as to ensure that the workers excluded in relation to trade union rights from Chapters XIII and XIV of the Labour Act enjoy the right to organize. The Committee notes the Government's indication that sectors which have been excluded from the operation of the Act have been excluded in the interests of security, public administration and smooth environment and that the country is not in a position to amend section 1(4) considering the socio-economic, cultural and environment situation and practices;
- the need to repeal provisions which restrict membership in trade unions and participation in trade union elections of those workers who are currently employed in an establishment or group of establishments, including seafarers engaged in merchant shipping (sections 2(65), 175 and 185(2));
- the need to repeal or amend new provisions which define as an unfair labour practice on the part of a worker or trade union an act aimed at "intimidating" any person to become, continue to be or cease to be a trade union member or officer, or "inducing" any person to cease to be a member or officer of a trade union by conferring or offering to confer any advantage, and the consequent penalty of imprisonment for such acts (sections 196(2) (a) and (b) and 291). The Committee notes that the Government considers section 196(2)(a) and (b) to be justified in the national context where there is competition in enrolling members of trade unions that results in bloodshed, clashes and litigation. In order to prevent such untoward situations and to restore peace and a good environment, the Government considers these provisions to be sine qua non;
- the need to repeal provisions which prevent workers from running for trade union office if they were previously convicted for compelling or attempting to compel the employer to sign a memorandum of settlement or to agree to any demand by using intimidation, pressure, threats, etc. (sections 196(2) (d) and 180(1)(a));
- the need to lower the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments for initial and continued union registration, as well as the possibility of deregistration if the membership falls below this number (sections 179(2) and 190(f)); the need to repeal provisions which provide that no more than three trade unions shall be registered in any establishment or group of establishments (section 179(5)) and that only one trade union of seafarers shall be registered (section 185(3)); and the need to repeal provisions prohibiting workers from joining more than one trade union and the consequent penalty of imprisonment in case of violation of this prohibition (sections 193 and 300);
- the need to modify section 179(1) which lists excessive requirements that must appear in the content of the constitution of a trade union in order for it to be entitled for registration;
- the need to amend section 190(e) and (g) which provides that the registration of a trade union may be cancelled by the Director of Labour if the trade union committed any unfair labour practice or contravened any of the provisions of Chapter XIII of the Rules. The Committee considers that, while the decision of the Director of Labour can be appealed before the tribunal (section 191) which will have to apply the legislation in force, the criteria for dissolution are too broad and involve serious risks of interference by the authorities in the existence of trade unions;
- the need to amend section 202(22) which provides that if any contesting trade union receives less than 10 per cent of the votes for the election of the collective bargaining agent, the registration of that union should be cancelled. The Committee considers that, while the 10 per cent requirement may not be deemed excessive for the certification of a collective bargaining agent, trade unions which do not gather 10 per cent of workers should not be deregistered and should be able to continue to represent their members (for instance, making representations on their behalf, including representing them in case of individual grievances);
- the need to amend section 317(d), which empowers the Director of Labour to supervise the election of trade union executives, so as to allow organizations to freely elect their representatives;
- the need to repeal provisions denying the right of unregistered unions to collect funds (section 192) upon penalty of imprisonment (section 299);
- the need to modify section 184(1), which provides that workers engaged in any specialized and skilled trade, occupation or service in the field of civil aviation may form a trade union if such union is necessary for affiliation with an international organization in the same field, and section 184(4) which provides that the registration should be cancelled within six months if the trade union is not affiliated to the international organization concerned;
- the need to amend sections 202(24)(c) and (e) and 204 which provide the collective bargaining agent in an establishment with some preferential rights (such as the right to declare a strike, to conduct cases on behalf of any individual worker or group of workers, and the right to check-off facilities), so that the distinction between a collective bargaining agent and other trade unions is limited to the recognition of certain preferential rights (for example, for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations), in order for the distinction not to have the effect of depriving those trade unions that are not recognized as being amongst the most representative of the essential means for defending the occupational interests of their members for organizing their administration and activities, and formulating their programmes;
- the need to lift several restrictions on the right to strike (concerning the majority required to consent to a strike (sections 211(1) and 227 (c)); the prohibition of strikes which last more than 30 days (sections 211(3) and 227(c)); the possibility of prohibiting strikes at any time if a strike is considered prejudicial to the national interest (sections 211(3) and 227(c)) or if it involves certain services (sections 211(4) and 227(c)); the prohibition of strikes for a period of three years in certain establishments (sections 211(8) and 227(c)); the penalties (sections 196(2)(e), 291 and 294–296); and interference in trade union matters (section 229));
- the need to amend section 301, which imposes a penalty of imprisonment for failure to appear before the conciliator in the framework of settlement of industrial disputes;
- the need to amend section 183(1), which provides that in a group of establishments no more than one trade union can be formed, so as to allow workers in any establishment or group of establishments to form organizations of their own choosing; and the need to amend section 184(2) which provides that only one trade union can be formed in each trade, occupation or service in a civil aviation establishment and if at least half of the total number of workers concerned apply in writing for registration. The Committee considers that the existence of an organization in a specific enterprise, trade, establishment, economic category or occupation should not constitute an obstacle for the establishment of another organization; and
- concerning the draft amendment, the need to modify section 200(1) of the draft amendments which provides that any five or more trade unions, registered in more than one administrative division and formed in establishments engaged, or carrying on, in a similar or identical industry may constitute a federation, so that: (1) the requirement of an excessively high minimum number of trade unions to establish a federation does not infringe the right of trade unions to establish and join federations of their own choosing; (2) workers have the right to establish federations of a broader occupational or interoccupational coverage; and (3) trade unions should not need to belong to more than one administrative division in order to federate.

Finally, the Committee had previously requested the Government to indicate whether rule 10 of the Industrial Relations Rules 1977 (IRR), which previously granted the Registrar overly broad authority to enter trade union offices, inspect documents, etc. without judicial review, had been repealed by the entry into force of the Labour Act 2006. The Committee noted that the Government stated, in this regard, that rule 10 of the IRR remains valid, and that – as its purpose was to maintain discipline in trade union administrations – it was not in favour of repealing the said provision. The Government further indicated that the workers' representatives in the tripartite review process towards the enactment of the Labour Act had raised no

objections to the Registrar's authority in these matters. The Government further indicates in its report that if any union or federation is aggrieved about the procedure and verification by the Registrar, it can appeal to the labour court. The Government adds that the Registrar does not go to the office of a trade union or federation for inspection unless their secretary or president applies to the Registrar for removal of irregularities, which is frequent. The Committee once again recalls that the right of workers' and employers' organizations to organize their administration without interference by the public authorities includes, in particular, autonomy and financial independence and the protection of the assets and property of these organizations. There is no violation of the Convention if such verification is limited to exceptional cases, for example in order to investigate a complaint, or if there have been allegations of embezzlement. Both the substance and the procedure of such verifications should however always be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity (see General Survey on freedom of association and collective bargaining, 1994, paragraphs 124 and 125). **The Committee once again requests the Government to take the necessary measures to repeal rule 10 of the IRR or amend it so as to ensure that this provision granting the Registrar authority to supervise trade union internal affairs is in line with the principles mentioned above.**

**The Committee takes due note once again of the Government's statement that it is fully committed to ensuring compliance with the Convention and the promotion of freedom of association in the country, and expects that all measures will be taken to bring the legislation into conformity with the Convention.**

**The Committee once again invites the Government to avail itself of the technical assistance of the Office in respect of all the matters raised above.**

## Belarus

*(Ratification: 1956)*

### Follow-up to the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 31 July 2012 alleging numerous violations of the Convention, including arrest and detention of members of independent trade unions, denial of the right to picket, denial of registration of primary trade unions, and interference by the authorities in trade union activities. The Committee notes with **concern** the ITUC's statement that the recommendations of the Commission of Inquiry are still not implemented and that no real effort has been made by the Government to address violations of trade union rights in the country. **The Committee requests the Government to provide detailed observations on the ITUC's allegations.**

The Committee notes with **regret** that the Government's report contains no new information on the measures taken to implement the 2004 recommendations of the Commission of Inquiry and this Committee's previous requests in respect of the application of the Convention. The Committee also notes the 366th Report of the Committee on Freedom of Association (November 2012) on the measures taken by the Government of the Republic of Belarus to implement the recommendations of the Commission of Inquiry. It notes, in particular, that the Committee on Freedom of Association expressed its deep concern at the Government's lack of cooperation in providing information on the follow-up given to the Commission of Inquiry recommendations. **The Committee urges the Government to cooperate fully with the ILO supervisory bodies.**

*Article 2 of the Convention. Right to establish workers' organizations.* The Committee recalls that in its previous observations it had urged the Government to take the necessary measures to amend Presidential Decree No. 2, its rules and regulations, so as to eliminate the obstacles to trade union registration (legal address and 10 per cent minimum membership requirements). The Committee notes with **deep regret** that no information has been provided by the Government in this respect. In this connection, the Committee notes with **concern** the ITUC's allegation that the management of "Granit" enterprise refuses to provide a newly established primary organization of the Belarus Independent Trade Union (BITU) with the legal address required, pursuant to Decree No. 2, for registration of trade unions. In this respect, the Committee notes the Government's indication that the enterprise management acted in accordance with the law as the BITU failed to submit the minutes of the founding meeting. The Government indicates that on 17 May 2012, the Belarusian Congress of Democratic Trade Unions (CDTU) filed a complaint with the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere. The Government points out that the minutes of the founding meeting submitted to the Council were signed only by 16 people, whereas 200 employees were said to have expressed a wish to join the BITU. Furthermore, some employees have stated that union representatives deceived them into signing the papers, without giving adequate explanations of the demands made to the employer. The Government indicates that the Council's secretariat is currently awaiting more information from the CDTU. The Committee recalls that the abovementioned 10 per cent minimum membership requirement is not applicable to primary trade unions and understands that the decision even by 16 workers would be sufficient to establish a primary trade union. In the light of the above, the Committee expresses its **concern** that the requirements imposed by Decree No. 2 continue to hinder the establishment and functioning of trade unions in practice. The Committee notes with **deep regret** that, despite the numerous requests by the ILO supervisory bodies, there have been no tangible measures taken by the Government to amend the decree, nor have there been any concrete proposals to that effect. **The Committee therefore once again urges the Government to take the necessary measures to that effect in consultation with the social partners, so as to ensure that the right to organize is effectively guaranteed. The Committee requests the Government to provide information on all progress made in this respect. The Committee hopes that the BITU primary trade union at "Granit" enterprise will be registered without delay and requests the Government to take all necessary measures to that end.**

The Committee **regrets** that the Government provides no information concerning the allegation previously submitted by the CDTU on the refusal by the Polotsk municipality to register the free trade union primary organization of "Self-employed workers at Polotsk outdoor collective farm market". **It therefore expects that the Government's next report will contain detailed observations thereon.**

The Committee had previously requested the Government to indicate whether the BITU had applied for the registration of its primary trade union at "Kupalinka" enterprise and, if so, the outcome of the registration procedure. It further requested the Government to provide a copy of the Supreme Court decision in the case of refusal to register "Razam" organization. The Committee notes the Government's indication that the BITU has not applied for registration of its primary trade union. The Committee further notes a copy of the Supreme Court's decision in the "Razam" case and understands that by its decision, the court left without examination the case of refusal to register "Razam" organization submitted by three petitioners. According to

the court, pursuant to Decree No. 2, at least 500 founding members from the majority of regions are needed in order to establish a trade union at the national level; this implies that only founding members could be given the authority to represent the interests of the union in the process of registration or in court. The court considered that the decision by the founding conference to admit to trade union membership one of the petitioners, to elect him or her to the union's office and to mandate him or her to represent, together with other persons, the interests of the union before the registering authorities and the courts was without any legal ground. The Committee expresses its **concern** at this new interpretation of paragraph 3 of Decree No. 2, which appears to create additional obstacles to registration and impede the right of trade unions to elect their representatives and to organize their administration in full freedom enshrined in *Article 3* of the Convention. **In view of the above, the Committee once again strongly encourages the Government to continue cooperation with the social partners in addressing the issue of registration in practice and to indicate in its next report all progress made in this respect.**

*Articles 3, 5 and 6. Right of workers' organizations, including federations and confederations, to organize their activities.* The Committee recalls that it had previously expressed its concern at the allegations of repeated refusals to authorize the CDTU, the BITU and the Radio and Electronic Workers' Union (REWU) to hold demonstrations and meetings and requested the Government to conduct independent investigations into these allegations, as well as to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations to defend their occupational interests. The Committee once again notes with **deep regret** that no information has been provided by the Government in this respect. **Recalling that peaceful protests are protected by the principles of freedom of association and that public meetings and demonstrations should not be arbitrarily refused, the Committee urges the Government to indicate the measures taken to investigate the alleged cases of refusals to authorize the holding of demonstrations and meetings and to bring to the attention of the relevant authorities the right of workers to participate in peaceful demonstrations to defend their occupational interests.**

The Committee recalls that it had previously noted with concern the CDTU's allegation that following a refusal by the "Delta Style" company's management to authorize a trade union meeting, the chairperson of the Soligorsk BITU regional organization met with several women workers (on their way to their workplaces) near the entrance. Following this event, the chairperson was detained by police on 4 August 2010 and subsequently found guilty of committing administrative offence and fined. According to the CDTU, the court had decided that having met members of the union near the entrance gate of the company, the trade union leader had violated the Act on Mass Activities. The Committee had requested the Government to provide its observations on the facts alleged by the CDTU. The Committee **regrets** that the Government has provided no information in this respect. **It therefore once again urges the Government to provide its observations thereon.**

In this connection, the Committee recalls that for a number of years it has been requesting the Government to amend the Act on Mass Activities, which imposes restrictions on mass activities and provides for dissolution of an organization for a single breach of its provisions, while organizers may be charged with a violation of the Administrative Code and thus subject to administrative detention. The Committee **deeply regrets** that once again no information has been provided by the Government on concrete measures taken in this respect. The Committee understands, however, that this piece of legislation has been amended so as to further restrict the right to organize public events. **The Committee requests the Government to provide a copy of these amendments.**

The Committee further **deeply regrets** that the Government has not provided any information in relation to the measures taken to amend Presidential Decree No. 24 concerning the use of foreign gratuitous aid and sections 388, 390, 392 and 399 of the Labour Code, regarding the exercise of the right to strike. **Recalling that the abovementioned legislative texts (Act on Mass Activities, Presidential Decree No. 24 and sections 388, 390, 392 and 399 of the Labour Code) are not in conformity with the right of workers to organize their activities and programmes free from interference by the public authorities and their amendment had been requested by the Commission of Inquiry over eight years ago, the Committee reiterates its previous requests and requests the Government to indicate all concrete measures taken or envisaged in this respect.** The Committee understands that the Act on Public Associations and the Criminal Code have been recently amended and that these amendments would have bearing on the application of the Convention. **The Committee requests the Government to provide copies of all relevant amendments to these legislative texts.**

**The Committee also once again requests the Government to indicate the measures taken to ensure that National Bank employees may have recourse to industrial action without penalty.**

The Committee notes with **deep regret** that no progress has been made by the Government towards implementing the recommendations of the Commission of Inquiry and improving the application of this Convention in law and in practice during the reporting year. Indeed, the Government has not provided any information on steps taken to amend the legislative provisions in question, as previously requested by this Committee, the Conference Committee, the Commission of Inquiry and the Committee on Freedom of Association. **The Committee therefore urges the Government to intensify its efforts to ensure that freedom of association and respect for civil liberties is fully and effectively guaranteed in law and in practice and expresses the firm hope that the Government will intensify its cooperation with all the social partners in this regard.**

## **Cambodia**

### **(Ratification: 1999)**

The Committee notes the Government's response to the concerns expressed by the International Trade Union Confederation (ITUC) in 2011, over the increased use of fixed duration contracts which could undermine the enjoyment of freedom of association and collective bargaining rights. The Government indicates that this longstanding issue has been the subject of tripartite consultations on the basis of draft amendments to the legislation, which had been prepared by the Ministry of Labour and Vocational Training, but that no consensus was reached. It adds that the issue would be the subject of further consultations in the tripartite Labour Advisory Committee in the near future.

The Committee notes with **regret** that the Government fails to respond to other comments submitted by the ITUC, by the Cambodian Labour Confederation (CLC) and by Education International (EI) in 2011, as well as to the 2010 comments by the ITUC and the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), which referred in particular to serious acts of violence and harassment against trade union leaders and members. Moreover, the Committee notes with **concern** the new comments submitted by the ITUC, in a communication dated 31 July 2012, and by EI

and the Cambodian Independent Teachers' Association (CITA), in a communication dated 31 August 2012, which refer again to serious acts of violence and harassment against trade union leaders and members. **The Committee urges the Government to send its observations on all the issues raised in 2010, 2011 and 2012, by the ITUC, the CLC, EI and CITA, and the FTUWKC.**

The Committee notes the latest conclusions and recommendations of the Committee on Freedom of Association in Case No. 2318, concerning the murders of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy and the continuing repression of unionists, which had to be examined in the absence of a response from the Government, and was considered as an extremely serious and urgent case (365th Report, November 2012, paragraphs 286–290). In its previous comments concerning these murders, the Committee had noted that: (1) the convictions of Sok Sam Oeun and Born Samnang for the murder of Chea Vichea had been remanded to the Appeal Court by the Supreme Court, and they had been released on bail; (2) an investigation was being conducted, before the case of the murder of Chea Vichea would be referred to the Appeal Court for reprocessing; (3) the Supreme Court had ordered on 2 March 2011 the provisional release on bail of Thach Saveth who had been convicted for the murder of Ros Sovannareth and had been awaiting a review of his conviction for several years; and (4) the case of the murder of Hy Vuthy had been sent to the prosecutor of Phnom Penh Municipal Court on 2 September 2010 for processing. In the case of the murder of Chea Vichea, the Appeals Court had announced that there was insufficient evidence to charge the two persons who had served jail sentences, indicated that the charges against them should be dropped and referred the case for further investigation. The Committee had expressed the firm hope that this would allow full and independent investigations into the murders of the abovementioned Cambodian trade union leaders to be conducted so as to bring to justice the actual murderers and perpetrators of these heinous crimes as well as the instigators. Furthermore, in view of the above and the total absence of due process in relation to the trials of Sok Sam Oeun, Born Samnang and Thach Saveth, the Committee had requested the Government to provide information on any steps taken to compensate them for damages. The Committee notes the Government's indication in its report that the Ministry of Labour and Vocational Training sent a letter to the Ministry of Justice, and that information would be provided upon receipt of the latter's response. **The Committee urges the Government to provide the information previously requested in relation to the compensation to be granted to Sok Sam Oeun, Born Samnang and Thach Saveth.**

*Trade union rights and civil liberties.* In its previous observations, the Committee urged the Government to take all the necessary measures, in the very near future, to ensure that trade union rights of workers are fully respected and that trade unionists are able to engage in their activities in a climate free of intimidation and risk to their personal security and their lives as well as that of their families. The Committee notes with **regret** that the Government remains silent on these matters in its report, particularly when the comments made by a number of workers' organizations allege serious acts of violence and harassment against trade union leaders and members, and the discussion on Cambodia in the Conference Committee on the Application of Standards in June 2011 relates to the persistent climate of violence and intimidation towards union members. The Committee is bound to recall, once again, that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of workers' organizations, and that detention of trade unionists for reasons connected with their activities in defence of the interests of workers, constitutes a serious interference with civil liberties in general and with trade union rights in particular. It further recalls that workers have the right to participate in peaceful demonstrations to defend their occupational interests. **In light of the above, the Committee once again urges the Government to take all the necessary measures, in the very near future, to ensure that trade union rights of workers are fully respected and that trade unionists are able to engage in their activities in a climate free of intimidation and risk to their personal security and their lives as well as that of their families, in accordance with the abovementioned principles. The Committee requests the Government to provide information in this regard.**

*Independence of the judiciary.* In its previous observations, the Committee, noting the conclusions of the ILO direct contacts mission of April 2008, referring to serious problems of capacity and lack of independence of the judiciary, requested the Government to take concrete and tangible steps, as a matter of urgency, to ensure the independence and effectiveness of the judicial system, including capacity-building measures and the institution of safeguards against corruption. In this regard, the Committee recalls that in 2011 the Conference Committee on the Application of Standards urged the Government to: (1) adopt without delay the proposed law on the status of judges and prosecutors and the law on the organization and functioning of the courts and ensure their full implementation; (2) provide information on the progress made in this regard, as well as in respect of the creation of labour courts; and (3) transmit the draft texts to the Committee of Experts so that it would be in a position to comment as to their conformity with the Convention. The Committee notes that none of these texts have been received. **It once again requests the Government to indicate whether these laws have been adopted, and, if so, to provide a copy of these laws. If this is not the case, the Committee urges the Government to adopt them without delay.**

**The Committee further requests the Government to provide in its next report information on any progress made concerning the creation of labour courts.**

**Furthermore, in relation to the Government's previous indication that an anti-corruption law had been adopted together with a five-year strategic plan (2011–15) and that an anti-corruption unit (ACU) had been established, the Committee notes from the Government's statement before the ILO Governing Body at its 316th Session that the ACU was established as a part of its commitment to legal and judicial reform in combating impunity, and requests the Government provide information on the composition and mandate of the anti-corruption institution and on its activities, together with a copy of the law, the strategic plan and any other relevant document.**

*The draft Trade Union Act.* In its previous observation, the Committee noted that the ITUC, the CLC and EI, in their 2011 comments, expressed concerns over a number of provisions of the draft Trade Union Act, in particular in relation to the scope of application of the law, the requirements for a local union to be registered, the possibility for the Ministry of Labour to suspend the registration of a union, the qualifications imposed for trade union leadership, and the sanctions on trade union leaders and members for the commission of unfair labour practices. The Committee had also noted that the Government had benefited from the Office's assistance on the draft law. The Committee recalls that in 2011 the Conference Committee on the Application of Standards urged the Government to: (1) intensify its efforts, in full consultation with the social partners and with the assistance of the ILO, to ensure that the final draft legislation on trade unions would be fully in conformity with the Convention; and (2) transmit the draft text to the Committee of Experts so that it would be in a position to comment as to its conformity with the Convention. The Committee notes the information provided by the Government in its report that many consultations have been conducted on the draft which has been finalized in August 2011 and was sent to the Council of Ministers for review. The Government adds that it hopes that the relevant institutions to which it would be sent afterwards would then review the draft to improve it. The Committee notes that no copy of the final draft legislation on trade unions has been received. **It once again**

**requests the Government to provide information on the steps taken towards the adoption of the Trade Union Act, and expresses the firm hope that the social partners will be fully consulted throughout the process, and that the final draft legislation will take into account all its comments and in particular that civil servants, teachers, air and maritime transport workers, judges and domestic workers will be fully guaranteed the rights enshrined in the Convention.**

The Committee is raising other points in a request addressed directly to the Government.

## **Canada**

### ***(Ratification: 1972)***

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee also notes the comments of the International Trade Union Confederation (ITUC), dated 31 July 2012, the Canadian Labour Congress (CLC), dated 27 August 2012, and the Confederation of National Trade Unions (CNTU), dated 31 August 2012, which relate to all the issues under examination. The Committee also notes the allegations of the ITUC and the CLC that there are increasing numbers of violations of trade union rights in Canada, and in particular that there is much evidence that violations of freedom of association have become the norm for the Federal Government. They also denounce the slowness of provincial authorities in giving effect to the recommendations of the Committee in relation to freedom of association, even though the Canadian Constitution entrusts them with primary responsibility in relation to labour legislation. **The Committee requests the Government to provide its observations in reply to the allegations of the ITUC, the CLC and the CNTU.**

*Article 2 of the Convention. Right to organize of certain categories of workers.* The Committee recalls that for many years it has been expressing concern at the exclusion of broad categories of workers from the statutory protection of freedom of association.

*Workers in agriculture and horticulture (Alberta and Ontario).* The Committee noted in its previous comments that workers in agriculture and horticulture in the Provinces of Alberta and Ontario are excluded from the coverage of the general labour relations legislation and are thereby deprived of the same statutory protection of the right to organize afforded to other workers. The Government referred to the ruling of the Supreme Court of Canada of 29 April 2011 in the case *Ontario (Attorney General) v. Fraser*, in which the constitutionality of Ontario's Agricultural Employees Protection Act, 2002 (AEPA), was challenged on the basis that it infringed the rights of farm workers under subsection 2(d) of the Canadian Charter of Rights and Freedoms. The ruling found that the AEPA provides a meaningful process for agricultural workers in Ontario to bargain collectively, and therefore upheld the AEPA as constitutional.

The Committee recalls that in its previous comments it emphasized that, although the AEPA recognizes the right of agricultural employees to form or join an employees' association, it however maintains the exclusion of this category of workers from the scope of the Labour Relations Act. The Committee notes the indication in the Government's report that the Ontario Government still considers that the AEPA provides adequate protection to this category of workers, particularly to form associations, represent their interests and exercise their constitutionally protected rights. The Ontario Government indicates: (1) that if properly interpreted, the Act requires agricultural employers to consider workers' representations, issues and concerns in good faith; and (2) that it does not intend to amend the legislation.

The Committee also recalls that it noted previously that the Government of Alberta did not envisage reviewing its legislation following the decision of the Supreme Court concerning Ontario's AEPA. Noting the absence of information in this regard in the Government's report, the Committee understands that the position of the Government of Alberta has not changed on this point. Noting the comments of the ITUC and the CLC, which denounce the status quo on this matter, the Committee is bound to recall once again that all workers without distinction whatsoever (with the sole possible exception of the armed forces and the police) shall have the right to organize under the Convention. Therefore, the Committee considers that any provincial legislation that would deny or limit the full application of the Convention in relation to the freedom of association of agricultural workers should be amended. **The Committee consequently once again requests the Government to ensure that the Governments of Alberta and Ontario amend their legislation so as to fully guarantee the right of agricultural workers to organize freely and to benefit from the necessary protection to ensure observance of the Convention. The Committee also once again requests the Government to provide detailed information and statistics on the number of workers represented by trade unions in the agricultural sector in Ontario and, where appropriate, on the number of complaints lodged to assert the exercise of their rights under the Convention and on any related follow-up action taken.**

*Domestic workers, architects, dentists, land surveyors, lawyers and doctors (Ontario, Alberta, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan).* The Committee recalls that its previous comments related to the need to ensure that a number of categories of workers excluded from any statutory protection of freedom of association under the labour relations legislation (domestic workers, architects, dentists, land surveyors, lawyers, engineers and doctors) enjoy the protection necessary, either through a revision of the labour relations legislation or by means of specific regulations, to establish and join organizations of their own choosing.

With regard to the situation of domestic workers, the Committee notes the indication by the Government of New Brunswick that it is continuing consultations with stakeholders regarding potential amendments to the Industrial Relations Act to remove the exclusion of domestic workers. The Committee also notes that the Government of Prince Edward Island indicates that domestic workers are covered under the Labour Act. The Committee notes that the Government's report does not contain any information with regard to the Governments of Ontario or Alberta on whether any amendment to the legislation is envisaged to remove the exclusion of domestic workers from the scope of industrial relations legislation.

With regard to the other categories, including architects, dentists, land surveyors, lawyers, doctors and engineers, the Committee notes the indication by the Government of New Brunswick that the Industrial Relations Act does not contain exclusions for architects, dentists, land surveyors, lawyers, doctors or engineers. The Committee notes the indication by the Government of Prince Edward Island that architects, engineers, lawyers and doctors who are entitled to practice and who are employed in a professional capacity are excluded from the Labour Act, but that their interests are

represented by their associations. With regard to Saskatchewan, the Committee notes the indication by the Government of the Province that in May 2012 it began a comprehensive review of its labour legislation, including the labour relations legislation. The objective of the review is to modernize and simplify the legislation, including a possible revision of the definition of the terms “employer” and “employee”, which will help to identify more accurately the relations between employees and employers within the meaning of the definitions.

**Taking duly into account the information provided, the Committee requests the Government to ensure that the Governments of Alberta, Nova Scotia, Ontario and Prince Edward Island take the necessary measures to guarantee that architects, dentists, land surveyors, lawyers, doctors and engineers enjoy the right to establish and join organizations of their own choosing, in accordance with the principles of the Convention. The Committee also requests the Government to indicate in its next report the outcome of the examination undertaken by the Government of the Province Saskatchewan on its labour legislation and its impact in terms of determining the categories of workers which can establish organizations of their own choosing under the terms of the Trade Union Act.**

**The Committee also trusts that the Government's next report will include information on the tangible measures adopted or envisaged by the Governments of Ontario and Alberta to amend their legislation in relation to the exclusion of domestic workers from the scope of their labour relations legislation. The Committee hopes that the Government will also report progress in the revision of the Industrial Relations Act of the Province of New Brunswick with a view to removing the exclusion of domestic workers.**

*Nurse practitioners (Alberta).* In its previous comments, the Committee noted that, under the terms of the Labour Relations (Regional Health Authorities Restructuring) Amendment Act of the Province of Alberta, nurse practitioners do not have the right to establish and join organizations of their choosing. **Noting that the Government's report does not contain any information on this subject, the Committee urges the Government to ensure that the Government of Alberta takes the necessary measures to amend the above Act so that nurse practitioners have the right to establish and join organizations of their own choosing, in accordance with the principles of Article 2 of the Convention.**

*Principals and vice-principals in educational establishments and community workers (Ontario).* The Committee recalls its previous comments concerning the need to ensure that principals and vice-principals in educational establishments, as well as community workers, have the right to organize, pursuant to the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos 1951 and 1975. The Committee notes that the Government's report does not contain any information on this point. **The Committee trusts that the Government's next report will contain information on the progress achieved in law and practice by the Government of Ontario in ensuring that principals and vice-principals in educational establishments, and community workers, enjoy the fundamental right to establish and join organizations of their own choosing for the defence of their professional interests.**

*Part-time employees of public colleges (Ontario).* In its previous comments, the Committee noted the entry into force of the amended Colleges Collective Bargaining Act (CCBA), which gives part-time academic staff and support staff in the colleges of Ontario the full right to organize and to bargain collectively. The Committee also noted that the same Act establishes a procedure to change, establish or eliminate bargaining units, including the possibility for colleges to challenge the number of union members holding cards, which the colleges allegedly use widely to delay the certification process. In this respect, the Ontario Public Service Employees' Union had filed certification applications to represent both part-time academic staff and part-time support staff units. In both cases, representation votes had been held and the ballot boxes had been sealed pending a decision by the Ontario Labour Relations Board (OLRB) concerning the issues that remained at dispute between the parties.

The Committee notes the Government's indication that, on 27 March 2012, the OLRB noted that the parties had reached agreement on the outstanding challenges in respect of one college (Centennial College), and that the parties had asked the OLRB to confirm the agreement and to determine a timeline as to how to move forward to deal with the challenges in relation to other colleges. The process and timeline for moving forward are reported to have been agreed. The Government of Ontario emphasizes the importance of the adjudicative role played by the OLRB in the process of certification established by law and considers that it would be inappropriate to interfere with or influence the procedure. It adds that this position is shared by the National Union of Public and General Employees. **Noting the positive developments in the treatment of this matter, the Committee requests the Government to indicate any further developments in this regard.**

*Education workers (Alberta).* The Committee recalls that its previous comments concerned the need to amend the provisions of the Post-Secondary Learning Act which empower the board of a public post-secondary institution to designate categories of employees who are allowed, by law, as academic staff members, to establish and join a professional association for the defence of their interests. **Noting that the Government's report does not contain any information on this point, the Committee once again requests it to ensure that the Government of Alberta takes all the necessary measures to ensure that all higher education staff without exception have the right to organize.**

*Article 2. Trade union monopoly established by law (Prince Edward Island, Nova Scotia and Ontario).* The Committee recalls that its previous comments concerned the specific reference to the trade union recognized as the bargaining agent in the law of Nova Scotia (the Teaching Professions Act), Ontario (the Education and Teaching Professions Act) and Prince Edward Island (the Civil Service Act, 1983). **Noting that the Government's report does not contain any information on this matter, the Committee once again requests the Government to ensure that the Governments of Nova Scotia, Ontario and Prince Edward Island take all necessary measures to bring their legislation into full conformity with the standards of freedom of choice on which the Convention is based by removing any specific designation of individual trade unions as bargaining agents and replacing it with a neutral reference to the most representative organization.**

*Article 3. Right of employers' and workers' organizations to organize their activities and to formulate their programmes. Education sector.* The Committee's previous comments concerned the recurrent problems in the exercise of the right to strike by workers in the education sector in several provinces (British Columbia and Manitoba). The Committee also notes the allegations of the CLC dated 31 August 2012 that the Government of Ontario announced that it would introduce a bill against education workers and school boards that would block any possible strike for up to two years and end all negotiations, particularly on teachers' wages. **The Committee requests the Government to provide its observations in reply to these allegations.**

*British Columbia.* The Committee previously requested information on any decision by the Labour Relations Board of British Columbia with regard to



essential service levels in the education sector. The Committee notes the interim order issued on 28 February 2012 by the Labour Relations Board on an application by the British Columbia Teachers Federation (BCTF), which found as follows: (1) the British Columbia Public School Employers' Association (BCPSA) and the BCTF will work with the Board to designate essential service levels for the BCTF bargaining unit; (2) the interim order will be reviewed on a weekly basis commencing at the beginning of the week of 12 March 2012, and may be varied, modified or amended as the circumstances require and the Board finds to be appropriate; and (3) any issue relating to the application or interpretation of the interim order will be raised as soon as possible and will be dealt with by the Board as expeditiously as possible.

With regard to the discussions between the Government of the Province and the BCTF concerning the Public Education, Flexibility and Choice Act, the Committee notes the Government's indication that these discussions were held between May and November 2011, and that the Government subsequently introduced the Education Improvement Act (Bill No. 22) in February 2012, which was adopted in March 2012. The Committee notes all of this information.

*Manitoba.* The Committee recalls that its previous comments concerned the need to amend section 110(1) of the Public School Act, which prohibits teachers from engaging in strike action. The Committee notes once again that the Government does not envisage amending the Public School Act. The Government adds that teachers in the Province voluntarily gave up the right to strike in 1956 in exchange for binding arbitration, and that neither teachers nor school boards have formally petitioned the Manitoba Government to restore the right to strike to teachers. The Act currently provides for a process of arbitration in resolving collective bargaining disputes. **Recalling that the right to strike should not be restricted for teachers, the Committee requests the Government to ensure that the Government of Manitoba takes the necessary measures to amend the Public School Act accordingly.**

*Certain categories of employees in the health sector (Alberta).* The Committee's previous comments concerned the prohibition of strikes for all employees within the regional health authorities, including various categories of labourers and even gardeners governed by the Labour Relations (Regional Health Authorities Restructuring) Amendment Act. **The Committee notes that the Government's report does not contain any information on this subject and requests it to ensure that the Government of Alberta takes the necessary measures to ensure that all workers in the health sector who are not providing essential services in the strict sense of the term are guaranteed the right to strike.**

*Public sector (Quebec).* The Committee recalls that its previous comments concerned Act No. 43, which put a unilateral end to negotiations in the public sector by imposing the application of collective agreements for a determined period, thereby depriving the workers concerned, including teachers, of the right to strike (the labour law in Quebec prohibits strikes during the term of a collective agreement). The Committee also requested the Government to amend the following provisions: (1) section 30, which establishes severe and disproportionate sanctions in the event of infringements of the provisions prohibiting recourse to strike action (suspension of the deduction of trade union dues merely by the employer declaring that there has been an infringement of the Act for a period of 12 weeks, for each day or part of a day that the infringement is observed); (2) section 32, which provides for a reduction of employees' salaries by an amount equal to the salary that they would have received for any period during which they are in infringement of the Act, in addition to not being paid during that period; and (3) section 38, which prohibits the facilitation of class actions against an association of employees by reducing the conditions required by the Code of Civil Procedure for such an action; and (4) sections 39 and 40, which establish severe penal sanctions.

The Committee notes the Government's indication that the Act is still subject of litigation before the courts of the Province and that the Government of Quebec therefore reserves its comments until the courts have issued their decisions. **The Committee requests the Government to provide full particulars on the decisions of the provincial courts, and the action taken as a result, and hopes that the amendments will be made as requested.**

*Arbitration imposed at the request of one party after 60 days of work stoppage (section 87.1(1) of the Labour Relations Act) (Manitoba).* The Committee recalls that its previous comments concerned the need to amend section 87.1(1) of the Labour Relations Act, which allows a party to a collective dispute to make a unilateral application to the Labour Board so as to initiate the dispute settlement process when a work stoppage has exceeded 60 days. The Committee notes the Government's indication that no changes are anticipated in the Labour Relations Act. **The Committee once again requests the Government to ensure that the Government of the Province of Manitoba takes the necessary measures to amend the above Act so that an arbitration award may only be imposed in cases involving essential services in the strict sense of the term, public servants exercising authority in the name of the State or where both parties to the collective dispute so agree.**

*Compliance of the Public Service Essential Services Act and of the Act to amend the Trade Union Act of the Province of Saskatchewan.* The Committee recalls that its previous comments concerned the Public Service Essential Services Act (Bill No. 5) and the Act to amend the Trade Union Act (Bill No. 6), which were adopted by the Government of Saskatchewan in May 2008. The Committee also observed that these texts were the subject of a complaint before the Committee on Freedom of Association (CFA) (Case No. 2654), and it referred to the March 2010 conclusions and recommendations of the CFA, which drew the attention of the Committee to the legislative aspects of the case. The Committee recalls that, in accordance with the recommendations of the CFA, the provincial authorities are called upon, in consultation with the social partners; (1) to amend the Public Service Essential Services Act (Bill No. 5) so as to ensure that the Labour Relations Board may examine all aspects relating to the determination of an essential service and act rapidly in the event of a challenge arising in the midst of a broader labour dispute; (2) to amend the Public Service Essential Services Act, which sets out a list of prescribed essential services; (3) to make compensatory guarantees available to workers whose right to strike may be restricted or prohibited under the Public Service Essential Services Act; and (4) to amend the Trade Union Act (Bill No. 6), so as to lower the requirement, set at 45 per cent, for the minimum number of employees required to express support for a trade union in order to begin the process of a certification election.

The Committee noted previously that a number of national and provincial trade unions had filed a complaint with the provincial court in July 2008 to have Bills Nos 5 and 6 declared unconstitutional for violating, among other fundamental texts, the Canadian Charter of Rights and Freedoms and the international Conventions ratified by Canada. The Committee notes the Government's indication that the Court of Queen's Bench for Saskatchewan rendered a decision on 6 February 2012 on the bills. With regard to Bill No. 6, the court found that the amendments were constitutional and, consequently, the Government of Saskatchewan has no intention of changing the amendments made to the Act in 2008. With regard to Bill No. 5, the court found that the amendments were unconstitutional and that the legislation as written infringes upon freedom of association by limiting the right to

strike. The Committee notes the indication that the Government of Saskatchewan is appealing the decision of the court and therefore notes that the matter is once again before the courts. **The Committee refers to the conclusions of the CFA regarding the need to amend the Trade Union Act, as amended by Bill No. 6, and requests the Government to provide information on any decision taken by the competent jurisdiction concerning the appeal made by the Government of Saskatchewan against the finding that the Public Service Essential Services Act (Bill No. 5) is unconstitutional, and any action taken as a result, taking into account the recommendations of the CFA concerning the amendments to be made to that Act.**

## Egypt

### **(Ratification: 1957)**

*Comments of workers' and employers' organizations.* The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee. The Committee notes the very detailed Government's observations on the comments submitted by the International Trade Union Confederation (ITUC) on 31 July and 31 August 2012. It notes in particular that, concerning the ITUC allegation that the state-controlled Egyptian Trade Union Federation (ETUF) continues to be the dominant trade union, the Government indicates that: (1) there are large numbers of trade union organizations in the country, some of which are under the ETUF, others are included in other federations, the most important of which is the Egyptian Federation of Independent Trade Unions; (2) the number of trade unions which were allowed to be established in all freedom exceeds 800 trade unions and federations; and (3) the Government does not control the ETUF and it is committed to handling trade union organizations and unions federations in full objectivity. Furthermore, with regard to the ITUC allegation that a court in the city of Helwan sentenced Kamal Abbas, the general coordinator of the Centre for Trade Union and Worker Services (CTUWS), to six months' imprisonment on 26 February 2012 because he denounced Ismail Ibrahim Fahmy, Acting President of the ETUF, while delivering a speech to the International Labour Conference (ILC) in 2011, the Government indicates that: (1) Ismail Fahmy initiated a lawsuit against Kamal Abbas for being insulted during the ILC and the court sentenced Mr Abbas in absentia to six months' imprisonment, according to the law; and (2) Mr Abbas appealed against the sentence, and appeared before the court, which automatically dropped the sentence. Recalling the importance of freedom of expression in the full exercise of freedom of association, as set out in the 1970 resolution concerning Trade Union Rights and Their Relation to Civil Liberties, the Committee welcomes the information that the court has cancelled Mr Abbas' sentence. The Committee notes the Government's indication that it has not received any notifications on specific incidents of violence alleged by the ITUC and that it is committed to referring any violations or allegations with respect to the use of violence against strikes to a tripartite committee for its examination and the adoption of legal measures. **The Committee once again requests the Government to submit the ITUC allegations to which it has replied to a tripartite committee for their examination and provide information in this respect.**

*Legislative issues.* The Committee recalls that for several years it has been commenting on the discrepancies between the Convention and the national legislation, namely Trade Union Act No. 35 of 1976, as amended by Act No. 12 of 1995, and Labour Code No. 12 of 2003, with regard to the following points:

- the institutionalization of a single trade union system under Act No. 35 of 1976 (as amended by Act No. 12 of 1995), and in particular sections 7, 13, 14, 17 and 52;
- the control granted by law to higher level trade union organizations, and particularly the Confederation of Trade Unions, over the nomination and election procedures to the executive committees of trade unions, under the terms of sections 41, 42 and 43 of Act No. 35 (as amended by Act No. 12);
- the control exercised by the Confederation of Trade Unions over the financial management of trade unions, by virtue of sections 62 and 65 of Act No. 35 (as amended by Act No. 12);
- the removal from office of the executive committee of a trade union which has provoked work stoppages or absenteeism in a public service or community services (section 70(2)(b) of Act No. 35 of 1976);
- the requirement of the prior approval of the Confederation of Trade Unions for the organization of strike action, under section 14(i) of the same Act;
- restrictions on the right to strike and recourse to compulsory arbitration in services which are not essential in the strict sense of the term (sections 179, 187, 193 and 194 of the Labour Code); and
- penalties for breaches of section 194 of the Labour Code (section 69(9) of the Code).

The Committee notes that the Government indicates that it is paying attention to bringing the Trade Unions Act and the Labour Code into conformity with the provisions of the Convention and that all regulations are currently being prepared for their submission to the new Parliament. In particular, it indicates that in March 2011, it issued the "Freedom of Association Declaration" which reiterates the observance of all ratified international Conventions, including Convention No. 87, as well as the freedom of establishing trade union organizations. After the promulgation of this Declaration, a large number of new trade union organizations and several trade union federations, which group more than one general union, and/or trade union committee, were set up.

The Committee further notes the Government's indications with respect to the draft freedom of association law that: (1) the previous Parliament was annulled by virtue of a judicial decision rendered by the Constitutional Court in June 2012, which hindered the completion of the discussion or the promulgation of the draft law which had been passed by the Egyptian Cabinet on 2 November 2011; (2) societal dialogue process aimed at promulgating the freedom of association law is still ongoing (to this end, a high-level meeting was held in September 2012, which included the Minister of Manpower and Migration, the Secretary of State for Legal Affairs in addition to the former Ministers of Manpower (Dr Ahmed El Bor'ai and Mr Refaat Hassan), and the Director of the ILO in Cairo); (3) the Government is examining several options with respect to the substance of the law and with respect to the procedural alternatives which are available for its promulgation in the absence of Parliament, and the fact that the President is the person who assumes the legislative power temporarily, until the election of a new Parliament; and (4) it is expected that the draft law will be submitted to the Council of Ministers for its adoption and its referral to the President who is currently acting in a legislative capacity. This will be followed by holding new workers' elections based on the texts of the new law which will apply to trade union organizations in Egypt. Concerning the ITUC's allegations on the draft law, the Government indicates that it refutes the allegations that it is not in conformity with the provisions of Convention No. 87 as this is considered to be in anticipation of events, and an interference in Egypt's internal affairs. **The Committee expects that the draft will have taken into account its previous comments, recalls that the Government may avail itself of the technical assistance of the Office in respect of all the matters raised above, and requests the Government to transmit the current draft so that it may consider its conformity with the Convention.**

Recalling its previous comments concerning the Decree of Law No. 34 (2011) adopted on 12 April 2011 by the President of the Supreme Council of Armed Forces which provided for sanctions, including of imprisonment, against any person who “during the prevalence of the state of emergency, makes a stand or undertakes an activity that results in the prevention of, obstruction, or hindering a State’s institution or a public authority or a public or private working organization from performing its work” or who “incites, invites or promotes [such activity]”, the Committee notes with **satisfaction** the Government’s indication that as of 31 May 2012, the state of emergency has been lifted and that since this Decree stated clearly that it applied only during the prevalence of the state of emergency, it is no longer applicable.

The Committee is raising other points in a request addressed directly to the Government.

## **Fiji**

### **(Ratification: 2002)**

*Comments of workers’ and employers’ organizations.* The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 31 July and 31 August 2012, on the application of the Convention. It further notes the communication of the Fiji Mine Workers Union (FMWU) of 19 September 2012, concerning matters examined by the Committee in the framework of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee notes the comments made by the International Organization of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

*ILO direct contacts mission.* The Committee notes the latest conclusions and recommendations reached by the Committee on Freedom of Association (CFA) in the framework of Case No. 2723 concerning, inter alia, acts of assault, harassment, intimidation and arrest of trade unionists, in particular, that it expresses its grave concern that the ILO direct contacts mission that visited Fiji in September 2012, was not allowed to continue its work, and that it draws the Governing Body’s attention to the extreme seriousness and urgency of the issues involved in this case. The Committee **deeply regrets** this loss of opportunity to clarify the facts and assist the Government and the social partners in finding appropriate solutions to the issues raised by the Committee and the CFA. **It hopes that a new mission may visit the country in the near future in order to deal with the matters examined by the ILO supervisory bodies.**

*Trade union rights and civil liberties.* The Committee reiterates its **great concern** about the numerous acts of assault, harassment, intimidation and arrest of trade union leaders and members for their exercise of the right to freedom of association, previously reported by the ITUC and Education International (EI).

*Acts of assault.* Concerning the alleged physical attacks on several trade unionists, the Committee notes the Government’s statement that: (i) to date, neither the Police Department nor the Office of Public Prosecutions has received any complaint filed by Mr Felix Anthony or Mr Mohammed Khalil for the alleged physical assaults, and investigations have thus not been initiated; and (ii) internal legal mechanisms within the country itself have therefore not been fully utilized by these two persons.

The Committee recalls that the resolution concerning trade union rights and their relation to civil liberties, adopted by the International Labour Conference (ILC) at its 54th Session in 1970, lists as first among the liberties essential for the normal exercise of trade union rights the right “to freedom and security of person” since this fundamental right is crucial to the effective exercise of all other liberties, in particular, freedom of association. The Committee once again emphasizes that it has always considered that, in the event of assaults on the physical or moral integrity of individuals, an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. Moreover, as regards allegations of the physical ill-treatment of trade unionists, the Committee has always recalled that governments should give precise instructions and apply effective sanctions where cases of ill-treatment are found. The absence of judgments against the guilty parties creates, in practice, a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights. **The Committee therefore urges the Government to take all necessary measures without delay to ensure the full respect of the above principles. It also urges the Government, even if the victims have lodged a complaint in the meantime, to conduct ex officio an independent investigation without delay into the alleged acts of assault, harassment and intimidation against Mr Felix Anthony, National Secretary of the Fiji Trades Union Congress (FTUC) and General Secretary of the Fiji Sugar Workers; Mr Mohammed Khalil, President of the Fiji Sugar and General Workers Union (FSGWU) – Ba Branch; Mr Attar Singh, General Secretary of the Fiji Islands Council of Trade Unions (FICTU); Mr Taniela Tabu, General Secretary of the Viti National Union of Taukei Workers (VNUTW); and Mr Anand Singh, lawyer. The Committee requests the Government to transmit detailed information with regard to the outcome of such inquiry and the action taken as a result. With particular regard to the reported act of assault against a union leader in retaliation for statements made by his colleague at the ILC in 2011, the Committee reiterates that the functioning of the Conference would risk being considerably hampered and the freedom of speech of the workers’ and employers’ delegates paralysed if the relevant delegates or their associates were victims of assault or arrest due to the expression of views at the Conference. It urges the Government to ensure that no trade unionist suffers retaliation for the exercise of freedom of expression.**

*Arrest and detention.* With respect to the arrested trade unionists (Mr Felix Anthony, Mr Daniel Urai, and Mr Nitendra Goundar), the Committee notes that the ITUC indicates that Mr Daniel Urai, the FTUC President, has two cases pending in court which have still not been heard: one for preparing union members for collective bargaining and the other one for having allegedly incited political violence by urging to overthrow the Government; and that, in the first case which is pending for almost a year, the prosecution has not been able to produce the required disclosures including the identification of the complainant.

The Committee also notes the Government’s summary of events: (i) Mr Nitendra Goundar and Mr Daniel Urai convened and conducted a meeting with the Hotel Workers’ Union at the Mana Island Resort on 3 August 2011, without the appropriate permit under the Public Emergency Regulations (PER) and allegedly made inciting remarks against the Government of Fiji; (ii) police arrested the two trade unionists and detained them for questioning in the conference room of the Nadi police station for one day; (iii) Mr Goundar and Mr Urai were charged on 4 August 2011 for breaches under the PER; (iv) by their own admission, they erred by not applying for the relevant permit to hold a public meeting but denied allegations that they made statements against the current Government; (v) at no time were the two unionists coerced, threatened or assaulted; and (vi) the hearing of the case is

scheduled on 4 June 2012.

While having previously noted that Mr Felix Anthony, Mr Daniel Urai, and Mr Nitendra Goundar had been released from custody, the Committee notes with **concern** that the criminal charges of unlawful assembly brought against Mr Goundar and Mr Urai on the grounds of failure to observe the terms of the PER are still pending. The Committee considers that, while being engaged in trade union activities does not confer immunity from sanctions under ordinary criminal law, the authorities should not use legitimate trade union activities as a pretext for arbitrary arrest or detention or criminal charges. **With respect to the abovementioned trade unionists, the Committee therefore urges the Government to take the necessary measures to ensure that all charges against them are immediately dropped, and to provide information of any developments in this regard without delay, including the outcome of the case hearing that the Committee understands has been deferred.** The Committee also recalls that the arrest and detention, even for short periods, of trade union leaders and members, engaged in their legitimate trade union activities constitute a grave violation of the principles of freedom of association (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 31). **It urges the Government to take full account of this principle in the future.**

*Restrictions to freedom of assembly and expression.* Furthermore, in regard to its previous comments relating to freedom of assembly and expression, the Committee notes the ITUC's view that many of the powers found in the recently repealed PER are included and expanded in the 2012 Public Order (Amendment) Decree (POAD); in particular, the ITUC criticizes the broad definition of "act of terrorism" that could be used for charging trade unions, the increased prison sentence of up to five years for holding a meeting without permission and the circumstances in which the police may refuse a permit. The Committee, moreover, notes the additional allegations that: (i) while union meetings are currently being held with greater frequency, the authorities (police) are selective in their responses to the permissions sought for meetings; (ii) police scrutinize meeting agendas and the content of speeches before they issue any permits; (iii) the FTUC Assistant National Secretary, Rajeshwar Singh, who represents the FTUC on the Air Terminal Services (ATS) Board was removed from the Board on 31 December 2011 by the Government on the grounds that he had a meeting with Australian trade unionists and allegedly called for a boycott; and (iv) freedom of expression is being limited, for example, in April 2012, a daily newspaper has refused to print a paid advertisement from the FTUC on Labour Day for fear of reprisal from the regime.

The Committee takes due note of the Government's indication that: (i) the PER have been lifted as of 7 January 2012 and that Fiji is once again guided by the Public Order Act as modernized through the POAD, which is an important step in the ongoing elaboration of the new constitution; (ii) notwithstanding the above, the PER did not prohibit trade unions from holding public meetings so long as they abided by the conditions required; (iii) over the last five years, the Government has approved numerous meeting permits; and (iv) today in Fiji, trade unions under the Public Order Act are holding meetings and conducting their important work in promoting the rights and well-being of workers in Fiji.

While welcoming the lifting of the emergency legislation in the form of the PER on 7 January 2012, the Committee notes with **concern** certain provisions of the Public Order Act as amended by the POAD, in particular, the new subsection (5) of section 8, according to which "the appropriate authority may, in its discretion, refuse to grant a permit under this section to any person or organization that has on any previous occasion been refused a permit by virtue of any written law or, to any person or organization that has on any previous occasion failed to comply with any conditions imposed with respect to any meeting or procession or assembly, or any person or organization which has on any previous occasion organized any meeting or procession or assembly which has prejudiced peace, public safety and good order and/or which has engaged in racial or religious vilification or undermined or sabotaged or attempted to undermine or sabotage the economy or financial integrity of Fiji". The Committee considers that the wording of this provision could be used in such a way as to make it difficult for trade unions to hold public meetings, especially given the previous allegations of the use of the PER to restrict their rights in this regard. It once again recalls that the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, constitute civil liberties which are essential for the normal exercise of trade union rights (ILC resolution concerning trade union rights and their relation to civil liberties, adopted at the 54th Session, 1970). **Welcoming the decision to temporarily suspend the application of section 8 of the Public Order Act as amended, the Committee requests the Government to consider abrogation or amendment of the POAD so as to ensure that the right to assembly may be freely exercised. The Committee urges the Government once again to take full account of the principles announced above in the future and refrain from unduly impeding the lawful exercise of trade union rights in practice.** With regard to Mr Rajeshwar Singh, FTUC Assistant National Secretary, the Committee is of the view that addressing trade unions abroad is part of the normal exercise of trade union rights. **It requests the Government to reinstate him in his position representing workers' interests on the ATS Board.**

*Legislative issues. Essential National Industries Decree No. 35 of 2011.* The Committee had previously urged the Government to take the necessary measures to amend the provisions of the Essential National Industries Decree without delay, in full consultation with the social partners, so as to bring it into conformity with the Convention. It notes that, in the view of the ITUC, the Decree continues to devastate trade unions in the covered sectors. The Committee observes that, in the framework of Case No. 2723, the CFA has recalled its previous conclusion that numerous provisions of the Decree and its implementing regulations give rise to serious violations of the principles on freedom of association and collective bargaining, for example, section 6 (cancellation of all existing trade union registrations in essential national industries); sections 10–12 (unions to apply to the Prime Minister to be elected as bargaining unit representative; determination by the Prime Minister of composition and scope of a bargaining unit for election purposes; conduct and supervision of elections by the Registrar); section 14 (50 per cent plus one necessary for a union to be registered as representative of the bargaining unit); section 7 (union officials to be employees of the relevant company); section 27 (providing for serious restrictions of the right to strike); section 26 (lack of judicial recourse for rights disputes; compulsory arbitration by the Government of disputes beyond a certain financial threshold); section 24(4) (prohibition of automatic dues deduction for workers in essential national industries).

The Committee welcomes that, according to the report of the direct contacts mission, within the framework of the current process of developing a new non-race based constitution for Fiji to be ready by early 2013 through an inclusive national dialogue paving the way to the first democratic elections scheduled in 2014, and in view of the fact that the new Constitution will reflect the eight fundamental ILO Conventions and that national labour legislation will need to be compatible with it, the tripartite Employment Relations Advisory Board (ERAB) subcommittee has been tasked with the review of all existing Government decrees relating to labour in terms of their conformity with the ILO fundamental Conventions. The Committee notes the Government's indication that the ERAB subcommittee, the last meeting of which took place on 13 August 2012, is expected to be reconvened with the views of the Public Service Commission (PSC) and the Attorney-General, and that the work of the ERAB and its subcommittee is anticipated to be concluded by October 2012. The Committee further welcomes that, according to the CFA conclusions in the framework of Case No. 2723, the ERAB

subcommittee agreed, as stated by the complainant, to delete most of the provisions of the Essential National Industries Decree considered as offending. **The Committee trusts that the measures agreed by the tripartite ERAB subcommittee will be actively pursued and given effect in the near future, so as to bring the legislation into conformity with the Convention, and requests the Government to provide information on any progress made in this regard.**

Noting with **deep concern** that, according to the ITUC, public sector unions and unions representing "essential national industries" face serious financial difficulties or even struggle for survival due to the discontinued check-off facility, the Committee observes that, in the framework of Case No. 2723, the CFA has considered that the withdrawal of a facility of existential importance to unions that was previously granted could, in the current context, be viewed as another attempt to weaken the Fiji trade union movement. The Committee underlines that the withdrawal of the check-off facility, which could lead to financial difficulties for trade union organizations, is not conducive to the development of harmonious industrial relations. **The Committee therefore requests the Government to make the necessary arrangements to ensure that the check-off facility is fully reactivated in the public sector and the sectors considered as essential national industries.**

*Employment Relations Promulgation of 2007 (ERP)*. The Committee previously commented on the necessity to amend the following provisions of the ERP in order to bring them into conformity with the Convention.

- section 3(2) so as to ensure that prison guards enjoy the right to establish and join organizations of their own choosing;
- section 125(1)(a) so as to ensure that refusals to register an organization under the said section are determined on the basis of objective criteria.

While noting that the Government indicates that since 2007 the Registrar has never refused any trade union application to register under the ERP, the Committee still considers that this provision confers upon the authorities excessively wide discretionary powers in deciding whether or not an organization meets all the conditions for registration;

- section 119(2), in order to enable workers exercising more than one occupational activity in different occupations or sectors to join the corresponding trade unions as full members. The Committee notes that, according to the Government, all Fijian trade unions have agreed to the one-union policy per person in the context of all other rights that have been packaged under the ERP. The Committee considers that demanding that workers belong to no more than one union, in order to sign an application for registration, may unduly infringe upon the right of workers to join organizations of their choosing;
- section 127, which provides that officers of a registered trade union must have been engaged or occupied for a period of not less than six months in an industry, trade or occupation with which the union is directly concerned; and forbids non-citizens to be trade union officers;
- section 184 so as to ensure that the issue of the expulsion from the trade union of members for refusal to participate in a strike is left to trade union constitutions and rules. The Committee notes that the Government indicates that the trade unions themselves, citing the fact that they do not have the capacity to resolve internal grievances amongst themselves, requested the Registrar to become involved in these cases. Whilst preferring that unions independently resolve their issues for fear that its participation may be perceived by the ILO to be interference into trade union matters, the Registrar at the behest of the unions has successfully mediated and facilitated the resolution of some of these cases. The Committee notes this information but considers that it should ultimately be up to the trade unions concerned to decide on the expulsion or sanctions against its members, regardless of the invoked reasons;
- section 128, so as to ensure that only complaints filed by a certain fixed percentage of union members may give rise to an inspection of union accounts. The Committee takes note of the Government's statement that the current practice is consistent with the ILO Recommendations, since the good governance oversight, which is necessary because trade unions in Fiji receive public funds from their members for their daily operations, is only activated when serious complaints of abuse of such funds are raised with the Registrar, or when the audited accounts reveal significant anomalies that warrant investigations. However, the Committee must recall that a provision which grants authorities the power to examine the books of an organization at any time, unless there is a complaint from a certain percentage of the trade union members, infringes the Convention;
- section 175(3)(b) so as to ensure that, only a simple majority of the votes cast in a strike ballot is required. The Committee notes the Government's indication that this has been agreed by all trade unions and unanimously passed by Fiji's multiparty Government and the Lower House in 2006. In these circumstances, the Committee must once again recall that although a ballot requirement does not, in principle, raise problems of compatibility with the Convention, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice. If a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast and that the required quorum and majority are fixed at a reasonable level;
- section 180 so as to ensure that responsibility for declaring a strike illegal lies with an independent body which has the confidence of the parties involved. It notes that the Government shares the sentiment of the ILO and that the independence element of this provision is currently under scrutiny by the ERAB subcommittee;
- sections 169, 170, 181(c) and 191(1)(c), so as to ensure that their cumulative effects do not amount to compulsory arbitration. The Committee notes that the Government indicates that the policy design of the ERP integrates both the promotion of good faith employment relations and productivity improvement. In practice, this means that those who create employment grievances or disputes have the primary responsibility to solve them and not the State. However, when the parties have exhausted this internal resolution process with good faith, for effective governance, especially in the context of financial global economic crisis, either party to the dispute or the State has to be accorded the right to refer the unresolved dispute to the State mechanism so that the dispute can be amicably resolved speedily without adverse effects to the nation as a whole. In this regard, the referral is not perceived as compulsory, and the system is working very effectively. Nonetheless, the Committee's request is under discussion at the ERAB subcommittee;
- section 256(a), which, when read with section 250, provides for a possible penalty of imprisonment in case of the staging of an unlawful strike. The Committee notes the Government's statement that it takes note of the ILO position in this matter and is willing to review these provisions through the tripartite dialogue in the ERAB subcommittee. However, the Government indicates that, prior to the ERP, trade unions have abused this right to strike provision due to bad faith and the lack of a deterrent mechanism, and that, while fully recognizing the right of workers to go on strike as effectively protected under the ERP, the Government is bound to also include effective deterrents for those who abuse this right. The Committee wishes to recall that no penal sanctions should be imposed against a worker for having carried out a peaceful strike, and therefore that measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed pursuant to legislation punishing such acts, such as the Penal Code.

The Committee welcomes the Government's indication that a national peak tripartite body, the ERAB, is responsible for any amendments to the ERP, and that a tripartite subcommittee of the ERAB has been given the mandate to look into the need for any amendments to the ERP and is going through all proposals for amendments before submitting them to the Board for endorsement. The Government expresses the hope to conclude the

amendment process in 2012, reiterates its commitment to honour its obligations under the core ILO Conventions in the new Constitution and states that this proactive and inclusive social dialogue in the labour market through the tripartite ERAB to review current labour market policies, laws, institutions and practices is a vital part of the Government's wider national dialogue in the development of Fiji's modern and non-discriminatory Constitution to be in place early 2013, paving the way for the general election in 2014. **The Committee trusts that the issues raised above will be part of the deliberations of the ERAB subcommittee and that, in the framework of this exercise, due account will be taken of the Committee's comments with a view to bringing the ERP into conformity with the Convention. It requests the Government to indicate, in its next report, the results of the ERAB's deliberations.**

*Decrees relating to the public sector.* The Committee previously noted that the Employment Relations (Amendment Decree) No. 21 excluded 15,000 public service workers from the coverage of the ERP who thus lost overnight their fundamental and other trade union rights, and urged the Government to take all necessary measures to ensure that public servants enjoy the guarantees enshrined in the Convention. The Committee notes the Government's indication that, since the passing of the Public Service (Amendment) Decree (Decree No. 36), all public servants in Fiji enjoy similar employment safeguard mechanisms as those foreseen in the ERP for the private sector. The Committee welcomes the adoption of the Public Service (Amendment) Decree, which, after the exclusion of public servants from the ERP, restores the protection of their fundamental rights including trade union rights.

The Committee had also noted that the State Services Decree No. 6 of 2009, the Administration of Justice Decrees Nos 9 and 10 of 2009 and No. 14 of 2010 as amended and the Employment Relations (Amendment) Decree No. 21 of 2011 issued by the Government, collectively eliminated the access of workers in the public service to the judicial or administrative review of any executive decision concerning the public service (including on terms and conditions of employment of public servants) and other selected sectors; and terminated any pending or ongoing judicial or administrative proceedings in this regard filed by any individual or organization against the State. The Committee notes the Government's indication that: (i) civil servants have recourse to the High Court of Fiji by way of judicial review should they be unsatisfied with the decision of the PSC Disciplinary Committee; in this regard, the Government refers to the judgment of the *State v. Permanent Secretary for Works, Transport and Public Utilities ex parte Rusiate Tubunaruara & Ors HBJ01 of 2012*, where the High Court ruled that it has full jurisdiction to accept cases from public servants who seek to challenge a decision of the Government or the PSC; and (ii) to facilitate speedy resolutions of employment grievances and disputes, the PSC has implemented a new internal grievance policy that includes the appointment of conciliators within government Ministries and Departments. The Committee welcomes the decision recently rendered by the High Court and the new PSC internal grievance policy. **It requests the Government to supply a copy of the High Court decision and to take all necessary measures to ensure that, in practice, all public servants may also have recourse to administrative review of decisions or actions of Government entities. Moreover, the Committee requests the Government to provide information on the relevant mechanisms currently available to public servants to address collective grievances, and to indicate the results of the review by the tripartite ERAB subcommittee of all existing Government decrees relating to the public service in terms of their conformity with the ILO fundamental Conventions.**

## Guatemala

*(Ratification: 1952)*

### Comments by workers' and employers' organizations

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 31 July 2012, referring to matters already under examination by the Committee, and particularly the murder of seven trade union leaders and two trade union members between January and October 2011. The Committee also notes the comments on the application of the Convention made by the Trade Union Confederation of Guatemala (UNSI TRAGUA), the General Confederation of Workers of Guatemala (CGTG) and the Trade Unions' Unity of Guatemala (CUSG), dated 30 August 2012, which refer in particular to numerous allegations of violations of trade union rights in practice, in both the private and public sectors, and to acts of violence against trade unionists, including the murder of a trade union leader in August 2012 (the Committee observes that some of the allegations have been submitted to the Committee on Freedom of Association). The Committee also notes the comments of the Indigenous and Rural Workers' Trade Union Movement of Guatemala (MSICG) of 31 August 2012 (the MSICG subsequently sent other comments, which were received on 10 September and 3 October 2012, outside the time limits for receiving them) which refer to the murder of a trade union leader in June 2012, allegations concerning acts of violence against leaders of the MSICG, the arrest and the initiation of prosecutions against trade union leaders in a context of the criminalization of the exercise of trade union rights and the policy to weaken the Ministry of Labour and the labour inspectorate. The MSICG also alleges numerous violations of trade union rights in practice, in the public and private sectors, including in *maquilas* (export processing zones) and industrial free zones. **The Committee requests the Government to refer the matters raised by these organizations to the National Tripartite Commission and to provide information in this respect, particularly on the decisions taken.**

The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

### Complaint under article 26 of the ILO Constitution

The Committee notes that a group of Workers' delegates to the 101st Session of the International Labour Conference submitted a complaint in June 2012 under article 26 of the ILO Constitution against the Government of Guatemala for failure to comply with the Convention.

The Committee notes the Government's indication that the President of the Republic and the authorities have observed with great concern the claim made by the workers, which is based on events that have been occurring for approximately the last 25 years. It adds that the current Government, which took office in January 2012, has adopted measures and taken firm action for transformation and change in the management of labour matters, and in this context has invited the Director-General of the ILO and the Director of the International Labour Standards Department to visit the country and support the efforts that are being made by the new Government for the implementation of the Convention. The Committee notes the Government's indication that during its first months in office it has made progress in the following principal areas: the implementation of the new national policy for safe, decent and quality employment, and the policy for permanent social dialogue; the budgetary, normative and institutional strengthening of the Ministry of Labour and Social Welfare, including the extension of the coverage of the General Labour Inspectorate; the conclusion of an agreement between the Office of the Attorney-General of Guatemala and the International Labour Standards Department of the ILO establishing relations of

cooperation and the exchange of information on matters covered by the ILO supervisory bodies; the broadening of national tripartite dialogue, including the trade union federations and confederations which have been excluded in the recent past, with as its first result the conclusion of the Memorandum of Understanding for the cooperation framework with the ILO, the Decent Work Programme and the Framework Implementation Plan; and coordination between state institutions to give priority to complaints concerning acts of violence against trade unionists and impunity which, unfortunately, also affect the population as a whole.

### **Acts of violence against trade unionists and the situation of impunity**

The Committee recalls that for several years it has been noting in its observations serious acts of violence against trade unionists which have gone unpunished and has requested the Government to provide information on developments in this regard. The Committee notes that in its comments the ITUC, in the same way as the national trade union confederations, continue to highlight serious acts of violence against trade union leaders and members in recent years, including in 2011 and 2012, and describe a climate of fear and intimidation with a view to dismantle existing trade unions and preventing the establishment of new ones. The organizations also emphasize the deficiencies of the labour inspection services and the crisis in the judicial system. The Committee has noted that in recent years many acts of violence have been committed against trade union leaders and members, including murders, death threats and acts of intimidation against trade union members. The Committee observes that the Committee on Freedom of Association (in Cases Nos 2445, 2540, 2609 and 2768) noted with concern that the allegations levelled in the context of its proceedings were extremely serious and included many murders and acts of violence against trade union leaders and members. The Committee recalls that the high-level mission which visited Guatemala from 9 to 14 May 2011 reported as follows:

The mission wishes to recall that the problems of violence referred to by the CEACR are the following:

- alleged murders of trade union leaders and members over the past five years: 2007: 12; 2008: 12; 2009: 16; 2010: 10; and 2011: two up to the month of May (a few days after the mission, a trade union leader of the SITRABI was murdered);
- death threats, abductions, raids, etc., alleged over the past four years:

2008: eight death threats, two attacks against the homes of trade union leaders, a raid against trade union premises and a raid against the home of a trade union leader, and two attempted murders of trade union leaders;

2009: 17 death threats against trade union leaders and executive committees, eight cases of physical assault against trade union leaders and members; an attack against trade union premises and an attack against the home of a trade union leader; and a temporary abduction of a trade union leader; and

2010: four death threats, an attempted murder of a trade union leader, an abduction, involving torture and the rape of a trade union leader, an attack against trade union premises, an attack against the home of a trade union leader, and physical assault against a trade union leader.

The mission emphasized to all those with whom it spoke the gravity of the allegations and the figures referred to above, and recalled during its meetings the relevant principles of the supervisory bodies, and particularly that trade union rights can only be exercised in a climate that is free from violence, and it sought solutions to the matters raised by the Committee. The mission also emphasized that the killing or serious injury of trade union leaders and trade unionists requires the institution of independent and expeditious judicial inquiries in order to shed full light, at the earliest date, on the facts and circumstances in which such actions occurred and in this way, to the extent possible, to determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events.

The mission observed that the situation of violence is generalized, affects trade unionists, employers and other categories and results in around 10,000 violent deaths a year (according to data provided by the Presidential Coordinating Commission for Executive Policy in the Field of Human Rights (COPREDEH)) in a country of 11,237,196 inhabitants (according to data provided by the Ministry of Labour). The murder figures for trade union leaders over the past five years show that they are a particularly vulnerable category, although at the present time the most affected sector is that of bus drivers and passengers (on the last day of its work, the mission was able to observe this directly by witnessing an attack with firearms on a bus in which five persons died). The mission was informed by various sources that the main perpetrators of acts of violence are related to common crime, organized crime and, recently, drug trafficking, a crime that has been spreading particularly rapidly in recent years in Guatemala and other Central American countries. The mission was able to observe that a large number of people in the country carry weapons. The trade union confederations and the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) emphasized the weakness of the security services and the judicial system, their concern at the level of violence and their desire to contribute to the eradication of violence and the restoration of the rule of law. In this context, at the beginning of its work, the mission found that the authorities were only in a position to provide information on investigations concerning a small number of the trade union leaders and members who had been murdered. In various meetings, including those held with certain magistrates and other authorities, the mission was informed that certain murders might be of an anti union nature. The mission observed that only once investigations have been conducted and those responsible for carrying out, planning and instigating the acts of violence against trade union leaders and members could their anti-union nature be ascertained, and that for that reason it is urgent to conduct expeditious and exhaustive investigations in all cases. The lack of full and up-to-date information on developments in the investigations concerning trade unionists was a matter of concern for the mission, as was the lack of coordination between State services following up these crimes. For this purpose, the Tripartite Commission on Labour Affairs called for the restoration of the specialized prosecution service for crimes against trade unionists and asked the mission to express its concern to the Office of the Attorney-General in relation to this situation. Sharing these concerns, the mission requested the Public Prosecutor to establish a special prosecution service responsible for investigating these crimes and for an acceleration of the investigations of the 52 murders denounced. The Public Prosecutor appointed a few months ago, with a background in the field of human rights, welcomed these proposals, although the proposal for the restoration of the specialized prosecution service was subject to the outcome of the budget discussions in the Congress. The mission also called on the International Commission against Impunity in Guatemala (CICIG) to collaborate with the Office of the Public Prosecutor to investigate and shed light on these cases. The mission is pleased to note that it received an affirmative response from both parties and the undertaking to carry out these investigations. The mission indicated to the authorities the importance that these investigations were undertaken taking duly into account the alleged anti-union nature of the cases, as in recent years there has been a certain tendency in investigations to give priority to other motives, and particularly those based on "passion". The Public Prosecutor expressed great interest in the possibility of concluding a cooperation agreement with the ILO, which would include activities to provide training to prosecutors on typical contexts of anti-union violence and the factors which give rise to such violence (the Public Prosecutor will soon contact the ILO for this purpose). The mission also suggested that representatives of the

Office of the Attorney-General should participate regularly in the meetings of the Tripartite Commission on Labour Affairs with a view to providing information on progress in the investigation of cases of murders of trade union leaders and members. The Office of the Attorney-General and the Tripartite Commission on Labour Affairs welcomed the proposal. The mission noted the urgent call by society, including employers' and workers' organizations, to address more decisively the impunity and corruption existing in the country and considers that the authorities need to devote much higher levels of resources and take effective measures to eradicate the corruption that permeates the administration of justice. At present, the impunity rate is 98 per cent, according to official sources. The CACIF and the trade unions agree on the need for criminal and labour court procedures concerning anti-union practices to be expeditious and effective.

The Committee also notes with **deep concern** that, according to the ITUC and the trade union confederations, since the visit by the mission murders have continued in 2011 and 2012.

The Committee notes the Government's indication in a communication addressed to the Committee on Freedom of Association and in its report to the Committee of Experts that: (1) the Office of the Attorney-General, in compliance with its constitutional mandate to ensure strict compliance with the laws of the country and its functions in relation to criminal prosecution, has been a member this year of the working group convened by the Ministry of Labour, together with the judicial authorities and the Ministry of Foreign Affairs, to monitor the application of the Convention; (2) the Office of the Attorney-General also accepted the invitation by the Tripartite Commission on International Labour Affairs, in which representatives of trade unions and representatives of employers participate, and the Ministry of Labour, to provide information on the progress in the cases denounced at the national level and with the ILO; (3) a group of investigators and support staff were recruited with a view, under the direction of the prosecutors responsible for each case, for pushing forward the investigation of the cases so that they can be resolved in a reasonable time and common factors identified in each case; (4) an overall study was undertaken of all the cases to establish whether there existed a common objective of eliminating trade union leaders; (5) the 58 cases under examination are distributed among 25 offices of public prosecutors, with the majority being assigned to the special prosecution service established to investigate crimes against trade unionists; (6) the examination of the cases found that 32 victims could be trade union members or leaders, while in 17 cases there is no documentation or evidence to prove that the persons concerned were members of a trade union, five cases are related to persons connected with municipal markets and four were members of community organizations; (7) in 45 cases, the motive for the murders is related to common crime, in two cases it was found that the death had its origins in the trade union struggles in which the victims were engaged, four died in relation to social claims, five persons perished due to confrontations between municipal authorities and market stallholders, one person died for political reasons and one in the context of the intervention by the state security forces; (8) of the 58 cases, rulings have been handed down or progress is being made in 24; (9) as a demonstration of the will of the Government and the Office of the Attorney-General, on 10 July a protocol agreement was concluded between the Office of the Attorney-General of Guatemala and the International Labour Standards Department of the ILO with the principal objectives of establishing cooperative relations, and a workshop was held on international labour standards, with emphasis on freedom of association, collective bargaining and impunity; the workshop was attended by the Sub-secretariat for Political Crime of the Office of the Attorney-General, seven district prosecutors, a branch prosecutor, nine investigators and 15 auxiliary investigators from throughout the Republic; and (10) since the establishment of the special investigation service for crimes against trade unionists, measures have been taken to: (i) receive complaints on the premises of the investigation service; (ii) security measures are granted immediately to trade unionists lodging a complaint of a threat; (iii) in the event of murders of trade union members, extended competence is requested so that these cases can be referred to higher-risk courts; and (iv) in the event of raids on the residences of trade union members or trade union premises, security measures are requested from the Ministry of the Interior around the locations where they are required.

The Committee notes all of this information. The Committee welcomes the Government's indications concerning the re-establishment of the special investigation service for crimes against trade union members. The Committee also welcomes the fact that, further to the conclusions of the high-level mission which visited the country in 2011, a cooperation agreement has been concluded between the Office of the Attorney-General and the ILO and that a first activity for the training of investigators has already been undertaken in relation to the typical context of anti-union violence and the factors giving rise to such violence. The Committee hopes that, in accordance with the cooperation agreement, this type of activity will continue to be carried out. The Committee once again draws the Government's attention to the principle that a genuinely free and independent trade union movement cannot develop in a climate of violence and uncertainty; freedom of association can only be exercised in conditions in which fundamental human rights, in particular those relating to human life and personal safety, are fully respected and guaranteed; the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. The Committee also recalls that excessively slow proceedings and the absence of judgments against the guilty parties creates, in practice, a situation of impunity, which aggravates the climate of violence and insecurity, which is extremely damaging to the exercise of trade union rights and incompatible with the requirements of the Convention.

***The Committee once again deplores the murders of trade unionists and other acts of anti-union violence and once again firmly requests the Government to: (1) bring to justice those responsible for the violence in order to counter impunity; (2) ensure the protection of trade unionists under threat of death; (3) convey to the Office of the Public Prosecutor and the Supreme Court of Justice its deep concern at the slowness and inefficiency of the justice system and its recommendations concerning the need to elucidate all murders and crimes committed against trade unionists so as to punish the perpetrators; (4) ensure the allocation of sufficient resources for these objectives with the consequent increase in human and material resources, and ensure effective coordination between the various state bodies which may be called upon to intervene in the judicial system, and to provide training for investigators; and (5) as affirmed by the new Government, to give absolute priority to these matters in government policy.***

***The Committee expresses the firm hope that the Government will take all the necessary measures to guarantee full respect for the human rights of trade unionists and that it will continue to provide protection measures to all trade unionists who so request. The Committee firmly hopes that the investigations which, according to the Government, are being carried out by the Office of the Attorney-General, will be finalized in the near future and will result in the determination of those responsible for acts of violence against trade union leaders and members, their prosecution and punishment in accordance with the law. The Committee requests the Government to provide information on any developments in this respect.***

## Legislative problems

The Committee recalls that for several years it has been commenting on the following provisions, which raise problems of consistency with the



Convention:

-restrictions on the freedom to establish organizations (the need, under section 215(c) of the Labour Code, to have 50 per cent plus one of those working in the occupation to establish industry trade unions) and delays in the registration of trade unions, or the refusal to register them. The Committee notes the Government's indication that: (1) this provision is based on article 102(q) of the Political Constitution, which recognizes the right of workers to establish organizations freely; (2) the constitutional and ordinary legislation protect and recognize the freedom to establish organizations and do not restrict the establishment of industry trade unions, and this section sets out clear rules for the establishment of industry trade unions, based on a qualified majority that is sufficiently representative, which ensures legal security and representativity; (3) the reasons set out comply with the need for the negotiation of the collective agreement, and this section guarantees the majority required for the direct negotiation of the collective agreement; (4) there is no discrimination and no requirement for prior authorization for the establishment of an industry trade union, that is to say that the wish of industry groups to associate is not prohibited; (5) the absence of industry trade unions is due to the lack of interest (for example, for economic reasons), and not to legal restrictions; and (6) in light of the above, effect is given to *Article 8* of the Convention. While noting this information, the Committee reiterates that the requirement of a minimum number of members is not in itself incompatible with the Convention, but that the minimum number should be kept within reasonable limits so as not to impede the establishment of organizations. The Committee considers in this respect that the majority required in the above section is too high and could therefore hinder the establishment of an industry-level trade union if the workers decided to establish one;

-restrictions on the right to elect trade union leaders in full freedom (they need to be of Guatemalan origin and to work in the enterprise or economic activity in order to be elected as a trade union leader, under sections 220 and 223 of the Labour Code). The Committee takes note of the Government's indication that the legislation is inclusive as it recognizes as being of Guatemalan origin persons originating from the Federation of Central America, for which reason it does not contravene the right to the free choice of trade union leaders, as persons of various nationalities may be elected. While noting that workers who are nationals of the countries of Central America can hold trade union office, the Committee recalls that the national legislation should allow foreign workers, of whatever nationality, to have access to trade union office, at least after a reasonable period of residence in the host country;

-restrictions on the right of workers' organizations to organize their activities freely (under section 241 of the Labour Code, strikes are not declared by the majority of those casting votes, but by a majority of the workers); the possibility to impose compulsory arbitration in the event of a dispute in the public transport sector and in services related to fuel, and the need to determine whether strikes for the purposes of inter-union solidarity are still prohibited (section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996); and the labour, civil and penal sanctions applicable in the event of strikes involving public officials or workers in specific enterprises (sections 390(2) and 430 of the Penal Code and Decree No. 71-86);

-the Civil Service Bill: in its previous observation, the Committee noted a Civil Service Bill which, according to UNSITRAGUA and the National Federation of State Workers' Unions (FENASTEG), requires a percentage that is too high to establish unions and restricts the right to strike. The Committee noted previously the Government's indication that the Bill had been withdrawn and that in July 2008 an inter-sectoral consultation committee was established to prepare a Bill that is consistent with the needs of the sectors involved; and

-the situation of many workers in the public sector who do not benefit from trade union rights. These workers, who are under contract under item 029 and others of the budget, should have been recruited for specific or temporary tasks, but are engaged in ordinary and permanent functions and often do not benefit from trade union rights or employment benefits other than wages, and are not covered by social security or by collective bargaining, where it exists. The Committee noted previously that the members of the Supreme Court of Justice indicated to the high-level mission that, in accordance with case law, these workers enjoy the right to organize. Nevertheless, this case law has not been given effect in practice, according to technical assistance reports and the comments of the MSICG.

In this respect, the Committee recalls the conclusions of the 2011 high-level mission, which are as follows:

The mission regrets to note that no progress has been achieved since the previous year in relation to the legislative reforms requested by the CEACR and that the Tripartite Commission on Labour Affairs has not submitted any draft legislation to Congress. The mission reiterated the importance of bringing the legislation into full conformity with the Conventions on freedom of association. The mission forwarded the comments of the CEACR to the Labour Commission of the Congress. The Labour Commission of the Congress expressed the wish that the Tripartite Commission on Labour Affairs should enter into contact with it regularly to address these matters, and the Tripartite Commission agreed. The mission suggested the possibility to the Labour Commission of the Congress to conclude an agreement with the ILO in relation to training on international labour standards and to improve their application; this proposal was received with great interest and it was indicated that the matter would be submitted in the near future to the competent authorities of the Congress. With regard to the situation of the many workers in the public sector engaged under contracts under items 029 and others of the budget, the mission noted that, according to the Supreme Court of Justice, the case law recognizes the right of these workers to organize. The mission also noted that in practice these workers join organizations and in certain State institutions represent 70 per cent of the staff. The mission suggested that the authorities, by means of a circular or a resolution, should remove any doubt on the right to organize of workers engaged under contracts under item 029 of the budget. However, the Minister of Labour expressed reservations for economic and legal reasons.

The Committee noted previously that the Government had established an inter-institutional commission to prepare a Bill on the outstanding legislative matters.

The Committee recalls that, in its 2011 conclusions, the Conference Committee expressed the hope that the Government would be in a position to report substantial progress in the very near future. The Committee *regrets* to note that, despite requesting improvements in the legislation for many years, there has not been significant progress in the legislative reforms requested, and it considers that much more effort will need to be made. **The Committee firmly hopes that, with ILO technical assistance, the Government will be in a position to provide information in its next report on positive developments in relation to the various matters referred to and that tangible progress will be achieved in the near future.**

*Registration of trade unions.* The Committee recalls that in its previous comments it referred to the conclusions of the 2011 high-level mission concerning the obstacles to the registration of trade unions, which read as follows:

The mission emphasized to the Government the need for a rapid solution concerning the registration of the remaining organizations. The mission also suggested the establishment of a proactive registration procedure enabling trade unions with the authorization of their assembly to correct directly in the Ministry legal problems arising during the registration process.

**The Committee once again invites the Government to discuss this matter in the Tripartite Commission with a view to adopting an approach that allows the very rapid resolution with those establishing trade unions of any substantive and formal problems that may arise and facilitates in so far as possible the registration of trade unions.**

## Other matters

*The maquila sector.* For years, the Committee has been noting the comments of trade unions concerning serious problems in the application of the Convention in relation to trade union rights in the *maquilas*. The Committee recalls that in its previous comments it noted the conclusions of the 2011 high-level mission, which read as follows:

With regard to the situation of trade unions in the *maquila*, the mission noted the indication by the authorities that there are 740 enterprises in the sector, six unions and three collective contracts covering 4,600 workers out of a total of 110,000 workers. The mission notes that the number of workers in the *maquila* has fallen considerably in relation to previous years (around 300,000). The mission also notes the indication by the authorities that it is a sector which has been subject to special attention to verify compliance with labour rights and that there is a special unit of the labour inspectorate that is particularly active in addressing problems in the *maquila*. The mission considers, based on meetings with trade union federations, which are very concerned at the low level of unionization in the *maquila*, that training activities on freedom of association and collective bargaining should be intensified in the *maquila* sector and it encourages the Government to have recourse to ILO technical assistance in this respect.

**The Committee once again requests the Government to continue providing information on the exercise in practice of trade unions rights in maquilas (number of trade unions, their membership, number of collective agreements and their coverage, complaints of violations of trade union rights, decisions taken by the authorities and number of inspections). The Committee expresses the hope that the Government will continue to benefit from ILO technical assistance so that full effect is given to the Convention in the maquilas and it requests the Government to provide information on this subject. The Committee requests the Government to refer problems relating to the exercise of trade union rights in the maquila sector regularly to the National Tripartite Commission and to provide information in this regard.**

*National Tripartite Commission.* In its previous comments, the Committee requested the Government to ensure that the composition of the workers' representation on the Tripartite Commission is based on strict criteria of representativity and it asked the Government to take the necessary measures for that purpose. The Committee welcomes the Government's indication that the trade union federations and confederations that had been excluded recently have now been included.

*Statistics and other matters.* The Committee noted previously that, according to the report of the 2011 ILO high-level mission, it would be useful for the Government to provide clearer statistics confined to trade unions that are in operation, and not those that have ceased to operate, and making a distinction between the public and private sectors, with a view to indicating the level of trade union membership and the coverage of collective bargaining in both sectors. The Committee considers that such data can also be useful in determining the representativity of trade union confederations. **The Committee once again requests the Government to produce statistics on the unionization rate and the coverage of collective bargaining and on other aspects of trade union activities.**

## Swaziland

### **(Ratification: 1978)**

*Comments from employers' and workers' organizations.* The Committee notes the comments made by the International Organisation of Employers (IOE) on the right to strike, in a communication dated 29 August 2012, which are dealt with in the General Report of the Committee.

The Committee notes the communication dated 31 July 2012 from the International Trade Union Confederation (ITUC) concerning the issues under examination, as well as allegations of continued repression of trade union activities in practice throughout the period under review, and reports on police brutality and harassment against trade unionists, including trade union leaders of the Swaziland Federation of Trade Unions (SFTU), the Swaziland Federation of Labour (SFL) and the Swaziland National Association of Teachers (SNAT), and the arrest and expulsion of officials from the Congress of South African Trade Unions (COSATU). The Committee also notes the comments dated 29 August and 25 September 2012 from the Trade Union Congress of Swaziland (TUCOSWA) on the implementation of the Convention in practice, on the exercise of trade union activities in the country under a repressive and tense atmosphere and without any meaningful social dialogue, and on the non-recognition and purported deregistration of the TUCOSWA by the Government. In view of the continued and long-standing comments from national and international trade unions on the exercise of trade union rights in the country, the Committee cannot but firmly recall that rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations. **The Committee urges the Government to ensure that this principle is respected and requests it to provide its reply to the serious allegations of the ITUC and the TUCOSWA. Furthermore, recalling that Article 5 of the Convention recognizes the right of workers' organizations to establish or to join federations and confederations of their own choosing, the Committee requests the Government to take all necessary steps to proceed to the registration of TUCOSWA, including legislative measures if necessary.**

*Legislative issues.* In its previous comments, the Committee noted that the Public Service Bill was being debated in both Houses of Parliament, after the social partners were given the opportunity to lobby the Senate on July 2011, and the assistance of an ILO expert which gave a presentation at the request of the Senators on August 2011. The Committee notes from the Government's report that the Bill could not be passed into law in the time required and that the process has since been reinitiated. The Government specifies that the Public Service Bill has been republished in a *Government Gazette* as Bill No. 4 of 2012 and is now open to the public for consultations and inputs, which gives an opportunity for further consultations with stakeholders. The Bill was further circulated to the Labour Advisory Board and will form part of its agenda. **The Committee requests the Government to provide information on the progress made to adopt the Public Service Bill and expresses the firm hope that it will be in full conformity with the provisions of the Convention with regard to trade union rights of public service workers. The Committee requests the Government to transmit a copy of the Bill once it is promulgated into law.**

In its previous comments, the Committee noted the entry into force of the Industrial Relations (Amendment) Act of 2010 (Act No. 6 of 2010) which

amended a number of provisions of the Industrial Relations Act (IRA), upon which the Committee had been commenting for many years. However, the Committee recalled that it has been requesting the Government to amend its legislation on other pending legal issues.

*Determination of a minimum service in sanitary services.* The Committee recalls that it has been requesting the Government for many years to amend the IRA to recognize the right to strike in sanitary services, and establish only a minimum service with the participation of workers and employers in the definition of such a service. In its previous comments, the Committee observed that Act No. 6 of 2010 provides for a clear definition of "sanitary services" in its section 2 and that the Essential Services Committee had engaged in discussion with the trade union and the staff association on the determination of the minimum service that should be provided. The Committee notes from the Government's report that section 2 of the IRA has been amended to allow for the establishment of a minimum service in sanitary services and that the Essential Services Committee held a number of meetings with the sanitary services trade unions. The Government indicates that the trade unions needed time to consult with other branches in other towns and city councils and are expected to present a proposed minimum service to the Essential Services Committee. **The Committee requests the Government to provide information on the final outcome of discussions engaged with the social partners with respect to the determination of the minimum service to be afforded for sanitary services.**

*Civil and criminal liabilities of trade union leaders.* The Committee recalls that in its previous comments it requested information on the effect given in practice to section 40 of the IRA with regard to the civil liability of trade union leaders and, in particular, the charges that may be brought under section 40(13) (civil liability of trade union leaders), as well as the effect given to section 97(1) (criminal liability of trade union leaders) of the IRA by ensuring that penalties applying to strikers do not in practice impair the right to strike. The Committee notes from the Government's report that a proposal to amend both sections 40 and 97 of the IRA was tabled to the Labour Advisory Board on 8 May 2012 and that social partners are consulting on the issues and are expected to come back shortly to the board with their proposals. **The Committee requests the Government to provide information on all progress made to amend sections 40 and 97 of the IRA.**

*Right to organize for prison staff.* The Committee recalls its previous comments on the need to take measures to amend the legislation so as to guarantee for prison staff the right to organize in defence of their economic and social interests. The Committee notes from the Government's report that the Ministry of Justice and Constitutional Affairs tabled the draft Correctional Services (Prison) Bill to the Social Dialogue Committee on 13 July 2011 but that the said committee could not deliberate on the proposed Bill which was then submitted to Cabinet. However, Cabinet directed that the social partners should be given an opportunity to make their input to the draft text which was circulated to the Labour Advisory Board on September 2012. **The Committee requests the Government to provide information on all progress made to adopt the Correctional Services (Prison) Bill in order to guarantee the right to organize for prison staff.**

*Other pending issues concerning legal acts and proclamation.* The Committee recalls that its comments also concerned a number of legal acts and proclamation which gave rise to practices contrary to the provisions of the Convention. The Committee takes note of the technical assistance provided by the Office in order to review the provisions of these texts, namely the 1973 Proclamation and its implementation regulations, the Public Order Act of 1963 and the 2005 Constitution of the Kingdom of Swaziland, and to make recommendations for corrective measures where needed. The ILO consultancy took place in 2011 and the report on proposed legislative amendments was circulated to the social dialogue committee on January 2012. It was reported that the said committee reviewed the report several times between February and March 2012. The Committee notes however that, according to the Government, further discussions on the issue were cancelled at the request of the trade unions due to other domestic issues they wanted to deal with. **The Committee takes due note of the Government commitment to endeavour to resume the discussions with the social partners in the framework of the social dialogue committee on the recommendations made pursuant to the ILO consultancy and firmly hopes that the Government will be able to report in the near future on progress made on the pending issues:**

*-The 1973 Proclamation and its implementing regulations.* In relation to the status of this Proclamation, the Committee previously observed from the 2010 high-level tripartite mission report that, despite assurances of the Government to the contrary, the social partners considered that there remained a certain ambiguity and uncertainty in respect of the residual existence of the Proclamation. The Committee also took note of the "Attorney-General's Opinion" which stated that "on the coming into force of the Constitution, the Proclamation died a natural death". The Committee notes that the Government maintains in its report that there is no state of emergency in Swaziland. The Government adds that the Decree No. 2 of the King's Proclamation was introduced for a period of six months and was extended by the Continuation of Period Order of 1973. However, the Detention Order of 1978 – which introduced the 60 days detention without trial or appearing before Court – repealed the Continuation of Period Order of 1973. Furthermore, the Detention (Repeal) Decree of 1993 repealed the Detention Order of 1978. Finally, the Government asserts that the Constitution of 2005, once promulgated, became the supreme law and any other law inconsistent with it is null and void to the extent of its inconsistency. **The Committee requests the Government to indicate the outcome of discussions with the social partners and any measures taken thereof in relation to the status of the 1973 Proclamation.**

*-The 1963 Public Order Act.* The Committee has been requesting the Government for a number of years to take the necessary measures to amend the Act so as to ensure that it could not be used to repress lawful and peaceful strike action. The Committee previously noted from the conclusions of the 2010 high-level tripartite mission that, despite the provisions exempting trade union meetings from the scope of the Act, it appeared that the Act was resorted to in respect of trade union activities if it was considered that these activities included matters relating to broader calls for democratic reforms of interest to trade union members. The Committee observes that in its report, the Government indicates that the ILO report following the consultancy recommended that the Act be amended and that the Government will submit the proposal to the social dialogue committee. **The Committee requests the Government to provide information on the outcome of the discussions in the social dialogue committee on the amendment of the 1963 Public Order Act and on any measures taken thereof in order to ensure that the Act is not used in practice to interfere in trade union meetings or protest actions.**

The Committee notes that the ILO technical assistance has also resulted in the drafting by the Government of a code of good practice for protest and industrial action, which is being submitted to the Office for comments. **The Committee requests the Government to provide information on any progress made to adopt the code of good practice for protest and industrial action and to provide a copy.**

**Finally, while acknowledging the Government's commitment to pursue its efforts in order to address all remaining issues on the application of the Convention in line with its long-standing requests, the Committee cannot but firmly hope that the Government will provide in its next report information on concrete progress made. The Committee also reminds the Government of its duty, under the Convention, to take all appropriate measures to guarantee that trade union rights can be exercised in normal conditions with respect for**

**basic human rights and in a climate free of violence, pressure, fear and threats of any kind.**

The Committee is raising other points in a request addressed directly to the Government.

## **Zimbabwe**

*(Ratification: 2003)*

### **Follow-up of the recommendations of the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)**

The Committee recalls that the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance by the Government of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), recommended that: the relevant legislative texts be brought in line with Conventions Nos 87 and 98; all anti-union practices – arrests, detentions, violence, torture, intimidation and harassment, interference and anti-union discrimination – cease with immediate effect; national institutions continue the process the Commission had started whereby people can be heard, in particular referring to the Human Rights Commission and the Organ for National Healing and Reconciliation (ONHR); training on freedom of association and collective bargaining, civil liberties and human rights be given to key personnel in the country; the rule of law and the role of the courts reinforced; social dialogue strengthened in recognition of its importance in the maintenance of democracy; and ILO technical assistance to the country continued.

The Committee notes that the ILO technical assistance to support the Government and the social partners in implementing the above recommendations continued throughout 2012 and in this respect, it notes, in particular, that two Zimbabwe Supreme Court judges have participated in a training course on international labour standards, judicial independence and ethics for judges, magistrates, arbitrators and lawyers and that two training workshops on human and trade union rights for the police, security forces and Attorney General's Office took place in the country. In relation to the Commission of Inquiry's recommendation that social dialogue be strengthened, the Committee welcomes the Government's indication that the principles for the Tripartite Negotiating Forum (TNF) legislation were approved by Cabinet. Following the approval, a tripartite consensus building workshop was carried out in July 2012 towards the drafting of the TNF Bill. In order to expedite the drafting process, two internal workshops were undertaken in September and October 2012, and managed to produce a draft which is now with the Attorney-General's Office which will subsequently pass it to Cabinet and Parliament. The Government indicates that it would need ILO support to hold a workshop to discuss the Bill with social partners, and that it anticipates that by the second quarter of 2013, Parliament would have enacted the TNF Bill. The Government also provides information on the ongoing dissemination of the Kadoma Declaration – "Towards a shared national economic and social vision" which aims at depoliticization of workplaces. Moreover, the Committee notes the Government's indication that several workshops will be held in the near future, including training workshops for conciliators and arbitrators on freedom of association and collective bargaining Conventions and two training workshops for national employment councils' councillors drawn from trade unions and employers' organizations and the promotion of freedom of association and collective bargaining at sector level.

The Committee recalls that it had previously urged the Government to provide information on the steps taken to ensure that the Zimbabwe Human Rights Commission and the ONHR can adequately contribute to the defence of trade union and human rights. The Committee notes the Government's indication that the Human Rights Bill to operationalize the Human Rights Commission was passed by Parliament and now awaits Presidential assent. The Government has also crafted activities involving the Human Rights Commission and ONHR on issues to deal with human rights in the world of work so as to give effect to the recommendations of the Commission of Inquiry. **The Committee requests the Government to provide in its next report detailed information on the outcome of such activities.**

*Comments made by workers' organizations.* The Committee recalls that it had previously requested the Government to provide its observations on the alleged cases of suspension and mass dismissals of workers following their participation in protests and strikes, as referred to by the International Trade Union Confederation (ITUC) in its 2011 communication. The Committee notes the Government's indication that it was made aware of these cases through the complaint by the ITUC to the ILO and that no attempt was made to report these cases to the Ministry of Labour for application of domestic remedies given that the law provides for protection of workers from such acts. The Government therefore requests the complainants to approach the Ministry of Labour for redress.

The Committee notes the comments made by ITUC and the Zimbabwe Congress of Trade Unions (ZCTU) on the application of the Convention in their communications dated 31 July and 29 August 2012, respectively, as detailed further below.

*Trade union rights and civil liberties.* The Committee recalls that it had previously requested the Government to indicate all measures taken or envisaged to ensure safety of Ms Hambira, General Secretary of the General Agriculture and Plantation Workers' Union of Zimbabwe (GAPWUZ), allegedly forced to exile following threats received for reporting violations of farm workers' rights, should she decide to return to the country. The Committee notes that in its report, the Government reiterates that the police and courts have confirmed that Ms Hambira has no pending case against her. It is therefore the Government's view that she is guaranteed safety upon return, like any other citizen of the country. The Committee notes, however, that according to the ZCTU, while the Government, in response to the request made by the Conference Committee on the Application of Standards in June 2011, has committed itself to ensuring Ms Hambira's safe return, no measures have been taken to that effect. **The Committee therefore requests the Government to take the necessary measures to ensure Ms Hambira's safety upon her return to the country. The Committee requests the Government to provide information on any concrete measures taken or envisaged in this respect.**

The Committee further recalls that it had previously noted the allegations submitted by the ZCTU and ITUC relating to the instances of banning of trade union activities (workshops, commemoration events, processions and May Day celebrations) and requested the Government to provide its observations thereon. The Committee notes the Government's indication that during the abovementioned two training workshops for the law enforcement bodies, the Ministry of Labour and Social Services has brought to the attention of the participants its position regarding the non-application of the Public Order and Security Act (POSA) to trade union meetings. The Government stresses that the few information-sharing sessions involving the law enforcement agencies conducted since July 2011 had a positive impact and that the May 2012 celebrations throughout the country took place without incident. In the Government's opinion, this vindicates the idea that with more information-sharing activities involving more law enforcement

officers across the country, such incidents will be a thing of the past. The Committee notes, however, that at its May–June 2012 meeting, the Committee on Freedom of Association examined Case No. 2862 concerning similar allegations. In this respect, the Committee notes with **concern** the alleged difficulties faced by the ZCTU in organizing public processions and gatherings to commemorate International Women's Day and International Labour Day in 2012. The Committee further notes with **concern** that the ITUC and ZCTU 2012 communications also contain numerous new allegations referring to the obstruction of trade union activities and, in particular, the interruption of trade union activities by the police, interrogations and threats to arrest trade union officials. **The Committee requests the Government to provide detailed observations thereon. It expects that the Government will intensify its efforts in ensuring that the POSA is not used to infringe upon legitimate trade union rights, including the right of workers' organizations to express their views on the Government's economic and social policy. It also expects that the Government will take the necessary steps to ensure that training on human and trade union rights for the police and security forces continue.**

The Committee recalls that it has previously requested the Government to carry out, together with the social partners, a full review of the application of the POSA in practice and considered that concrete steps should be taken to enable the elaboration and promulgation of clear lines of conduct for the police and security forces with regard to human and trade union rights. The Committee notes that the Government submits in this regard that it was necessary to share information on international labour standards with the law enforcement bodies before a joint review of the application of the POSA could be made with the social partners. The Government informs that the participants of the abovementioned workshops for the law enforcement agencies recommended that in the future, such training activities should include representatives of the social partners. The Government also points out that it is currently engaged with the International Labour Office with regard to a handbook on international labour standards and national law and practice for the use in training by various actors in the labour market. **While taking due note of this information, the Committee expects that a full review of the application of the POSA in practice will be carried out together with the social partners without further delay. The Committee further expects that in addition to a training handbook referred to by the Government, clear lines of conduct for the police and security forces will be elaborated and promulgated without delay as has been requested by the Conference Committee on the Application of Standards in June 2011 and more recently by the Committee on Freedom of Association (see 364th Report, June 2012, paragraph 1145). It requests the Government provide information on all measures taken or envisaged in this respect.**

Furthermore, the Committee recalls that in its previous observation it had noted the Government's indication that the POSA, notwithstanding its non-application to trade union meetings, was being amended. Noting copies of two sets of amendments proposed back in 2009, the Committee had requested the Government to clarify the status of these amendments, particularly in the light of the fact that in the framework of the Universal Periodic Review (UPR) process of the United Nations Human Rights Council, the Government of Zimbabwe had clearly indicated that it did not support the recommendations calling for the amendment of the POSA (see A/HRC/19/14, Human Rights Council, 12th session, 3–14 October 2011). The Committee notes the Government's explanation to the effect that while the role of the Ministry of Labour and Social Services is to ensure that the POSA is not applied to trade union activities, its amendment is under the Ministry of Justice purview. Accordingly, the Minister of Justice is best qualified to make pronouncement on the POSA in the context of the UPR. The Government also indicates that the abovementioned amendments of the POSA were proposals emanating from private members and were not initiated by the Government. **In the light of the continuing difficulties with the application of the POSA in practice and the Commission of Inquiry's recommendation that the POSA be brought into line with the Convention, the Committee requests the Government to take the necessary measures, in consultation with the social partners, in order to amend the POSA. It requests the Government to provide information on all concrete steps taken or to be taken in this respect.**

The Committee further recalls the Commission of Inquiry's recommendation that steps be taken by the authorities to bring to an end all outstanding cases of trade unionists arrested under the POSA. It further recalls that in its previous observation it had urged the Government to ensure that cases of trade unionists arrested under the POSA were withdrawn without further delay and to provide detailed information in this respect. The Committee notes that the Government forwards a communication dated 29 March 2012 addressed by the Office of the Attorney-General to the Ministry of Labour, which contains information on criminal cases involving ZCTU members and leaders. According to this report, which groups the cases by regions, following completion of relevant investigations, the prosecution of the accused trade unionists was either declined or charges against them were withdrawn for the lack of evidence. The report indicates, however, that any updates on cases that were referred to the Supreme Court for constitutional applications will be communicated in due course. The Committee notes, however, that in its 2012 communication, the ZCTU indicates that the recommendation of the Commission of Inquiry to bring to an end to all outstanding cases of arrested trade unionists has not been implemented. **In the light of this contradicting information, the Committee requests the Government to further engage with the ZCTU on this matter and to indicate how many cases involving trade unionists arrested under the POSA are still pending, particularly before the Supreme Court, and to provide information on all steps taken by the authorities to bring them to an end.**

*Labour law reform and harmonization.* The Committee had previously requested the Government to provide information on all developments and progress made in revising and harmonizing the Labour Act, Public Service Act and all other relevant laws and regulations. The Committee notes the Government's indication that together with the social partners it had finalized the development of principles for harmonization and review of labour laws, which have now been submitted to Cabinet for consideration. The Government submits a copy of the Memorandum to Cabinet by the Minister of Labour and Social Services on Principles for the Harmonization and Review of Labour Laws in Zimbabwe. The Government reiterates that the thrust of the harmonization and reform process, as reflected in the Memorandum, is essentially to give effect to the comments and recommendations of the Committee. The Government adds that it is anticipated that Cabinet would approve the principles by the end of December 2012. After the approval, the Government intends to hold a consensus building workshop in December 2012 towards the drafting of the labour law reform bill. The Government indicates that it has submitted the concept note to the ILO Country Office in Harare, and calls for ILO support during the workshop, in order to have the confidence of the social partners. The Government anticipates Parliament to enact the new labour law by the third quarter of 2013. **The Committee requests the Government to provide information on all developments and progress made in this respect.**

**The Committee expresses the firm hope that the law and practice will be brought fully into line with the Convention in the very near future and requests the Government to provide, in its next report, detailed information on all other measures taken to implement the recommendations of the Commission of Inquiry. It encourages the Government to continue cooperating with the ILO and the social partners in this regard.**

## Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

### Greece

(Ratification: 1962)

The Committee takes note of the Government's report, as well as the comments made under article 23 of the ILO Constitution by the Greek General Confederation of Labour (GSEE) in a communication dated 16 July 2012 and by the Hellenic Federation of Enterprises and Industries (SEV) dated 16 November 2012. **The Committee requests the Government to provide any observations it may wish to make on these comments.**

In its previous comments, the Committee expressed the firm hope that the Government and the social partners would be able to review all of its comments in the constructive vein in which they were given, with the aim of jointly developing a common platform to advance the country in a manner which fully respected organizational rights and the promotion of free and voluntary collective bargaining responsive to the current urgencies.

The Committee observes from the latest comments of the GSEE that the Greek Parliament endorsed, on 12 February 2012, Law No. 4046 on the "Approval of the Plans for Credit Facilitation Agreements between the European Financial Stability Facility (ESF), the Hellenic Republic and the Bank of Greece, the draft Memorandum of Understanding between the Hellenic Republic, the European Commission and the Bank of Greece and other urgent provisions for reduction of public debt and recovery of the national economy". According to the GSEE, the text of the new Memorandum of Economic and Financial Policies sets out the numerous commitments undertaken by the Greek Government including a fresh round of austerity and new permanent measures that further disintegrate fundamental labour rights and industrial relations institutions; these wide-ranging commitments are described as "complete rules of law with direct effect". In addition, the Ministry of Labour and Social Security delivered a Circular (No. 4601/304) concerning the implementation of section 1(6) of Law No. 4046/2012. According to the GSEE, the impact of these measures is devastating for collective labour institutions, freedom of association, social dialogue as well as the principle of independent social partnership. The GSEE considers that these new permanent measures will irreversibly and harmfully compound the effect of standing measures since they demolish almost every aspect of the collective bargaining system; moreover, these measures were adopted wholly, disregarding the agreement reached by the national social partners on 3 February 2012 to respect the agreed minimum standards of work included in the National General Collective Agreement (NGCA) for the years 2010–12. The GSEE denounces that subsequently, under unprecedented pressure by the troika, the Government undertook to abolish the NGCA itself and has explicitly legislated to decrease the wage rates therein and replace them with a statutory minimum wage after July 2012; as opposed to generating jobs, the sum of the measures taken has given rise to spiralling unemployment, massive lay-offs and widespread precariousness with over-flexible low-paid jobs where women and young people are predominant.

The Government, for its part, stresses its firm commitment to the observance of international labour standards and states that the financial crisis and the international economic environment reduce the quality of labour rights, redefining the concept of core labour rights in an economically developed country, which is required to reduce the quality of life of its citizens. The loan conditions and their association with drastic restructuring of the institutional framework of industrial relations constitute an unprecedented challenge for Greece and the international community, a fact that was highlighted both by the high-level mission and the Committee of Experts. The international organizations that are offering financial aid to rescue the Greek economy have chosen the implementation of measures that will enhance labour market flexibility, as being considered the most appropriate method to enhance the competitiveness of the Greek economy. According to the Government, the measures imposed include a partial restructuring of the free collective bargaining system so that the core of trade union freedom and of collective bargaining might not be affected. The Government adds that the text of programmatic convergence of the three parties that support the newly elected Government provides: "The collective autonomy and the validity of labour collective agreements return to the level defined by the European Social Law and the *acquis communautaire*, according to which the level of wages in the private sector is agreed between the social partners. This also includes the setting up of minimum wage provided for by the NGCA."

The Committee further notes the new legal framework and context described by the SEV.

The Committee takes note of the conclusions and recommendations made by the Committee on Freedom of Association when examining these same matters in light of their conformity with the principles of freedom of association (Case No. 2820, 365th Report, paragraphs 784–1003). **The Committee similarly encourages the Government and the social partners to rapidly re-engage in intensive social dialogue with a view to developing a comprehensive vision for labour relations in the country and requests the Government to indicate in its next report the steps taken in this regard. The Committee once again urges the creation of a space for the social partners that will enable them to be fully involved in the determination of any further alterations within the framework of the agreements with the EC, the International Monetary Fund (IMF) and the European Central Bank (ECB) that touch upon aspects which go to the heart of labour relations, social dialogue and social peace, and trusts that the views of the social partners will be fully taken into account.**

*Article 4 of the Convention. Violation of the NGCA and other collective agreements.* The GSEE indicates that the Government has legislatively imposed a reduction of the minimum daily/monthly wages established by the NGCA by 22 per cent compared to the level of 1 January 2012. A further reduction was made for young workers (15–25 years old) of 32 per cent. By Circular No. 4601/304, the Ministry of Labour has extended the scope of this reduction to the wages in all collective agreements. According to the GSEE, the Circular also provides that any work performed by workers between 15–18 years of age is excluded from the protective provisions of labour law and is not counted towards seniority. In addition, the minimum daily/monthly wage is subject to a freeze, contrary to raises provided for in the relevant collective agreements, until the rate of unemployment falls below 10 per cent. The clauses of the NGCA related to seniority are further suspended for indefinite duration.

The SEV explains that minimum wages will be regulated by administrative authority as from 1 April 2013, after consultation with the social partners.

While acutely aware of the grave and exceptional circumstances being experienced in the country, the Committee **deeply regrets** these numerous interventions in voluntary concluded agreements, including the NGCA for which the social partners, cognizant of the financial and economic challenges, declared their continuing support in February 2012. The Committee recalls, as has been said to other countries in similar situations, that if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that it is necessary, without exceeding a reasonable period, and it should be

accompanied by adequate safeguards to protect workers' living standards. **While noting the gravity of the economic crisis the Committee refers to its conclusion above about the importance of a space for social dialogue and the role of the social partners in participating in the determination of measures affecting them and the labour market and urges the Government to review with them all the above measures with a view to limiting their impact and their duration and ensuring adequate safeguards to protect workers' living standards. Noting the Government's indication that consultations are taking place between the newly elected Government and the social partners with the aim of signing the new NGCA, the Committee requests the Government to indicate in its next report the progress made in this regard and trusts that any mechanism for the determination of wages will ensure that the social partners can play an active role.**

**As regards its previous comments concerning collective agreements in the banking sector on supplementary pension funds raised by the Greek Federation of Bank Employee Unions (OTOE), the Committee once again requests the Government to indicate the steps taken to bring the parties together with a view to achieving a mutually acceptable agreement.**

As regards the GSEE reference to the Government's enforcement of a maximum duration of three years for collective agreements and the mandatory expiry of collective agreements (those already in place over 24 months shall have a residual duration of one year), the Committee does not consider that imposing a three year maximum duration on collective agreements constitutes a violation of the Convention, if the parties are free to agree on a different duration.

*Binding nature of collective agreements and association of persons.* The Committee recalls its previous comments concerning Act No. 3845/2010 which provided that: "Professional and enterprise collective agreements' clauses can (from now on) deviate from the relevant clauses of sectoral and general national agreements, as well as sectoral collective agreements' clauses can deviate from the relevant clauses of national general collective agreements. All relevant details for the application of this provision can be defined by Ministerial Decision." In its previous comments, the GSEE raised its deep concern that this provision paved the way for the dismantling of a solid machinery of collective bargaining which had been functioning smoothly and effectively in the country for 20 years as a result of a "Social Pact" endorsed in 1990.

As regards the matter of the association of persons, the Committee notes the information in the Government's latest report that Act No. 4024/2011 provides that, where there is no trade union in the company, an association of persons is competent to conclude a firm-level collective agreement. The Government adds that the association of persons is established irrespective of the total number of workers and without an indefinite duration. The Government confirms that at least three-fifths of the workers of the enterprise are required for forming an association of persons and thus the minimum number of workers for an association is five. These workers are protected against anti-union dismissal and may exercise strike action; they therefore constitute trade union organizations of a peculiar type. According to the annual report of the labour inspectorate, 22 firm-level agreements were concluded by association of persons and 26 by trade unions from the period 27 October (time of the publication of Act No. 4024) to 31 December 2011. The SEV states that, in its opinion, an association of persons is just another form of trade union organization already recognized by the law and that its role is purely supplementary.

The Committee nevertheless is of the understanding that unions cannot be formed in enterprises with less than 20 workers, thus leaving a void for association of persons to have priority to make firm-level agreements over negotiations which previously took place with respect to small enterprises at the relevant sectoral level. Moreover, the Committee recalls its **concern** that, given the prevalence of small enterprises in the Greek labour market (approximately 90 per cent of the workforce), the facilitation of association of persons combined with the abolition of the favourability principle set out first in Act No. 3845/2010 and given concrete application in Act No. 4024/2011 will have a severely detrimental impact upon the entire foundation of collective bargaining in the country. **The Committee requests the Government to ensure that trade union sections can be formed in small enterprises in order to guarantee the possibility of collective bargaining through trade union organizations.**

As regards the favourability principle, while observing the indication in the Government's report that the reinforcement of collective bargaining decentralization was included in the measures indicated by the troika including the suspension of this principle, the Committee highlights the importance of the general principle enunciated in Paragraph 3(1) of the Collective Agreements Recommendation, 1951 (No. 91), that collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded. The Committee also observes from the examination of Case No. 2820 by the Committee on Freedom of Association, however, that the Government has affirmed that all collective agreements will be binding upon the parties. **While recalling the importance in the current situation of ensuring that trade union sections can be established in small enterprises, the Committee requests the Government to ensure full respect for this principle and to continue to provide information on the impact of firm-level agreements, including the number of associations of persons constituted in the country and the number of agreements concluded by them and their coverage, and to indicate whether there have been any first-level agreements in contravention with the abovementioned favourability principle.**

*Arbitration.* As regards the previous concerns raised by the GSEE in relation to the Organization for Mediation and Arbitration (OMED) and recourse to arbitration, the Committee now observes that arbitration can only be carried out at the request of both parties, which is not contrary to the Convention. The Committee further observes from the latest comments of the GSEE, however, that the arbitrator is obliged to adapt the award to the need to reduce unit labour cost by about 15 per cent during the programme period and that all the cases pending in arbitration at the time of Law No. 4046/2012 were compulsorily closed/archived. The Committee further observes that both the GSEE and the SEV contest the limitation of the arbitrators' mandate to only wage issues. **The Committee recalls the importance of efficiently functioning independent and impartial arbitration machinery without government interference and requests the Government to review these restrictions with the social partners so as to ensure that the arbitrators are not given such rigid instructions by law in carrying out their mandate so that they may be able to independently determine the matters voluntarily brought before them. The Committee further requests the Government to reply to the GSEE comments that the closing of the Workers' Social Fund (OEE) will have a negative impact on the OMED as it was one of the main sources of funding for their organization enabling it to preserve its autonomy vis-à-vis the State.**

*Articles 1 and 3 of the Convention. Protection against anti-union dismissal.* More generally, the GSEE has referred to the continuing introduction of measures introducing flexible forms of work which render workers more vulnerable to abusive practices and unfair dismissal (e.g. flexibility in the management prerogative to breach full-time work contracts and unilateral imposition of reduced-term rotation work, extended duration of permissible use of temporary agency work, increased probationary period and extension of the maximum period for fixed-term contracts). **The Committee once**

again requests the Government to provide its observations on the comments made by the GSEE in this regard and to provide all relevant information, including comparative statistics relating to complaints of anti-union discrimination and any remedial action taken, with its next report.

## Honduras

(Ratification: 1956)

### Comments from workers' and employers' organizations

The Committee notes the Government's reply to the comments of 31 July 2009, 2011 and 2012 from the International Trade Union Confederation (ITUC) referring to pending legislative matters and to: (1) The framing of a bill which could result in collective bargaining being authorized only for unions that represent more than 50 per cent of all employees in the enterprise. In this regard, the Government indicates that there is no record of such a bill having been submitted to parliament. (2) The creation of parallel unions by employers. The Government indicates in this regard that the competent bodies have received no formal complaints about the establishment of such organizations. (3) Anti-union practices in the export processing zones and various enterprises in the cement and bakery sectors, slow proceedings dealing with complaints of anti-union practices and non-compliance with court orders to reinstate trade unionists. The Government states in this regard that, through the Ministry of Labour and Social Security, it will seek to have these items put on the Economic and Social Council's agenda. (4) Cases of anti-union dismissals. In this respect, the Government indicates that investigations are under way in the course of the General Labour Inspectorate's work, and that court proceedings have been initiated, and in one case a trade unionist was reinstated.

*Legislative matters. Articles 1 and 2 of the Convention. Protection from acts of discrimination and interference.* The Committee recalls that for many years it has referred in its comments to:

-The lack of adequate protection against acts of anti-union discrimination, since the penalties provided for in section 469 of the Labour Code for persons who interfere with the right to freedom of association range from 200 to 10,000 lempiras (200 lempiras being roughly equivalent to US\$12) are obviously insufficient and a mere token. The Committee notes that in its report, the Government reiterates that protection against any act of discrimination that undermines freedom of association in the sphere of employment is guaranteed by the provisions of: (1) article 128(14) of the Constitution of the Republic, which confers the right to freedom of association on employers and workers alike; (2) section 517 of the Labour Code, which grants special state protection to workers when they notify to their employers their intention of forming a union and which provides that, from the date of such notification until receipt of the notice of legal personality, none of the notifying workers may be dismissed or transferred or suffer any impairment of their working conditions without due cause, as defined previously by the competent authority; and (3) the provisions of the Code that impose the penalties indicated by the Committee. **The Committee again asks the Government, in consultation with the social partners, to take the necessary steps to amend the penalties established in section 469 of the Labour Code so as to make them dissuasive.** The Committee further recalls that in its previous observation, it asked the Government to indicate specific cases in which section 321 of Decree No. 191-96 of 31 October 1996 (establishing penal sanctions for discrimination) has been used to apply sanctions for acts of anti-union discrimination. The Committee notes that according to the Government, the Ministry of Labour and Social Security sought information on the matter from the Office of the General Prosecutor of the Republic and is awaiting a reply in order to report back to the Committee. **The Committee hopes that the Government will provide this information in its next report.**

-The absence of full and appropriate protection against all acts of interference, and sufficiently effective and dissuasive penalties against such acts. The Committee notes that the Government reiterates that the legislation does contain provisions to afford workers' organizations adequate protection against all acts of interference by employers, a case in point being section 511 of the Labour Code, which bars from membership of executive committees of enterprise unions or first-level unions or from appointment to trade union office members who, on account of their duties in the enterprise, represent the employer or hold management posts or positions of trust or who are able easily to exercise undue pressure on their colleagues. The Committee recalls in this connection that the protection of Article 2 of the Convention is broader than that afforded by section 511 of the Labour Code and that in order to ensure that effect is given to Article 2 of the Convention in practice, the legislation must make express provision for sufficiently dissuasive remedies and sanctions against acts of interference by employers against workers and their organizations, including against measures that are intended to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means with the objective of placing such organizations under the control of employers or employers' organizations. **The Committee again requests the Government, in consultation with the social partners, to take the necessary steps to these ends.**

*Article 6. Right of public servants not engaged in the administration of the State to bargain collectively.* In its previous comments the Committee pointed out that, although Article 6 of the Convention allows public servants engaged in the administration of the State to be excluded from the Convention's coverage, other categories of workers must be able to enjoy the guarantees laid down in the Convention and thus bargain collectively for their conditions of employment, including pay. The Committee asked the Government to take the necessary steps to amend sections 534 and 536 of the Labour Code barring unions of public employees from submitting lists of claims or signing collective agreements. The Committee notes with regret that the Government has sent no information on this matter. **The Committee again asks the Government to take the necessary measures to amend the legislation to take account to the abovementioned principle.**

The Committee notes that the Government states that it will take steps to align the labour legislation with ratified Conventions, in the framework of the Economic and Social Council, with support from the ILO. **The Committee trusts that all the issues it has highlighted will be taken into account, and asks the Government to provide information on any measures adopted in its next report.**

**[The Government is asked to supply full particulars to the Conference at its 102nd Session and to reply in detail to the present comments in 2013.]**

## Turkey

(Ratification: 1952)



The Committee notes the observations provided by the Government on the 2011 comments of the International Metalworkers' Federation (IMF) and of the International Trade Union Confederation (ITUC). The Committee also notes the comments made by the ITUC in a communication dated 31 July 2012 alleging violations of collective bargaining rights and numerous cases of anti-union dismissals. **The Committee requests the Government to provide its observations thereon in its next report.** The Committee is examining the Government's observations on matters raised by Education International (EI) in 2011, as well as the comments submitted by EI on 31 August 2012, in the framework of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

*Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.* The Committee recalls that in its previous observation it had observed that the ITUC referred to widespread acts of anti-union discrimination in the public and private sectors and had noted that similar allegations were submitted by the Public Employees' Trade Unions (KESK). The Committee requested the Government to indicate the procedure that applies for the examination of complaints of anti-union discrimination in the public sector and to provide statistical data showing progress made in addressing effectively allegations of acts of anti-union discrimination and interference both in the public and private sectors (number of cases brought to the competent bodies, average duration of proceedings and remedies imposed). The Committee noted the observations provided by the Government on the ITUC and the KESK comments. The Government indicated, in particular, that in addition to the abovementioned legislative provisions which, in its view provide for sufficient protection against all types of discrimination, the necessary warnings have been issued by the Government and four circulars have been published by the Office of the Prime Minister on the unacceptability of interference in trade union activities of public employees. The Committee further noted that the Government indicated that no statistical database regarding complaints of anti-union discrimination is kept by the Ministry of Labour and Social Security. The Government further explained that, as regards the public sector, public servants have the right to make written or verbal complaints to their supervisors requesting to investigate cases of trade union discrimination. If the alleged cases are not resolved following this procedure, administrative proceedings can be initiated. The Government informed that the State Personnel Administration possesses statistical information and documents submitted to it by the relevant institutions regarding claims relating to cases of anti-union discrimination in the public sector. **The Committee once again requests the Government to provide this statistical data.** It notes once again that in its latest communication, the ITUC refers to cases of reinstatement ordered by the court but alleges that justice is too slow for many. **Noting once again, however, that no information has been provided by the Government with regard to the public and private sector, the Committee reiterates its previous request for information and expresses the firm hope that the Government will take all necessary measures to ensure that the provisions of the Convention are effectively applied.**

The Committee recalls that in its previous observation it had noted the draft Act on Trade Unions amending Act No. 2821 on trade unions and Act No. 2822 on collective agreements, strikes and lockouts. The Committee notes that this draft, renamed "Collective Labour Relations Act", was submitted to the Prime Minister in October 2011 and was discussed again in a special committee. The Committee understands from the ITUC that this second draft has been condemned by several trade union organizations for containing regressive provisions compared to the existing law and to the first draft law discussed with social partners earlier in 2011. The Committee notes that the Collective Labour Relations Act was adopted by the Parliament on 18 October 2012. **The Committee requests the Government to send a copy of the Collective Labour Relations Act, amending Acts Nos 2821 and 2822. It expresses the firm hope that the necessary amendments were made to the legislation, taking into account the comments of the Committee concerning remedies and compensation and free and voluntary collective bargaining.**

*Collective bargaining in the public service.* The Committee recalls that it had previously noted that Act No. 5982 of 2010 repealed several provisions of the Constitution which previously restricted collective bargaining rights and granted, by virtue of its section 53, the right to conclude collective agreements to public servants and other public employees, and that these constitutional amendments would be followed by the relevant legislative amendments. The Committee notes that Act No. 6289, with significant amendments to Act No. 4688, has been adopted on 4 April 2012. It notes with **satisfaction** that this new Act addresses some of the issues the Committee has raised in the past, notably regarding the scope of collective bargaining which now extends not only to financial questions but to "social rights" (section 28 of Act No. 6289), the need for the parties to be able to hold full and meaningful negotiations over a period of time longer than that previously provided for (extended from 15 days to one month under section 31 of Act No. 6289), the removal of the possibility for the authorities to modify collective agreements signed by the parties and the change of scope of the law from collective "talks" to collective "agreements". The Committee notes, however, that its observations have not been fully taken into account with regard to the need to ensure that: (i) the direct employer participates, alongside the financial authorities, in genuine negotiations with trade unions representing public servants not engaged in the administration of the State; and (ii) a significant role is left to collective bargaining between the parties. The Committee once again recalls that an additional issue to be overcome in order to allow for free and voluntary collective bargaining in the public sector is the recognition of the right to organize to a large number of categories of public employees not engaged in the administration of the State, such as civilian personnel in military institutions and prison guards, who are excluded from this right and, therefore, from the right to be represented in negotiations.

Finally, the Committee noted that in its statement before the Conference Committee in 2011, the Government referred to the adoption in February 2011 of an Act providing for a collective agreement premium for members of public servant trade unions and to the abrogation of a criticized provision concerning contract personnel in the public sector. **The Committee once again requests the Government to provide a copy thereof.**

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

### Dominican Republic

(Ratification: 1964)

The Committee notes the observations of the Autonomous Confederation of Workers' Unions (CASC) and the Employers' Confederation of the Dominican Republic (COPARDOM), which were attached to the Government's report and refer to matters pending. **The Committee also notes the new observations submitted by the CASC, the National Trade Union Confederation (CNUS) and the National Confederation of Dominican Workers (CNTD), and requests the Government to send its observations thereon.**

*Discrimination based on colour, race and national extraction.* The Committee has for a number of years been referring to discrimination against Haitians and dark-skinned Dominicans and recalls that in 2008, the Conference Committee called on the Government to address the intersection between migration and discrimination with a view to ensuring that migration laws and policies did not result in discrimination based on race, colour or national extraction. The Committee also recalls that in its previous observation it took note of observations by the CNUS, the CASC and the CNTD, asserting that foreign workers, mainly Haitians, were paid lower wages than national workers in the construction sector. The Committee notes with **interest** the adoption on 19 October 2011 of Regulation No. 631-11 to the General Migration Act, section 32 of which establishes that the same fundamental rights applying to nationals are guaranteed to resident foreigners. Section 35(III) provides that the Ministry of Labour must ensure that the equality guaranteed in the Constitution is applied to the conditions of work of immigrants and that the labour law is enforced. The Committee notes that the Government indicates that as a result of the application of the Regulation, unregistered immigrants will be given legal status and be issued with documents, and will be authorized to work and to avail themselves of the national social security system on an equal footing with Dominican workers. The Government adds that the Legal Assistance Department will also afford help to foreign workers. The Committee further notes that, according to the Government, the Dominican Labour Observatory (OMLAD) submitted a study in February 2012 on the participation of Haitian immigrants in the Dominican labour market, specifically in the construction and banana sectors. The Committee notes that the study highlights a marked wage gap between immigrant and Dominican workers in these sectors and the need to ensure that the fundamental rights of immigrant workers are respected, that the supervisory mechanisms are reinforced and that access to justice is guaranteed. Furthermore, a labour migration unit has been established in the Ministry of Labour (Resolution No. 14/2012), the aim of which is to oversee compliance with the labour regulations applying to foreigners, disseminate information on the rights of foreigners and ensure respect for migrants' rights through inspection procedures. The Committee also notes that a committee has been established to promote equal opportunities and prevent discrimination at work within the Ministry of Labour. While taking due note of all the measures adopted by the Government to address the issue of discrimination against Haitians and dark-skinned Dominicans, the Committee recalls that it has been dealing with these concerns for a number of years and highlights the need to complement the measures adopted with practical implementation. **The Committee accordingly asks the Government to take the necessary measures to ensure that the Regulation to the General Migration Act, No. 631-11 of 2011, is fully implemented to ensure there is no discrimination against migrant workers based on any of the grounds enumerated in the Convention and to provide specific information in this regard. Furthermore, it hopes that the measures adopted by the labour migration unit and the committee to promote equal opportunities and prevent discrimination at work will enable the Convention to be fully applied and will ensure that workers of Haitian origin and dark-skinned Dominicans will not suffer discrimination based on race, colour or national extraction, including irregular workers, and asks the Government to provide information in this regard, and on the following:**

- (i) the specific measures adopted pursuant to the OMLAD study on the participation of Haitian immigrants in the construction and banana sectors;**
- (ii) complaints filed with the administrative and judicial authorities for discrimination based on race, colour or national extraction, and on the processing of these complaints; and**
- (iii) whether a tripartite committee has been established to follow up the recommendations of the Special Rapporteur and the independent expert referred to in earlier observations; and on progress made in implementing those recommendations.**

*Discrimination based on sex.* The Committee has for a number of years been raising concerns about the persistence of instances of discrimination based on sex, particularly mandatory pregnancy testing, sexual harassment and the failure to apply the legislation in force effectively, especially in export processing zones. The Government states that judges and labour inspectors receive ongoing training on all forms of discrimination, including discrimination based on sex. It lists the measures taken to provide training and awareness raising for workers, employers and public servants about sexual harassment and pregnancy testing. The Committee notes, however, that the Government provides no information on progress made in adopting the amendments to the Labour Code that concern sexual harassment and pregnancy testing, or on the measures to support and protect victims of sexual harassment and mandatory pregnancy testing to which the Committee referred in its previous observation. It notes that the Government provides no information on the scope of section 47(9) of the Labour Code, which prohibits employers from "carrying out any action against a worker which may be regarded as sexual harassment, or supporting or failing to intervene in any such action on the part of the employer representatives". The Government indicates that the Penal Code punishes sexual harassment by a one-year prison term and a fine ranging from 5,000 to 10,000 pesos. The Committee recalls that sexual harassment at work and pregnancy testing as a requirement for entering and remaining in employment constitute serious violations of the Convention and must be adequately and effectively addressed in legislation and practice with a view to their elimination and prevention. Furthermore, the Committee recalls that addressing sexual harassment only through criminal proceedings is not sufficient due to the sensitivity of the issue, the higher burden of proof, which is harder to meet, especially if there are no witnesses (which is often the case), and the fact that criminal law generally focuses on sexual assault or "immoral acts" and not the full range of behaviour that constitutes sexual harassment in employment and occupation (see General Survey on fundamental Conventions, 2012, paragraph 792). **The Committee again urges the Government to take specific measures, including through the Committee to promote equal opportunities and prevent such discrimination at work, to ensure that the legislation in force is effectively applied, and to take proactive measures to prevent, investigate and punish sexual harassment and pregnancy testing as a requirement for obtaining and keeping a job, and to provide adequate protection for the victims. The Committee also requests the Government as follows:**

- (i) to take the necessary measures to increase the penalties for such acts and to ensure that the mechanisms for settling disputes regarding discrimination in employment and occupation are efficient and available in practice to all workers, including those in export processing zones;**
- (ii) to provide information on the scope of section 47(9) of the Labour Code and on the status of the proposed amendments to the Labour Code dealing with sexual harassment and pregnancy testing, and expresses the firm hope that the amendments will include a provision**

**expressly prohibiting both quid pro quo and hostile environment sexual harassment and will establish appropriate penalties; and (iii) to provide detailed information on training for judges, labour inspectors and the social partners on sexual harassment and pregnancy testing, including representative samples of the training material used.**

*Real or perceived HIV status.* With regard to mandatory testing to establish HIV status, the Committee notes with **interest** the adoption of Act No. 135-11 of 7 June 2011, section 6 of which prohibits HIV testing as a requirement for obtaining or keeping a job or obtaining a promotion. Furthermore, under sections 8 and 9, any dismissal on the ground of HIV status is automatically null and void. Under the Act, mandatory testing is subject to a fine ranging from 25 to 50 times the minimum wage in the private sector, and in the public sector gives rise to civil liability. The Committee also notes that, according to the Government, the Technical Unit for Comprehensive Care (UTELAIN) has carried out a number of training projects that include training on the HIV and AIDS Recommendation, 2010 (No. 200) for labour inspectors, lawyers and the social partners. Furthermore, an agreement has been signed for inter-institutional cooperation between the Ministry of Labour, the National Council on HIV and AIDS (CONAVIHSIDA), the National Council for Export Processing Zones and the Dominican Association of Export Processing Zones, with a view to devising policies and establishing certification for enterprises in export processing zones. The UTELAIN has signed 169 agreements with enterprises on the implementation of anti-discriminatory policies relating to HIV and AIDS. **The Committee requests the Government to continue to send information on the measures adopted to prevent and eradicate discrimination based on HIV and AIDS. It requests the Government to provide information on the number and nature of complaints filed with the administrative and judicial authorities for discrimination based on HIV and AIDS, including for mandatory HIV and AIDS testing, and on the decisions handed down.**

The Committee is raising other points in a request addressed directly to the Government.

## **Iran, Islamic Republic of**

**(Ratification: 1964)**

*Follow-up to the conclusions of the Conference Committee on the Application of Standards (International Labour Conference, 99th Session, June 2010).* The Committee refers to the discussion that took place in the Conference Committee on the Application of Standards in June 2010 and the resulting conclusions. The Committee recalls that the Conference Committee had urged the Government to amend the discriminatory laws and regulations, and to bring the practice into line with the Convention, including regarding the role of female judges, the obligatory dress code, the application of social security regulations, hiring women over 40, and women's access to the labour market. It also called on the Government to expressly repeal section 1117 of the Civil Code, to promote public awareness of the right of women to pursue freely any job or profession, the inclusion of women in the labour market and decent work for women. It also urged the Government to take decisive action to combat discrimination against ethnic minorities and unrecognized religious minorities, in particular the Baha'i. The Conference Committee also expressed concern that in the context of the lack of freedom of workers' organizations, meaningful social dialogue on the implementation of the Convention would not be possible.

*Discrimination based on sex. Discriminatory laws and regulations.* For a number of years the Committee, as well as the Conference Committee, have been raising concerns regarding laws and regulations that discriminate against women, urging the Government to amend or repeal them. The Committee notes with **deep regret** that no concrete results in this regard have been achieved. The Committee notes that the committee established in April 2010 to which the Government referred previously, with the aim of reviewing the laws and regulations that could be in conflict with the Convention, does not seem to have had any impact in bringing about the necessary changes, as the Government again refers only generally to the mandate of this committee. The Committee also notes that the Government refers generally to proposals for amendments to the Labour Law by the Centre for Women and Family Affairs with a view to addressing legal obstacles to women in different areas. The Committee notes the Government's indication that section 1117 of the Civil Code, which provides that a husband can prevent his wife from taking up a job or profession, has still not been repealed. The Government previously referred to proposals made for its repeal in 2006 and 2008, and the Government indicates that another proposal was made in 2010, which also does not appear to have been successful. With regard to the discriminatory provisions in social security regulations that favour the husband over the wife for pension and child benefits, the Committee notes that no specific information is provided.

While welcoming the Government's indication that the number of female judges has increased, the Committee also notes that the Government does not address the issue of giving women access to all positions in the judiciary, including those qualified to hand down judgments, and no steps appear to have been taken to address these limitations in the 1982 Law on the selection of judges and Decree No. 5080 of 1979. Regarding the obligatory dress code, the Committee notes the Government's acknowledgement that observance of the Islamic code of dress is established in the Constitution. The Committee notes the concerns raised by the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran that "strict implementation of the morality code concerning dress and attempts to criminalize improper veils have limited women's participation in public and social arenas." (A/66/374, 23 September 2011, paragraph 56). The Committee remains concerned that such a restriction could have a negative impact on the employment of non-Islamic women and to their access to education (see General Survey on fundamental Conventions, 2012, paragraph 800).

The Committee recalls that the primary obligation of ratifying States is to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating all discrimination in respect thereof (*Article 2 of the Convention*). Some concrete measures are immediately required under the Convention, including repealing any statutory provisions and modifying any administrative instructions or practices that are discriminatory or inconsistent with promoting equality in employment and occupation (see General Survey, 2012, paragraphs 841–844). **Given that the Committee has for many years urged the Government to repeal or amend the discriminatory laws and regulations, and given that this is an immediate obligation under the Convention, the Committee strongly urges the Government to take concrete and immediate steps to ensure the repeal, effective amendment or modification of all laws, regulations, instructions or practices that hinder women's equality of opportunity and treatment in employment and occupation, including with respect to section 1117 of the Civil Code, the social security regulations, the role of female judges, and the obligatory dress code. Noting the Government's reference to the Bill for early retirement of householder women, the Committee asks the Government to review the Bill to ensure that it does not exert a negative impact on women's career paths or access to higher level positions, or result in women receiving a lower pension than men, and to provide specific information in this regard.**

*Discriminatory practices.* With respect to the limitations on employing women over 40, the Government indicates that the maximum age for

employment for both men and women is 40, though an extension of five years can be granted. The Committee recalls that there appear to be obstacles in practice to women being hired after the age of 30. In response to the Committee's concerns regarding the prevalence of discriminatory job advertisements, the Committee notes the Government's indication that such advertisements, published by the Government and the private sector, are motivated by professional needs and qualifications, and that the Government cannot interfere in this regard. The Committee recalls that limiting applications to only men or only women for a particular job is discriminatory, unless being a man or a woman is an inherent requirement of the particular job, in the strict sense of the term, as provided in *Article 1(2)* of the Convention. The Committee recalls that there will be very few instances where distinctions based on sex may be required, for example jobs in the performing arts or those involving physical intimacy (General Survey, 2012, paragraphs 827–830). **The Committee urges the Government to take measures to prohibit discriminatory job advertisements, and to ensure such prohibition is enforced. The Committee also requests the Government to provide information on the actual age profile of the workforce, in the public and private sector, disaggregated by sex, and asks the Government to take measures to ensure that there are no obstacles in practice to women being employed after the age of 30.**

*Discrimination based on religion and ethnicity.* Noting the general information provided by the Government regarding measures taken to benefit certain ethnic and religious groups, the Committee notes with **deep concern** that the Government does not address the very serious concerns that have been raised for many years regarding discrimination against unrecognized religious minorities, in particular the Baha'i and the urgent need to take decisive action to combat such discrimination. The Committee recalls the concerns raised by Education International (EI) regarding religious-based discrimination against the Baha'i in access to education, universities and to particular occupations in the public sector. The Committee notes that the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran acknowledges that "Baha'is are subjected to severe socio-economic pressure ... in some cases, they have been deprived of property, employment and education". He also refers to the establishment of an office to counteract Baha'i publications, the denial of positions of influence to Baha'i and prohibiting them from carrying out certain trades. He also states that ethnic minorities "continue to be subjected to intense socio-economic discrimination and pressures, including land and property confiscation, denial of employment and restrictions on social, cultural and linguistic rights" (A/HRC/19/66, 6 March 2012, paragraphs 61–62). The Committee notes further that the Special Rapporteur states that the practice of *gozinesh*, a selection procedure requiring state officials and employees to demonstrate allegiance to the state religion, has further alienated ethnic minorities (ibid., paragraph 65). **The Committee must once again urge the Government to take decisive action to combat discrimination and stereotypical attitudes against religious minorities, in particular the Baha'i, through actively promoting respect and tolerance for religious minorities, to repeal all discriminatory legal provisions, including regarding the practice of gozinesh, and withdraw all circulars and other government communications discriminating against religious minorities. The Committee also calls on the Government to ensure that religious minorities, including unrecognized religious minorities, in particular the Baha'i, as well as ethnic minorities, are protected against discrimination, and have equal access and opportunities, in education, employment and occupation, in law and practice. The Committee asks the Government to take concrete measures to this end, and to provide detailed information of the measures taken and the results achieved. The Committee also asks the Government to provide further information on the progress made in developing an index of ethnic justice to which the Government refers, the indicators established, and any conclusions or findings arising from the index.**

*Discrimination based on political opinion.* The Committee recalls the observations of EI raising concerns of persecution and prosecution of teachers, students and trade unionists advocating for social justice, for equal rights to education and employment and for women's rights. The Committee notes that the Government in its brief reply to this allegation states that the activities of the association of teachers to which EI had referred, had a political nature. The Committee recalls that the protection against discrimination on the basis of political opinion under the Convention implies protection in respect of the activities of expressing or demonstrating opposition to established political principles and opinions and also covers discrimination based on political affiliation. The protection of political opinion applies to opinions which are either expressed or demonstrated, but does not apply where violent methods are used (General Survey on fundamental Conventions, 2012, paragraph 805). The Committee also recalls that the protection of freedom of expression is aimed not merely at the individual's intellectual satisfaction at being able to speak his or her mind, but rather – and especially as regards the expression of political opinions – at giving him or her an opportunity to influence decisions in the political, economic and social life of the society; for political views to have an impact, the individual generally acts in conjunction with others (General Survey on equality in employment and occupation, 1988, paragraph 57). **The Committee requests the Government to take measures to ensure that teachers, students and their representatives enjoy protection against discrimination based on political opinion and requests the Government to provide information on the specific measures taken in this respect.**

*Legislative and policy framework for equality and non-discrimination.* The Committee previously noted that the Bill on Non-discrimination in Employment and Education had been submitted to the Commission of Social Affairs of the Cabinet of Ministers. The Committee had noted with concern that the Bill did not provide effective and comprehensive legal protection for all workers against discrimination in employment and occupation on all the grounds enumerated in the Convention, and urged that steps be taken to bring it into line with the Convention. The Committee notes the Government's indication that the Bill remains with the Commission of Social Affairs, and will be forwarded once it has been approved. On the issue of providing legislative protection against sexual harassment in employment and occupation, the Committee notes that the Government considers that individuals respect social norms proportional to the "necessities of the society and regular behaviour", and indicates that no case of sexual harassment in the workplace has been reported. With respect to the concerns raised regarding the increasing number of women working in temporary jobs and under contract employment, thus being excluded from legal entitlements and facilities, including maternity protection, the Committee notes the Government's indication that all gaps regarding the protection of mothers will be considered in the process of the amendment of the Labour Law. **The Committee once again urges the Government to ensure that effective and comprehensive legal protection for all workers, whether nationals or non-nationals, against direct and indirect discrimination, on at least all the grounds enumerated in the Convention, namely race, colour, sex, religion, political opinion, national extraction and social origin, with respect to all aspects of employment and occupation. The Committee asks the Government to review the procedures that would be available to bring a claim for a violation of the provisions concerning discrimination, to ensure they provide effective and accessible avenues for redress. The Committee urges the Government to take effective measures, in law and in practice, to prevent and prohibit both quid pro quo and hostile environment harassment in employment and occupation. The Committee also asks the Government to provide information on the progress of amending the Labour Law with a view to ensuring that women in temporary and contract employment benefit from all entitlements and facilities.**

The Committee notes the adoption of the Act of the Fifth Economic, Social and Cultural Development Plan (2011–15) of 20 January 2011 (Act of the 5th Development Plan), and the National Plan of Decent Work, 2010, which were attached to the Government's report. The Committee notes that the

Act of the 5th Development Plan does not appear to address equality and non-discrimination in employment and occupation. With respect to the National Plan of Decent Work, the Committee notes that the objectives of the Plan include fundamental labour rights, including prohibition of discrimination in employment and occupation; "equalizing opportunities" for men and women, and enabling women to take advantage of suitable job opportunities; and reforming laws and regulations to comply with international conventions. The Committee notes that the Plan is very general in nature, and no specific measures are set out to address the objectives listed. **The Committee asks the Government to provide information on the measures taken in the context of the National Plan of Decent Work, or otherwise, in line with Article 2 of the Convention, to declare and pursue a national policy designed to promote equality of opportunity and treatment in employment and occupation, with a view to eliminating any discrimination based on all the grounds enumerated in the Convention, and the impact of such measures.**

*Equality of opportunity and treatment between men and women.* The Committee notes the Government's indication that the labour force participation of women increased from 12.6 per cent in the fourth quarter of 2009 to 16 per cent in the first quarter of 2010. According to the statistics provided by the Government, women's labour force participation rates from 2007 to 2010 fluctuated regularly within a band of 12.3 per cent to 16.7 per cent. The Committee also notes the increase in women's unemployment in 2010 to 25 per cent, from 16.8 per cent in 2009. The Committee notes the range of measures reported by the Government with a view to improving women's access to education and training, as well as the Government's acknowledgement that this education and training is not translating into the same labour market access for women as for men. The Government states that the difference in access to the labour market is due to social and cultural reasons, mainly based on traditional interpretations, which the Government considers are justified. The Committee notes the continuing efforts made to promote women's entrepreneurship, including the establishment of the Foundation of Cooperative and Development of Women's Entrepreneurship. The Committee also notes the Government's indication that it will submit updated information on the measures adopted by the Cultural and Social Council of Women in the near future, and looks forward to receiving such information once it is available. **The Committee asks the Government to take concrete steps to ensure that women's education and training opportunities translate into jobs, including those with a career path and higher pay. In this context, the Committee urges the Government to address stereotyped assumptions regarding women's aspirations, preferences and capabilities regarding employment. The Committee also asks the Government to continue to provide information on activities to promote women's empowerment and women's entrepreneurship, and the impact of such measures. Please also provide more detailed information on the contents and progress of the adoption of the Bill on home-based work and the Family Protection Bill, including a summary of the provisions of relevance to the Convention. The Committee again asks the Government to provide information on the quota system in universities and how this is applied in practice. Please also continue to provide information on the participation of women and men respectively in education, vocational training, and provide information on the distribution of men and women in the various sectors and occupations of employment.**

*Enforcement.* The Committee notes that the Government provides information on the number of cases of alleged violations of citizenry rights, including discrimination against religious and ethnic minorities, that were heard in different provinces (a total of 5,926 cases). However, it is not clear during what period or in which court or other proceedings these complaints were heard, whether they related to discrimination in employment and occupation, or what was the outcome of the cases. The Government also refers to the General Inspection Organization, which monitors, inspects, and deals with complaints. The Government also refers to the establishment of tripartite reconciliation councils, which settled 30 per cent of complaints in 2011. It is not clear if any complaints of discrimination have been addressed in this context or by the General Inspection Organization. The Committee also notes the Government's indication that no cases of discrimination in employment against women have been reported. The Committee recalls that the absence of complaints of discrimination is likely to indicate a lack of an appropriate legal framework, lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals (General Survey, 2012, paragraph 870). **The Committee asks the Government to provide further information on the number and nature of complaints addressed relating to the principle of the Convention, by the labour inspectorate, the courts, and any administrative bodies, and the remedies provided and sanctions imposed. Noting that the Government refers to the establishment of special courts for religious minorities to issue verdicts according to their religious rights, the Committee asks the Government to provide information on the number and nature of complaints of discrimination addressed by these courts and the outcome thereof. The Committee also asks the Government to take concrete measures to increase awareness of workers, employers and their organizations of the principle of the Convention and the complaints procedures available for discrimination. The Committee also calls on the Government to take steps to train all those involved in monitoring and enforcement to increase their capacity to identify and address cases of discrimination in employment and occupation.**

*Social dialogue.* While noting the Government's general reference to measures taken to promote social dialogue, the Committee remains concerned that national-level social dialogue regarding the implementation of the Convention remains impeded, including in the absence of an appropriate legal framework for freedom of association and social dialogue. The Committee notes that the Government refers to the ongoing process of amending the Labour Law in this context. However, the amendments have not yet been adopted. The Committee notes that the Government requests ILO technical assistance in this regard. **The Committee once again urges the Government to make every effort to establish constructive dialogue with the social partners to address the continuing gaps in law and practice in the implementation of the Convention, and to provide detailed information of steps taken in this regard. The Committee also asks the Government to take the necessary steps to secure ILO technical assistance, including forwarding a copy of all relevant draft legislation and amendments to the Office for comments and advice.**

**[The Government is asked to supply full particulars to the Conference at its 102nd Session and to reply in detail to the present comments in 2013.]**

## **Korea, Republic of**

**(Ratification: 1998)**

The Committee notes the Government's report in reply to the request made by the Conference Committee on the Application of Standards in June 2011. The Committee notes the observations of the Federation of Korean Trade Unions (FKTU) and the observations of the Korea Employers' Federation (KEF), attached to the Government's report, the communication from the Korean Confederation of Trade Unions (KCTU), dated 31 August 2012, and the communication of the International Organisation of Employers (IOE) and the KEF, dated 31 August 2012, as well as the Government's replies thereto. The Committee also notes the observations made by Education International (EI) and the Korean Teachers and Education Workers' Union (KTU), dated 31 August 2012, and the Government's reply thereto of 23 October 2012.

*Articles 1 and 2 of the Convention. Migrant workers.* The Committee recalls that the Conference Committee concluded in 2009 that the issue of protecting migrant workers from discrimination and abuse required the Government's continued attention and requested the Government to pursue, and where necessary, to intensify efforts in this regard. It had also called on the Government to review the functioning of the current arrangements for workplace changes, in consultation with workers' and employers' organizations, with a view to determining how best to achieve the objective of reducing migrant workers' vulnerability with regard to abuse and violations of their labour rights.

The Committee notes from the Government's report that changes were made recently to the Act on employment, etc. of foreign workers and the Employment Permit System (EPS). With respect to the possibility for a migrant worker to change workplace, section 25(1) of the Act was amended in 2012, so as to allow such a change in "cases publicly announced by the Minister of Employment and Labour, where it is deemed difficult to work in the workplace considering social norms, due to a reason not attributable to the worker, such as temporary shutdown, business closure, cancellation of the employment permit, restrictions on employment and violations of working conditions or unfair treatment by the employer" (new section 25(1)(2)). The Committee recalls that under the EPS, a worker is permitted to change workplaces a maximum of three times, unless the change is due to "a reason not attributable to the foreign worker". Pursuant to the amendment to section 25, a change of workplace due to "unfair treatment by the employer" is now considered as a change for "a reason not attributable to the worker" and therefore is not included as one of the three permitted changes under the EPS. In addition, the Ministry of Employment and Labour issued a Notification (No. 2012-52) according to which "unfair treatment" covers "unreasonable discrimination by the employer, etc. on the grounds of his/her nationality, religion, gender, physical disability, and so on".

The Committee notes that, according to the IOE, which reflects the position of the KEF, the right of the foreign worker to stay in Korea arises from the labour contract signed between the worker and his or her employer and in principle he or she should continue to work in the workplace where permission for employment was first obtained. The IOE considers, therefore, that the limitation on the number of workplace changes is not a violation of foreign workers' rights. According to the IOE, foreign workers should receive pre-employment training in the sending country and should be made aware of the Korean labour legislation and the system of grievances. The Committee notes from the observations of the KCTU that despite the amendment to section 25(1), it is very difficult for migrant workers to apply for a change of workplace in practice when they face unfair treatment, discrimination or even serious violations of their human and labour rights for a number of reasons: the burden of proof on the worker; language difficulties and the absence of legal support; the lack of appropriate criteria when the request for change is examined by the job centre; and the obligation for the worker to continue to work at the same workplace during the period of the investigation (up to one month). The Government indicates that a foreign worker can file a complaint with a labour inspector or the police and request a change of workplace on the basis of the results of the investigation. In addition, when it is "objectively recognized" that a foreign worker suffers discrimination, he or she may request immediately a change of workplace and therefore does not have to continue to work in the workplace while awaiting the results of the investigation. The Government also states that the Ministry of Employment and Labour provides interpreters and has set up 60 job centres, 34 support centres for foreign workers and one call centre to provide counselling and support with regard to grievances and labour law issues.

The Committee notes the Government's indication that 94.7 per cent of foreign workers who applied for a change of workplace succeeded in transferring to another workplace within the three-month permitted period in 2011 (compared to 96.7 per cent in 2010), that the main reason for a change of workplace was termination of or refusal to renew the labour contract (85.6 per cent), and that violation of the employment contract was invoked only in 0.13 per cent of the cases during the period 2010–11. The Committee notes that the KCTU considers that these statistics are not reliable, because workers must obtain permission from their employer to request a change of workplace, and they are forced, or sometimes advised by the Ministry, to change the reason invoked in the middle of the procedure for fear of rejection of their case. The Committee notes the Government's explanation that a confirmation from the employer is only required when the reason invoked is termination of employment. The Committee notes from the KCTU's observations that in August 2012 a new government policy entitled "Measures for Improvement in Foreign Workers' Change of Workplace and Prevention of Broker Intervention" ended the practice of providing migrant workers with a list of companies offering jobs, and introduced a system operated by job centres, whereby employers are provided with a list of migrant workers seeking employment, thereby limiting their ability to choose their employer.

With respect to the possibility of being re-employed, the Committee recalls that migrant workers who have entered Korea under the EPS can be employed up to four years and ten months and then should go back to their country. The Committee notes the Government's indication that since July 2012, foreign workers in small businesses (50 workers or less) in the agricultural, livestock and fisheries industries and manufacturing businesses, who have worked "faithfully in the same workplace for four years and ten months without transferring to another workplace" are entitled to re-enter and be re-employed in Korea after a period of three months outside of the country. The Government also indicates that foreign workers who have transferred to another workplace during their employment period may re-enter and work again in Korea after a period of six months outside of the country "through the special Korean language test system". The Committee notes that the KCTU points out that, given that most migrant workers want to work in Korea longer, in practice, this system prevents them from requesting a change of workplace and escaping poor working conditions in order to be able to return to Korea.

The Committee notes from the Government's report the high number of violations found in the 2,241 workplaces employing foreign workers that were inspected in 2011 (7,994 violations, of which 1,768 concerned wages and other working conditions, including gender discrimination). It further notes that fines were imposed in only 74 cases and only six cases resulted in prosecutions. With respect to complaints lodged by migrant workers, the Committee notes that, according to the information provided by the Government, most of the complaints relating to discrimination brought before the National Human Rights Commission (NHRC) were rejected or dismissed.

***While noting the changes in the legislation regarding the EPS, the Committee asks the Government to take the necessary steps to ensure that in practice the EPS, including the "re-entry and re-employment system", allows for appropriate flexibility for migrant workers to change their workplaces so as to avoid situations in which they become vulnerable to abuse and discrimination on the grounds set out in the Convention, and to report on the measures taken. The Committee also asks the Government to ensure that measures are taken to provide migrant workers with adequate access to procedures and remedies in case of discrimination and to ensure that appropriate sanctions are applied. In this respect, the Committee requests the Government to provide clarification on the following points:***

***(i) the definition of the expression "unreasonable discrimination" used in Notification No. 2012-52 as well as the grounds of discrimination covered; and***

*(ii) how, and by which authority, is it “objectively recognized” that a foreign worker suffers discrimination and therefore does not have to wait for the outcome of the investigation on his or her request for a change of workplace to leave to employer.*

***The Committee also asks the Government to take measures to raise awareness among workers and employers of the new provisions in the Act on employment, etc. of foreign workers, in particular the new rules concerning changes of workplace, as well as of the anti-discrimination legal provisions in force and the relevant procedures available, including with respect to sexual harassment. Please continue to provide information on the inspection of workplaces employing migrant workers (number of enterprises inspected and workers covered, number and nature of violations detected, and remedies provided), as well as the number, content and outcome of complaints brought by migrant workers before labour inspectors, the police, the courts and the NHRC.***

*Discrimination on the basis of sex and employment status.* The Committee recalls that the Conference Committee requested information concerning the difficulties encountered with the enforcement of the Act on the protection, etc. of fixed-term and part-time employees, which prohibits discriminatory treatment of these workers based on their employment status. The Conference Committee also requested information on whether trade unions were authorized to bring complaints on behalf of victims of such discrimination, and called on the Government, in consultation with the workers' and employers' organizations, to improve the legislative protection against discrimination based on employment status, which disproportionately affected women. The Committee notes that, according to the Government, as of March 2012, there were 5,809,000 non regular workers (contingent, part-time and atypical workers), representing 33.3 per cent of all wage earners (47.8 per cent according to the KCTU which alleges that a large number of persons in “special types of employment” are excluded from the Government’s statistics) of which 53.7 per cent are women. The Committee further notes from the statistics provided by the Government that the hourly gross wage of female non-regular workers (i.e. the majority of female workers) represents only 42 per cent of the hourly gross wage of male regular workers. According to the KCTU, which continues to express concern regarding the discrepancies between regular and non-regular workers, there is no indication of any improvement of the situation of non-regular workers. The KCTU is also of the view that fixed term contract workers are excessively used, and that the recruitment of such workers should only be permitted in certain cases. The Committee also notes the observations made by the FKTU according to which, despite legislative protection, in practice women on fixed-term contracts often face disadvantages and even dismissal, due to pregnancy, childbirth, and childcare. The FKTU points to the high concentration of women workers in precarious employment and reports an increase in cases of sexual harassment as well as cases of verbal abuse and disrespect against “indirectly employed” workers. According to the IOE, after the introduction of the Act on the Protection, etc. of Fixed-term and Part-time Employees in 2007, a significant improvement of the situation with regard to discrimination was reported by many companies. In addition, the IOE states that there have been many criticisms regarding the scope of the protection against discrimination. The IOE considers that prohibiting discrimination related to wages and working conditions is appropriate, but not other aspects such as welfare and other advantages and, in the case of subcontracting, it is not reasonable to apply the same conditions of work to workers hired by different companies.

The Government indicates that a set of measures was adopted in 2011 with a view to “removing irrational discrimination against non-regular workers and reinforcing the social safety net for vulnerable workers”. The Committee notes the Government’s statement that it took measures aimed at converting non-regular employment into regular employment by expanding vocational training, converting public sector non-regular workers into workers with open-ended contracts, and obliging the employer to directly and immediately employ dispatched workers in case of illegal dispatch.

The Committee notes that as pointed out by the KCTU, the number of cases of discrimination brought before the Labour Relations Commission significantly decreased in 2011 (46 compared to 194 in 2010) and half of them were dismissed, rejected or withdrawn. In this respect, the Committee notes the Government’s indication that the new measures also include an increase of the time limit for filing a complaint to seek redress from discrimination from three to six months as well as new advisory and supervision powers granted to labour inspectors to address discrimination against fixed-term, part-time and dispatched workers. The Committee notes the Government’s statement that trade unions cannot be given the right to file complaints on behalf of workers because they are neither a party whose rights are infringed as a result of discriminatory treatment nor a party who gains benefit from redressing discrimination. The Government however points out that according to section 36 of the Labour Relations Commission Regulations, a trade union may act on behalf of others with the approval of the chairperson of the Commission. The Committee notes that, according to the KCTU, under this procedure, the burden of filing a complaint remaining on the worker still requires the worker to first file a complaint and then an assignment is made to the trade union. The Committee recalls the importance of allowing trade unions to bring complaints as it reduces the risk of reprisals and is also likely to serve as a deterrent to discriminatory action, particularly in the context of non-regular employment.

***The Committee asks the Government to take the necessary measures, including through the qualitative and quantitative strengthening of enforcement, to protect fixed-term, part-time and dispatched workers against discrimination, particularly women, and to provide information on the impact on precarious employment of the set of measures taken in 2011, including measures with a view to converting non-regular employment into regular employment and measures for the protection of subcontracted workers. Please indicate specifically the results of such measures on the employment of women as regular workers. Considering the particular vulnerability of non-regular workers to discrimination, the Committee asks once again the Government to consider taking steps to allow trade union representation with respect to complaints on behalf of fixed-term, part-time and dispatched workers under the existing anti-discrimination legislation, and to provide detailed information on whether and to what extent the procedure under section 36 of the Labour Relations Commission Regulations has been successfully used for trade union representation. It also asks the Government to provide information on the effect of the measures taken to increase time limits for filing a discrimination complaint on the number of complaints brought before the Labour Relations Commission and the results thereof. The Committee asks the Government to provide specific information on the advisory and supervisory activities of labour inspectors concerning discrimination against non-regular workers, including the number of workplaces inspected and male and female workers covered, the number and nature of the violations identified and the remedies provided and sanctions imposed.***

*Equality of opportunity and treatment of women and men.* In its previous comments, the Committee noted that the Conference Committee had called on the Government to step up its efforts and to seek cooperation with the employers' and workers' organizations, to increase the low level of women's participation in the labour market and reduce the gender pay gap. The Committee notes the detailed statistical information provided by the Government on the situation of men and women in workplaces subject to the affirmative action scheme (i.e. private enterprises with 500 employees or more and public institutions with 50 employees or more), which shows a very slow increase in the percentage of women workers and women managers employed in both the private and the public sectors from 2009 and 2011 (respectively 34.87 per cent in 2011 compared to 34 per cent in 2009 and 16.09 per cent in 2011 compared to 14.13 per cent in 2009). The participation of women in the labour force has been stable, around 54 per cent, in the

past years. The Committee notes that, according to the Government, the low rate of women's participation in the labour market is mainly attributable to their unsuccessful return to work after a career break. In August 2012, measures were taken with a view to reconciling work and family life, such as reduced working hours for childcare and a family care leave system, through the amendment of the Act on Equal Employment and Support for Work-Family Reconciliation. The Committee notes that the IOE expressed concern at the potential negative effect of measures to promote the employment of women, such as the family care leave, on the recruitment of women workers. In this respect, the Committee notes the Government's indication that support would be provided to small enterprises to assist them with the replacement of workers.

The Committee notes the Government's indication that honorary equal employment inspectors appointed by and in enterprises ensure that these enterprises voluntarily address gender discrimination and sexual harassment issues. Local and employment offices provide the honorary equal employment inspectors with training, have set up local consultative bodies to this end and have created a pool of instructors to provide training on measures to prevent sexual harassment in workplaces. In 2012, the Government developed administrative guidelines on the cooperation between local employment and labour offices and equal employment counselling centres regarding remedies to be provided to women who are victims of gender discrimination. The Committee also notes the FKU's indication that unions and women's organizations have conducted counselling services on discrimination, sexual harassment at work and reconciliation of work and family responsibilities. The organization also states that expertise in gender discrimination and gender sensitivity of labour inspectors has significantly decreased and this has made it difficult to collaborate on these issues. As far as collaboration is concerned, the Government further indicates that it holds regularly a women employment policy forum, in which workers' and employers' organizations and experts also participate, examines the functioning of the affirmative action scheme in order to improve it. The Committee notes from the observations of the FKU that a significant number of workplaces have not implemented the affirmative action scheme, due to the low level of awareness among employers, and that the scheme should be provided with adequate budget and expertise. **The Committee asks the Government to continue to take steps, in consultation with workers' and employers' organizations, to promote the access of women to employment both in the public and the private sector, in particular to a wide range of jobs and to take measures to address the underlying causes of gender discrimination, such as gender stereotypes on the role and the aspirations of women in employment and in society. The Committee asks the Government to continue to provide information on the results achieved in terms of employment of women through the implementation of the affirmative action scheme and the improvements thereof. It also asks the Government to provide information on the concrete activities conducted by honorary equal employment inspectors in enterprises and equal employment counselling centres in the field on gender equality and non-discrimination. The Committee also asks the Government to provide information on the application in practice of the reduction of working hours for childcare and the family leave care, indicating the proportion of men and women who have used this possibility, as well as information on any assessment made or envisaged of its impact on equality of opportunities between men and women in employment and occupation. Please provide a copy of the Act on Equal Employment and Support for Work-Family Reconciliation, as amended.**

*Discrimination based on political opinion.* The Committee notes that EI and the KTU allege discrimination based on political opinion against pre-school, primary and secondary teachers. The KTU states that in May 2010, the Government announced that it would dismiss 183 teachers because they had made donations to the Democratic Labour Party (DLP) and therefore had joined the DLP illicitly, in violation of their obligation of political neutrality under the Korean Civil Servants Law. The KTU indicates that as of August 2012, eight teachers were dismissed, 21 were suspended and many were fined, and legal proceedings are still ongoing. The organization points out that only those teachers in primary and secondary schools are banned from joining a political party, participating in any political activities, and donating money to a political party under Korean Law. The Committee also notes that the KTU indicates that in June 2009, 17,147 teachers signed a statement requesting the withdrawal of education policies designed to create fierce competition among students at the expense of quality education for all. The KTU issued in July 2009 a second statement entitled "Teachers' statement for the freedom of expression and protection of democracy" which was endorsed by 28,637 teachers. The Government filed a complaint against 89 KTU activists and initiated disciplinary procedures against them, and dismissed 15 KTU chapter heads and suspended 45 union staff members. The KTU indicates that the dismissed teachers have been reinstated by the courts' decisions but that they took the case to the Supreme Court. In a ruling dated 19 April 2012, the Supreme Court decided that the teachers' petition campaign was illegal since public servants should maintain political neutrality and that the political expression of teachers was against the public good and in violation of the Public Servant Act.

In its reply, the Government indicates that teachers, who are state public officials, are prohibited from engaging in political activities by law (State Public Officials Act) and that as an exception, university teachers are allowed to engage in political activities as party members. The Committee notes the explanations from the Government that this is due to a difference between the duties of elementary, middle and high school teachers and the duties of university teachers, the former being responsible for educating students as prescribed by law and the latter combining academic research and activities of teaching. The Government indicates that the Constitutional Court took a similar position. It further states that the Constitution and the law impose a duty of political impartiality on teachers, as state public officials, ban their involvement in political activities, and prohibit them from taking collective action for matters that are not their official duties. The Committee also notes the Government's indication that, in the Court's ruling on the case relating to the KTU's statements, the issuance of statements and the gathering of signatures on such statements was an act of clearly manifesting a political bias or partisan views therefore incurring the direct risk of infringing political impartiality of teachers who are public officials.

The Committee recalls that the protection against discrimination on the basis of political opinion implies protection in respect of the activities of expressing or demonstrating opposition to established political principles and opinions and also covers discrimination based on political affiliation. The protection of political opinion applies to opinions which are either expressed or demonstrated, but does not apply where violent methods are used (General Survey on fundamental Conventions, 2012, paragraph 805). The Committee also recalls that the protection of freedom of expression is aimed not merely at the individual's intellectual satisfaction at being able to speak his or her mind, but rather – and especially as regards the expression of political opinions – at giving him or her an opportunity to influence decisions in the political, economic and social life of the society. For political views to have an impact, the individual generally acts in conjunction with others (General Survey on Equality in Employment and Occupation of 1988, paragraph 57). The Committee also considers that political opinion may in certain circumstances constitute a bona fide qualification for certain senior posts which are directly concerned with developing government policy; however this is not the case when conditions of a political nature are laid down for public employment in general, or for certain other professions. In order to come within the scope of the exception provided for in *Article 1(2)* of the Convention, the criteria used must correspond in a concrete and objective way to the inherent requirements of a particular job (General Survey on fundamental Conventions, 2012, paragraph 831). **The Committee requests the Government to take measures to ensure that elementary, primary and secondary school teachers enjoy protection against discrimination based on political opinion and requests the Government to provide**



information on the measures taken in this respect.

## Saudi Arabia

(Ratification: 1978)

The Committee notes the Government's report in reply to the request made by the Conference Committee on the Application of Standards in June 2012.

*National equality policy.* The Committee recalls its previous observations, calling on the Government to take measures to declare and pursue a national equality policy as required under *Article 2 of the Convention*, addressing at least all the grounds set out in *Article (1)(1)(a)* of the Convention. Terms of reference had been provided by an ILO high-level mission on the development of a national equality policy, including regarding the establishment and mandate of a multi-stakeholder task force. The Committee notes the Government's general indication that it considers that the different laws and regulations, including the Labour Code, ministerial decisions and regulations, and decisions of the Consultative Council reinforce that the official policy is based on combating all forms of discrimination, segregation or exclusion on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin. It states further that the official policies, educational systems and programmes, administrative instructions and practices are in conformity with the Government's approach to the elimination of any discrimination or segregation. The Government also states that there is no declared or hidden discriminatory policy against non-Saudis, as evidenced by the approximately 10 million non-Saudis living in stability and security in the country. In response to the previous requests and concerns of the Committee with respect to discrimination based on religion, the Committee also notes the Government's general indication that no cases have been brought before the courts alleging such discrimination. The Committee draws the Government's attention to its 2012 General Survey on fundamental Conventions, highlighting that it is essential to acknowledge that no society is free from discrimination, and that continuous action is required to address it. The Convention requires the national equality policy to be effective: it should therefore be clearly stated, which implies not only that all discriminatory laws and administrative practices are repealed or modified, but also that programmes are set up, stereotyped behaviours and prejudicial attitudes are addressed and a climate of tolerance promoted, and monitoring is put in place. Noting the very general indications of the Government, the Committee recalls that measures to address discrimination in law and in practice should be concrete and specific (see General Survey, 2012, paragraphs 844–845). Recalling that the Government had previously indicated that steps were being taken to examine the establishment of a working group responsible for the preparation of a national equality policy, the Committee notes that the Government provides no information in this regard. **The Committee urges the Government to take steps to establish the multi-stakeholder task force, with a view to taking concrete measures, without further delay, to develop and implement a national policy designed to promote equality of opportunity and treatment in employment and occupation, with a view to the elimination of any discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin, and asks the Government to provide specific information in this regard, including with respect to measures taken to encourage and promote a climate of tolerance among all the sections of the population. The Committee again asks the Government to provide information on the steps taken to secure ILO technical assistance in this regard to which the Government previously referred. The Committee also asks the Government to undertake the national survey on the situation in the country with regard to discrimination on all the grounds set out in the Convention, and the establishment of an action plan, which was foreseen in the terms of reference for the multi-stakeholder task force.**

*Legislation.* The Committee recalls that the Labour Code, 2006, contains no specific provisions defining and prohibiting discrimination in employment and occupation. The Committee notes the Government's indication that the regulations in force are based on the prohibition of discrimination between citizens or between citizens and foreign workers. The Committee notes, however, that the Government does not refer to any specific legislation in this regard. **The Committee urges the Government to take concrete steps to include as part of its national equality policy, legislation specifically prohibiting discrimination, both direct and indirect, in the public and private sectors, on at least all the grounds set out in the Convention, covering all workers and all aspects of employment, and ensuring effective means of redress. Please provide specific information on the concrete steps taken in this regard.**

*Domestic workers and agricultural workers.* With respect to the Committee's previous requests for information on how various groups of workers were protected against discrimination in practice, the Committee notes the Government's indication that the Ministry of Labour considers the formulation of special labour regulations on agricultural and rural workers to be a priority. Regarding domestic workers, the Government indicates that the Consultative Council has adopted a special regulation for domestic workers, which is currently before the high authorities for decision. The Government also states that the Ministry of Labour, in collaboration with the private sector, has formulated an insurance document aimed at providing protection to domestic workers with respect to unpaid wages, as well as providing medical coverage, occupational disability coverage, legal services, etc. **The Committee asks the Government to provide specific information on the regulations foreseen for agricultural and rural workers, and domestic workers, and whether it is envisaged that they will address specifically the issue of protection against discrimination for such workers with respect to the grounds enumerated in the Convention. The Committee asks the Government to provide information on the status of the adoption of such regulations, and to provide a copy of them once they are adopted.**

*Discrimination against migrant workers.* The Committee recalls that it has been raising concerns, along with the Conference Committee on the Application of Standards, regarding discrimination against migrant workers, in particular the risk of exploitation and abuse of migrant workers due to the sponsorship system. The Committee welcomes the Government's acknowledgement that sponsorship provisions can lead to exploitation and abuse, and its commitment to abolishing the sponsorship system. The Government indicates further that the Ministry of Labour has taken several measures to provide more protection for migrant workers, including establishing a Department for the Welfare of Expatriate Workers, and adopting a regulation on recruitment companies, aimed at regulating migrant labour and protecting the rights of workers and employers. The Government also indicates that it has formulated a bilateral agreement to regulate the relationship between domestic workers and their employers, to safeguard the rights of both parties. The Council of Ministers has authorized the Minister of Labour to negotiate and sign such bilateral agreements with countries of origin. The Government considers that such measures will lead to the end of the sponsorship system in practice, before it is envisaged formally and legally. **The Committee asks the Government to continue to provide information on the steps taken to bring an end to the sponsorship system, both in law and in practice, as well as on the impact of such measures. The Committee also requests information on the mandate of the Department for the Welfare of Expatriate Workers, including any role in inspection or dispute resolution, as well as on the conclusion of any bilateral agreements, and the contents of such agreements. The Committee also asks the Government to indicate whether any steps have been**

**taken, as previously urged by the Committee, to follow up in a concerted manner on the issues relating to discrimination of migrant workers, including examining the occupations in which migrant workers are employed, their conditions of employment, and the particular situation of female domestic workers, and to make addressing discrimination against migrant workers an important component of the national equality policy.**

*Equal opportunity and treatment of men and women.* The Committee notes that in reply to the concerns raised previously regarding the significant occupational gender segregation, with women being concentrated in a narrow range of sectors, the Government provides very general information, including that women have excelled in education, that they have assumed some high-level posts, and are being trained in computer and information technology and other specialties. The Government also refers to a ministerial decision that was issued on the special requirement of women's employment in factories, and another on promoting home work for women. The Committee recalls that the objectives of the Ninth Development Plan (2010–14), include: "[i]ncreasing] the overall participation rate, particularly that of females, in an effort to enhance economic empowerment of women"; "promoting participation of women in economic activity, and providing the facilities required to increase their participation"; and "consolidating and enhancing qualitative progress in education of Saudi girls at all stages of education". **The Committee again asks the Government to provide specific information on the concrete measures taken pursuant to the Ninth Development Plan and the National Employment Strategy, to which the Government previously referred, to increase the labour market participation of women, including the training and facilities provided, as well as the measures taken to improve education for girls to expand their future employment opportunities, and the impact of such measures. The Committee also again asks the Government to take concrete measures to address occupational gender segregation, with a view to providing opportunities for women in a wider range of sectors and occupations, including higher level and decision-making positions, and in those areas that have been traditionally dominated by men, and to provide information on the results achieved. Please also provide information on the concrete measures taken to ensure that workers, employers and their organizations are aware that the law no longer prohibits women and men from working together, and the specific steps taken to address de facto workplace segregation. The Committee also requests information on the establishment, mandate and activities of the Higher National Committee for Women's Affairs, to which the Government previously referred.**

*Sexual harassment.* Recalling the concerns raised regarding the absence of legislation addressing sexual harassment, and the particular vulnerability of domestic workers to such harassment, the Committee notes the Government's acknowledgement that sexual harassment occurs in the work environment where both men and women work together, though the Government considers that such cases are limited due to prevailing customs and traditions. The Government also states that the prohibition of sexual harassment is being considered, and that the Ministry of Labour, through the Advisory Council for Women's Work, has been studying the issue of the rules "governing the morals of treatment among employees for the protection of men and women employees at work against immoral transgressions ... Such transgressions, breaches, mechanisms for complaints, as well as the penalties are currently being defined." **The Committee asks the Government to provide information on the specific recommendations of the Advisory Council for Women's Work with respect to defining and prohibiting sexual harassment, and the specific follow-up given to such recommendations. The Committee hopes that the Government will soon be in a position to report progress in explicitly defining and prohibiting both quid pro quo and hostile work environment harassment in employment and occupation, including for domestic workers, and asks the Government to provide detailed information in this regard.**

*Restrictions on women's employment.* Recalling the protective measures set out in section 149 of the Labour Code, confining women to jobs that are "suitable to their nature", the Committee notes the Government's indication that, while it does not consider this provision to be discriminatory, the need to repeal the provision is being seriously considered in the context of draft amendments to the Labour Code. The Committee also recalls that the criteria governing work that can be undertaken by women remains regulated by paragraph 2/A of Council of Labour Force Order No. 1/19M/1405 (1987), which establishes the following criteria for women to work: (a) the need for the woman to work; (b) permission of her guardian; (c) suitability of the work to a woman's nature and not distracting with regard to her household and marital duties; (d) sex-segregated workplace; and (e) women's compliance with notions of dignity and modesty and Islamic dress code. **Recalling that protective measures limiting women's access to employment constitute obstacles to the recruitment and employment of women, the Committee urges the Government to amend section 149 of the Labour Code, and repeal paragraph 2/A of Council of Labour Force Order No. 1/19M/1405 (1987), with a view to ensuring that any protective measures are strictly limited to maternity protection. The Committee also again asks the Government to amend the Order of 21 July 2003 approving women's participation in international conferences suitable to them, to ensure that women are able to participate in international conferences in the course of employment and occupation on an equal footing with men.**

*Enforcement.* Recalling the concerns raised regarding the inadequacy of the dispute resolution mechanisms in addressing issues of discrimination, including for migrant workers, the Committee notes that the Government stresses the importance of the continuous training provided to judges and labour inspectors, and refers again to Royal Decree No. 8382/mb of 28/10/1429 (2008) which provides for the establishment of women's units in courts and justice secretariats under the supervision of an independent women's administration. The Government, however, once again indicates that there have been no complaints relating to discrimination in employment and occupation. The Committee recalls that the absence of cases is likely to indicate a lack of an appropriate framework, lack of awareness of rights, lack of confidence in or absence of practical access to procedures, or fear of reprisals (see General Survey, 2012, paragraph 870). **Noting the absence of complaints regarding discrimination, the Committee asks the Government to take steps to ensure there are accessible avenues for bringing and addressing cases of discrimination in employment and occupation, and to raise awareness of such procedures. Please also provide specific information in this regard, as well as on the implementation of Royal Decree No. 8382/mb. The Committee again requests the Government to clarify whether it is envisaged that women will be included on the Human Rights Commission and the courts, having the same status and responsibilities as men, and to provide information on any progress made in this regard. The Committee also asks the Government to provide specific information on the nature of the training provided to judges and labour inspectors, particularly as it relates to equality and non-discrimination in employment and occupation.**

### Spain

**(Ratification: 1970)**

*Articles 1 and 2 of the Convention. Measures to alleviate the impact of the crisis.* The Committee notes the information sent by the Government in the report for the period ending in June 2012. The Committee also notes the observations sent by the Trade Union Confederation of Workers' Commissions (CC.OO.) and the General Union of Workers (UGT) and the Government's reply received in November 2012. The Government indicates that 2011 began with a slight recovery of the economy reflected in somewhat more positive trends in the labour market. From the third quarter of 2011 the process came to a halt: employment fell by 2 per cent in 2011. In the first quarter of 2012 the activity rate stood at 74.9 per cent, the occupation rate was 59.6 per cent and the unemployment rate was 24.4 per cent of the active population (unemployment rose by 4 percentage points by comparison with the same period in 2011). A total of 351,900 jobs were lost in 2011. At the end of that year, the number of unemployed persons stood at almost 5 million (with slightly more than 18 million occupied persons out of an active population of 23 million). The Government asserts that the labour reform approved by Royal Legislative Decree No. 2/2012 of 10 February 2012 issuing urgent measures for the reform of the labour market (adopted as Act No. 3/2012 of 6 July 2012) has created a regulatory framework for labour relations which are more favourable to job creation and maintenance. The Government states that it is being made easier for enterprises to adopt flexible measures in preference to the option of dismissal and it is promoting employability and stable recruitment, especially for young people. As regards the impact of Act No. 35/2010 of 17 September 2010, the Government indicates that the proportion of temporary workers decreased by nine percentage points between 2006 and 2010. However, the rate of temporary employment went back up to 25.3 per cent in 2011. The UGT considers that reducing the fiscal deficit has become the main objective of economic policy for Europe and emphasizes that this objective has hampered the recovery of both the economy and employment. The greatest impact of the adjustment measures has been on workers and their families. The current economic recession highlights the weaknesses in the productive market in Spain. The UGT claims that the solution is not to change the structure of the labour market but to establish a different balance among the various economic sectors, foster the recovery of national demand and boost the level of public sector employment and investment. The CC.OO. also highlights in its communication that 80 per cent of jobs lost between the first quarter of 2008 and the first quarter of 2012 have been jobs held by men, especially young men under 25 years of age. The most affected sector is construction. The Committee notes that in order to know the effects of the labour market reform undertaken since February 2012 and to quantify its macro-economic impact, the Government relies on a simulation which has foreseen an adjustment in wages and hours of work instead of a loss of jobs. The positive impact hoped for from the 2012 labour reform is an increase of 4.5 percentage points in the level of potential GDP. The corresponding rise in employment will result in a permanent reduction of 3.2 percentage points in the structural component of the unemployment rate. The Government admits that if the current credit terms and the debt levels of enterprises persist, it is only from 2014 that the impact of the labour reform on the number of persons in employment will be seen. ***In view of the precedence given to economic policy objectives indicated by the trade union organizations and the deterioration that has occurred in the employment situation since the observation made in 2010, the Committee invites the Government to indicate in its next report the manner in which Article 2 of the Convention is applied, namely whether a regular review is undertaken of the measures and policies adopted for attaining the objectives specified in Article 1. The Committee recalls that, under the provisions of Article 1 of the Convention, an active policy designed to promote full, productive and freely chosen employment must be declared and pursued as a major goal.***

*Article 3. Participation of the social partners.* The Government refers in its report to the various tripartite agreements concluded in 2011 and January 2012. The trade union organizations denounce the lack of social dialogue and the failure to comply with the agreements reached in the context of the 2nd Agreement on Employment and Collective Bargaining for 2012, 2013 and 2014, signed on 25 January 2012. The Committee points out once again that social dialogue is essential in normal times and becomes even more so in times of crisis. ***The Committee invites the Government to indicate in its next report the manner in which the experience and views of the social partners have been taken into account in the formulation and implementation of employment policy measures. The Government is also requested to state to what extent consultations have been held with representatives of the persons affected by the measures taken, particularly young persons, to enable an evaluation of the effective application of Article 3 of the Convention.***

*Long-term unemployment. Youth employment.* The Government indicates that the balance of the results concerning the long-term unemployed in 2011, matching the deterioration in the employment situation, was negative. In the first quarter of 2012, a total of 2,822,500 persons were affected by long-term unemployment, 200,000 more than in the previous quarter. The incidence of long-term unemployment is slightly higher among adults than young people. The situation of young people followed the general trend, with a rise in the rate of youth unemployment. The Government lists the actions taken to improve the employability of young persons and the various job contracts available for young people. The UGT states that the numbers of long-term unemployed exceed those who have been unemployed for one or two years. The labour reform of 2012 will worsen the situation for young people by increasing precarity and reducing protection. The CC.OO. also states that university graduates are competing with those with vocational diplomas in the labour market, thereby leading to a perceived loss in value for vocational training. Many young persons have spent a greater amount of time studying without being able to find a job subsequently. ***The Committee invites the Government to include in its next report up-to-date information on the impact of the measures taken to facilitate the return to the labour market of long-term unemployed persons. The Committee hopes that the information sent by the Government will enable it to examine the quality of employment provided for young people who have been the recipients of special contracts and measures taken to promote youth employment, particularly for young persons with few qualifications.***

*Integrated labour market policies.* The Government states that labour legislation is of general application and hence there are no distinctions of a geographical nature except for specific mechanisms that only apply to certain autonomous communities such as Andalucía and Extremadura, which have higher unemployment rates and to which specific measures relating to agriculture are applied. The CC.OO. states that the crisis has worsened labour-related differences between regions. The unemployment rate has reached alarming levels, exceeding 30 per cent in the first quarter of 2012 in Andalucía, the Canary Islands and Extremadura; at the same time, the unemployment rate has ranged from 13 to 17 per cent in the Basque Country and Navarra owing to the presence of more industry, the lesser impact of the real estate bubble and their fiscal status. The UGT adds that the autonomous communities with less income and high unemployment rates display higher rates of temporary employment (Andalucía, Extremadura and Murcia). ***The Committee again requests the Government to include up-to-date information in its next report on the measures taken to reduce regional disparities so as to attain a better balance in the labour market.***

*Education and vocational training policies.* The Government indicates that the Sustainable Economy Act, which was referred to in the observation of 2010, has been supplemented by Organic Act No. 4/2011 of 11 March 2011. The Committee notes the other information sent by the Government on the impact of the measures adopted under the 2011 National Reform Plan and the new measures introduced in 2012. The CC.OO. suggests that an evaluation should be undertaken of the positive impact of the programmes for cooperation with the autonomous communities, whose purpose is to reduce school drop-out rates and increase the provision of vocational training. The CC.OO. recalls that the renewal of the tripartite agreement on vocational training is pending and regrets that changes have been made unilaterally to the training model through the labour reform of February 2012. The Committee recalls the close link established in the 2010 General Survey concerning employment instruments between achieving full employment and decent work and the adoption of innovative education and training policies for jobseekers. ***The Committee asks the Government to include in its next report up-to-date information on the measures taken to improve qualification standards and coordinate education and training policies with potential employment opportunities. The Committee invites the Government to include information, in the report due in 2013 on the application of the Human Resources Development Convention, 1975 (No. 142), to enable it to evaluate the manner in which efforts have been intensified, with the cooperation of the social partners, to ensure that vocational guidance and training systems meet the learning and vocational training needs of the most vulnerable groups in the regions worst affected by the crisis.***

***[The Government is asked to reply in detail to the present comments in 2014.]***

## Minimum Age Convention, 1973 (No. 138)

### Kenya

#### (Ratification: 1979)

*Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice.* The Committee had previously noted that according to the ILO–IPEC TACKLE project report, four action programmes had been implemented in Kenya under this project which resulted in the withdrawal of about 1,050 children from child labour who were enrolled back in schools or placed in skills training through apprenticeship, in addition to 351 children who have been prevented from dropping out of school and from entering into child labour. It had also noted from the ILO–IPEC TACKLE project report that following the implementation of the Kenya Education Sector Programme (KESSP), the net enrolment rates at the primary level increased from 83.2 per cent in 2005 to 92.5 per cent in 2008. The Committee had noted, however, that about 20 per cent of all primary school children did not complete the primary school cycle. It further noted from the ILO–IPEC TACKLE project report that according to the 2009 National Census, nearly 4 million children of school-going age were out of school, which implies that the number of children in or at risk of child labour could be higher than the 756,000 reported in the 2008 Child Labour Analytical Report.

The Committee notes the Government's statement that it is making efforts through the county administration to ensure that children are kept in school and that the Ministry of Labour has been provided with extra budget for the purpose of strengthening the County Child Labour Committees (CCLCs) and carrying out child labour inspections. The Committee further notes the Government's information that it is currently being engaged in consultations with ILO–IPEC to undertake a child labour survey in Kenya which is expected to be carried out in October 2012. The Committee notes from the Labour Commissioner's annual report of 2011, (available on the Government website) that through the activities undertaken by the CCLCs, 788 children were found involved in child labour and its worst forms, 176 children were withdrawn from work and sent to school, 290 children were withdrawn from work and placed in youth polytechnics and vocational training centres. Furthermore, 880 children are being provided with school uniforms and school fees to ensure that they do not drop out of school and engage in child labour.

The Committee further notes that according to the information available from the ILO–IPEC (SNAP project report), the net enrolment rate at primary level increased to 96 per cent in 2011 and the transition rate from primary to secondary school reached 72 per cent. It also notes that within the framework of the SNAP project, a total of 1,951 children (893 girls and 1058 boys) were withdrawn or prevented from child labour through the provision of educational services or training opportunities. In addition, the Committee notes the information from ILO–IPEC that the TACKLE project supported a rapid assessment on child labour in salt mines located in Coast Province. The project also supported the National Council for Children Services to develop a national children database that will help the Government collect data on key child protection indicators which will be used for planning and reporting purposes. While noting the measures taken by the Government, the Committee must once again express its **deep concern** at the high number of children who are not attending school and are involved or are at risk of being involved in child labour. ***It therefore urges the Government to continue its efforts to improve the situation of child labour in the country. It requests the Government to provide information on the findings of the rapid assessment survey on child labour in salt mines in Coast Province. The Committee also encourages the Government to pursue its efforts to undertake a child labour survey, and to provide any up-to-date statistical information obtained in this regard.***

*Article 2(3). Age of completion of compulsory schooling.* The Committee had previously noted that, under section 7(2) of the Children's Act, every child shall be entitled to free basic education which shall be compulsory. It had also noted the Government's statement that in order to address the gap between the minimum age for admission to employment (16 years) and the age of completion of compulsory schooling (14 years), the Government had waived the tuition fees for the first two years in secondary schooling. It had further noted the Government's indication that it has not envisaged adopting any legislation fixing the age of completion of compulsory education. In this regard, the Committee had noted the information provided by the Government representative of Kenya to the Conference Committee on the Application of Standards in June 2006 concerning the application of Convention No. 138 that it had appointed a committee to review the Education Act with a view to modifying, inter alia, the age of completion of compulsory schooling. Recalling that this Convention had been ratified by Kenya more than 25 years ago, the Conference Committee had urged the Government to ensure that legislation addressing the gap between the age of completion of compulsory schooling and the minimum age for admission to employment or work would be adopted shortly. The Committee had noted with regret that despite the request which it has repeatedly made since 2002, no measures have yet been taken to give effect to the Convention. It had therefore urged the Government to take the necessary measures, without delay, to extend compulsory schooling up to 16 years which is the minimum age for employment in Kenya.

The Committee notes the Government's statement that in the reviewed Education Bill which is currently before the cabinet for approval, it has been proposed that the compulsory schooling be extended to 18 years. In this regard, the Committee must emphasize the desirability of linking the age of completion of compulsory schooling with the minimum age for admission to work, as provided under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). It also recalls that according to *Article 2(3)* of the Convention the specified minimum age shall not be less than the age of completion of compulsory schooling. If the minimum age for admission to work or employment is lower than the school-leaving age, children may be encouraged to leave school as children required to attend school may also be legally authorized to work (see General Survey of 2012 on the fundamental conventions concerning rights at work, paragraph 370). ***Noting that the Education Bill proposes to extend the compulsory schooling age up to 18 years which is higher than the minimum age for admission to work (16 years), the Committee urges the Government to take the necessary measures to ensure that the revision of the Education Bill does not fail to take into account the principle laid down under Paragraph 4 of the Minimum Age Recommendation, 1973 (No. 146). The Committee expresses the firm hope that the Education Bill respecting the provisions of Article 2(3) of the Convention will be formulated and adopted in the near future.***

*Article 3(2). Determination of hazardous work.* The Committee had previously noted the Government's statement that the list of types of hazardous work prohibited to children under 18 years had been approved by the National Labour Board and was awaiting to be published in the Gazette by the Ministry of Labour. It had noted that the draft document entitled "Determining Hazardous Child Labour in Kenya: July 2008" prepared by the Ministry of Labour and Human Resources Development in consultation with the Central Organization of Trade Unions and the Federation of Kenya Employers, contained a comprehensive list of 18 types of hazardous occupations/sectors including: work in domestic households; transport; internal conflicts; mining and stone crushing; sand harvesting; miraa picking; herding of animals; brick making; agriculture; work in industrial undertakings; carpet/basket weaving; building construction; tannery; deep lake and sea fishing; glass factory; matches and fireworks factory; urban informal sector; and scavenging with each sector further providing a list of various activities that are prohibited to children.

The Committee notes the Government's information that the List of Hazardous Work, 2008 is currently being reviewed and a consultant has been appointed with the assistance of ILO-IPEC to enable the normal process of adoption. **Noting with regret that the Government has been referring to the adoption of this draft regulation on the list of types of hazardous work since 2005, the Committee once again urges the Government to take the necessary measures to ensure that this regulation is adopted in the very near future. It requests the Government to supply a copy thereof once it has been adopted.**

*Article 3(3). Admission to hazardous work as from 16 years of age.* The Committee had previously noted the Government's indication that the competent Minister had issued regulations in respect of periods of work and establishments where children aged at least 16 years may work, including hazardous work, referred to in section 10(4) of the Children's Act. It had also noted the Government's statement that the Children's Act was being reviewed and that a copy thereof would be sent after adoption by the Parliament. It had further noted the Government's statement that the regulations under section 10(4) of the Children's Act were adopted, and that a copy would be provided. The Committee had observed that the Government had been stating since 2005 that this regulation under section 10(4) of the Children's Act had been issued by the Minister, and had strongly urged the Government to supply a copy thereof along with its next report.

The Committee notes the Government's statement that the matter has been taken up with the relevant department and that it will ensure that information on the progress made in the discussions will be supplied as soon as possible. **Observing that Kenya ratified the Convention over 30 years ago and that the question of revision of the Children's Act and the adoption of the regulation under section 10(4) of the Children's Act has been raised for a number of years, the Committee once again urges the Government to take the necessary measures to ensure the adoption of regulations in respect of periods of work and establishments where children aged at least 16 years may work, including hazardous work, referred to in section 10(4) of the Children's Act.**

*Article 7(3). Determination of light work.* The Committee had previously noted that, according to section 56(3) of the Employment Act, the minister may make rules prescribing light work in which a child of 13 years may be employed and the terms and conditions of that employment. It had noted the Government's statement that the rules and regulations which stipulate the types of light work activities permitted to children of 13 years, and which prescribe the hours and conditions of such employment had not yet been completed.

The Committee notes the information in the Government's report that the rules prescribing the light work in which a child of 13 years and above may be employed has been developed and discussed by stakeholders and is currently at the Attorney General's Office for adoption. **The Committee once again expresses the firm hope that the regulations determining the light work activities that may be undertaken by children of 13 years of age and above and the number of hours during which and the conditions in which, such work may be undertaken, will be adopted soon. It requests the Government to provide a copy once they have been adopted.**

*Article 8. Artistic performances.* The Committee had previously taken note of section 17 of the Children's Act, which provides that a child shall be entitled to leisure, play and participation in cultural and artistic activities. It had also noted that the national legislation does not provide for permits to be granted to children participating in cultural artistic performances. The Committee had noted with regret that despite its reiterated comments for many years, no measures had yet been taken by the Government to this effect.

The Committee notes the Government's information that the matter to establish the provisions for granting permits for young persons under the age of 16 years has been taken up by the relevant ministries and the outcome of the discussions will be supplied soon. **The Committee expresses the firm hope that the provisions allowing for young persons below 16 years of age to take part in artistic activities through permits granted in individual cases and which prescribe the number and hours during which, and the conditions in which, such employment or work is allowed, will be formulated and adopted in the near future. It requests the Government to supply information on any progress made in this regard.**

The Committee is raising other points in a request addressed directly to the Government.

**[The Government is asked to supply full particulars to the Conference at its 102nd Session and to reply in detail to the present comments in 2013.]**

## **Rwanda**

### **(Ratification: 1981)**

*Article 1 of the Convention and Part V of the report form. National policy on the effective abolition of child labour and the application of the Convention in practice.* The Committee previously noted that a draft National Five-Year Action Plan for the Elimination of Child Labour (NAP) was first developed in 2007, but had not been adopted. It also noted that, according to the National Child Labour Survey (NCLS) of 2008, approximately 6.1 per cent of children between the ages of 5 and 14 in the country (approximately 142,570 children) were involved in economic activity. The NCLS also indicated that the majority of these working children (4.9 per cent of children in the age group) combined both school and economic activity. The NCLS further indicated that the overwhelming majority of working children (85 per cent) were in the agricultural sector.

The Committee notes the Government's statement that the revision of the NAP is in the final process of consultation. The Committee also notes the information from ILO-IPEC of April 2012 that the revised NAP should include recent data on child labour and, in this regard, an ILO technical team travelled to Kigali in the spring of 2012. The Committee further notes that Rwanda is one of several countries participating in the ILO-IPEC project entitled "Project Development, Awareness Raising and Support for the Implementation of the Global Action Plan on the Elimination of the Worst Forms of Child Labour by 2016". Information from ILO-IPEC indicates that implementation of the Project in Rwanda was extended until June 2013. **Noting that the NAP was first developed in 2007, the Committee urges the Government to ensure the elaboration, adoption and implementation of the NAP in the near future. The Committee requests the Government to provide information on progress made in this regard, and on the results achieved.**

*Article 2(2). Raising the initially specified minimum age for admission to work.* The Committee previously noted the adoption of the Law Regulating Labour (2009), which prohibits employing a child even as apprentice, before the age of 16. **Observing that, upon ratification the Government specified the minimum age of 14 years, the Committee draws the Government's attention to the fact that Article 2(2) of the Convention provides that any Member having ratified the Convention may subsequently notify the Director-General of the International Labour Office, by a new declaration, that it has raised the minimum age from that which it had initially specified. To allow the age fixed by national legislation (of 16 years) to be harmonized with that provided for at the international level, the Committee would be grateful if the Government would consider the possibility of sending a declaration of this nature to the Office.**

*Article 2(3). Age of completion of compulsory schooling.* The Committee previously noted the Government's indication that it intended to progressively increase the number of years of compulsory schooling from six to nine years, thereby raising the age of completion of compulsory schooling to 16 years of age. The Committee requested the Government to provide information on whether the extension of the duration of compulsory education from six to nine years was contained in national legislation.

The Committee notes the Government's statement that the progressive extension of compulsory education from six to nine years is contained in the Education Sector Policy of July 2003. Moreover, the Committee notes the Government's statement in its report to the Committee on the Rights of the Child of 1 March 2012 that, since the 2009 school year, Rwanda has introduced a cycle of nine years so that children normally complete school at 16 years (CRC/C/RWA/3-4, paragraph 95). The Committee notes with **interest** that this age of completion of schooling of 16 years is in line with the new minimum age for admission to work specified in the Law Regulating Labour (2009).

*Article 3(2). Determination of hazardous work.* The Committee previously noted that a draft ministerial order on the worst forms of child labour had been developed. It requested the Government to provide a copy of the order, once adopted.

The Committee notes with **satisfaction** the adoption of Ministerial Order No. 06 of 13 July 2010 determining the list of the worst forms of child labour, their nature and categories of institutions that may not employ children. This Order contains an extensive list of hazardous types of work, including: underground work; work in mining; work at high heights; work in the drainage of marshlands; work in unhygienic places; work with high temperatures, noises and vibrations; work related to demolition; work carried out using machines or other dangerous materials; work involving the lifting of heavy loads; fishing on boats; domestic work outside of the family; construction work; and the driving of heavy machines. The Ministerial Order also contains a list of categories of institutions that are not permitted to employ children, such as enterprises that carry out the slaughtering of animals, mining and quarry enterprises, enterprises that manufacture toxic gases, construction enterprises, enterprises that produce and sell alcoholic beverages, and enterprises that manufacture bricks and tiles.

*Article 9(3). Registers of employment.* In its previous comments, the Committee noted that section 165 of the Law Regulating Labour (2009) states that employers must keep a register of workers, and that section 166 states that the Minister shall determine the nature of this register. The Committee noted that a draft ministerial order had been developed in this regard.

The Committee notes the adoption of Ministerial Order No. 10 of 28 July 2010 regarding the declaration of an enterprise and the nature of employer's registers. The Committee notes with **interest** that section 6 of this Ministerial Order states that every employer shall have a register of employment, and that this register shall be kept at the place of work. Annex II of the Ministerial Order contains a model for the employer's register, which includes the employee's name, date of birth and the date of their work contract. The Committee further notes that section 7 of the Ministerial Order provides that the employer's register shall be available to labour inspectors when requested.

The Committee is raising other points in a request addressed directly to the Government.

## Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

### Chad

**(Ratification: 1998)**

The Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its 2009 observation which read as follows:

*Articles 2 and 5(1) of the Convention. Consultation mechanisms and effective tripartite consultations required by the Convention.* The Committee notes the Government's report received in October 2009. The Government refers to a Higher Committee for Labour and Social Security which is tripartite in composition. The Committee notes the Government's statement that no information is available on the consultations held during the period covered by the report on each of the items set out in *Article 5(1)*. The Committee refers to the comments that it has been making since its examination of the first report and expresses the conviction that the Government and the social partners should endeavour to promote and strengthen tripartism and social dialogue on the matters covered by the Convention. The Committee refers to the 2008 Declaration on Social Justice for a Fair Globalization, which reaffirms that "social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards". ***The Committee therefore hopes that the Government's next report will contain detailed information on the consultations held on all the items covered by Article 5(1) of the Convention, and on the other points raised in its previous observations in relation to Articles 4 and 6 of the Convention.***

***The Committee hopes that the Government will make every effort to take the necessary action in the near future.***



## Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)

### Iceland

#### *(Ratification: 1990)*

*Promotion of employment for persons with disabilities.* The Committee notes the information provided by the Government in a report prepared in consultation with the Icelandic Tripartite ILO Committee and received in August 2012. It notes that the report was prepared in response to the request made by the Conference Committee in June 2012. The Committee notes with **interest** that the statement of objectives in the Disabled Persons Act, which took effect on 1 January 2011, defines the aim of the Act as being to guarantee persons with disabilities equality and quality of life comparable with that of other citizens and to create conditions in which they are able to live a normal life. The Government also indicates that the Programme of Action on Disabled Persons' Affairs for 2012–14 defines measures aimed at making workplaces accessible, supporting persons with disabilities in the private sector and making the labour market more accessible to them. The aim is that 85 per cent of persons with disabilities of working age should be employed, or be involved in measures to increase their involvement, or in programmes of studies, by the end of 2014. The Committee notes with **interest** the adoption on 12 June 2012 of Act No. 60/2012 on Employment-Related Vocational Rehabilitation and the Operation of Vocational Rehabilitation Funds. The Government indicates that the aim of the Act is to ensure that individuals with reduced working capacity following illness or accidents will have access to vocational rehabilitation as one part of a comprehensive rehabilitation programme in which vocational rehabilitation funds and institutions operated by central and local government collaborate as far as possible and strive to define and fulfil their roles with the aim that as many people as possible are enabled to remain active in the labour market. The origins of the Act go back to the collective agreements of 2008 between the social partners, and the Vocational Rehabilitation Fund (VIRK) was established to give effect to the collective agreements, as noted in the 2010 observation. **The Committee would welcome continuing to receive information on the measures adopted to promote employment opportunities for persons with disabilities. Please also include practical information, including statistics (disaggregated as much as possible by age, gender and the nature of the disability), extracts from reports, studies or inquiries on the matters covered by the Convention (Part V of the report form).**

## Worst Forms of Child Labour Convention, 1999 (No. 182)

### Senegal

(Ratification: 2000)

The Committee notes the Government's report and the communication from the International Trade Union Confederation (ITUC) of 31 August 2012.

*Articles 3(a) and 7(1) of the Convention. Sale and trafficking of children for economic exploitation; forced labour and penalties. Begging.* In its previous comments, the Committee noted that the Committee on the Rights of the Child, in its concluding observations in October 2006 (CRC/C/SEN/CO/2, paragraphs 60 and 61), expressed concern at the practices in Koranic schools run by *marabouts* who use *talibé* children on a large scale for economic gain by sending them to agricultural fields or to the streets for begging and other illicit work to earn money, thereby preventing them from having access to health, education and good living conditions.

The Committee previously noted with concern that, although section 3 of Act No. 2005–06 prohibits the organization, for economic gain, of begging by others or the employment, procuring or deceiving of anyone with a view to causing that person to beg, or the exertion of pressure on a person to beg or to continue begging, section 245 of the Penal Code provides that "the act of seeking alms on days, in places and under conditions established by religious traditions does not constitute the act of begging". It accordingly observed that, from a joint reading of these two provisions, it would appear that the act of organizing begging by *talibé* children cannot be criminalized as it does not constitute an act of begging under section 245 of the Penal Code. The Committee further noted that the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, in her report of 28 December 2010 submitted to the Human Rights Council following her mission to Senegal (A/HRC/16/57/Add.3), noted the inconsistency between section 3 of Act No. 2005–06 and section 245 of the Penal Code (paragraph 31). The Committee also noted that the Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, in its concluding observations of 3 December 2010 (CMW/C/SEN/CO/1, paragraph 26), noted with concern that more than half of the children who are forced to beg in the Dakar region come from neighbouring countries and that the Government of Senegal has not taken any practical steps to end regional trafficking in children for the purpose of begging.

The Committee further noted the comments of the ITUC indicating that the number of *talibé* children compelled to beg, consisting mainly of boys between the ages of 4 and 12 years, was estimated at 50,000 in 2010. The ITUC observed that most of these children live in isolated rural areas of Senegal or are victims of trafficking from neighbouring countries, including Mali and Guinea-Bissau. It emphasized that these children in practice receive very little education and are extremely vulnerable, because they depend totally on their Koranic teacher or *marabout*. They live in unhealthy conditions and in poverty, and are the victims of physical and psychological abuse if they do not succeed in earning their financial quota through begging. With regard to the causes of the phenomenon, the ITUC explains that poverty alone cannot explain this form of exploitation, as the evidence tends to show that certain *marabouts* earn more through children begging than the income necessary to maintain their *daaras* (Koranic schools). The ITUC added that there are no records of arrests, prosecutions or convictions of *marabouts* for compelling *talibés* to beg up to August 2010, when the Prime Minister announced the adoption of a Decree prohibiting begging in public places. Following this measure, seven Koranic teachers were arrested and convicted to prison sentences under Act No. 2005–06 of 29 April 2005 to combat the trafficking of persons and similar practices and to protect victims. However, these sentences were never imposed. Indeed, the ITUC indicated that branch associations of Koranic teachers were reported to have condemned the application of Act No. 2005–06 and threatened to withdraw their support from the President in the elections in February 2012. In October 2010, the President, therefore, reversed the Government's decision.

The Committee notes the fresh allegations made by the ITUC that Senegal has been very lax in terms of the enforcement of the law and repression of the exploitation of *talibés* and the ill-treatment inflicted on these children. The ITUC reports that, since the conviction and release of the *marabouts* arrested in 2010, no *marabout* has been prosecuted or, in particular, convicted. Furthermore, the ITUC indicates that it would be useful to amend the Penal Code so as to remove any doubt as to whether compelling a child to beg is prohibited in all places and under all circumstances, including in *daaras*, so as to bring the legislation into full conformity with the commitments made by Senegal in relation to the Convention.

The Committee notes the information provided by the Government in its report concerning begging by children. The Government indicates, in particular, that in its view there is no ambiguity between the provisions of section 245 of the Penal Code and section 3 of Act 2005–06. According to the Government, by specifying that the fact of seeking alms under the conditions established by religious traditions does not constitute begging, section 3 of Act 2005–06 is merely making a distinction between forms of begging that are prohibited and those that are tolerated. The Government adds that continuous begging in the streets of the city is a penal offence under Senegalese law, while asking for alms, for example on Fridays in mosques or on mass days in churches, is tolerated in light of socio-cultural beliefs.

The Committee notes that the Committee on the Elimination of Racial Discrimination, in its examination of the reports submitted by Senegal on 31 August 2012, notes with concern the persistence and extent of the phenomenon of *talibé* children (CERD/C/SEN/CO/16–18, paragraph 14). The Committee on the Elimination of Racial Discrimination also expresses regret that the inconsistency between section 3 of Act No. 2005–06 and section 245 of the Penal Code persists despite the recommendations of the Special Rapporteur on the sale of children, child prostitution and child pornography (paragraph 14). In this respect, although the Committee of Experts notes the Government's indications concerning the prosecutions initiated and the convictions handed down for trafficking between 2008 and 2010, it is bound to note that the Government has not provided any information on the investigation, arrest or conviction of *marabouts* for the exploitation of begging by child *talibés*.

With reference to the General Survey on the fundamental conventions concerning rights at work of 2012 (paragraph 483), the Committee reminds the Government that, while the issue of seeking alms as an educational tool falls outside the scope of the Committee's mandate, it is clear that the use of children for begging for purely economic ends cannot be accepted under the Convention. This situation constitutes a deviation from the legitimate purposes of this traditional educational system and its methods. Often kept in conditions of servitude, *talibé* children are obliged to work daily, generally in street begging, in order to give the money received to their *marabouts*.

The Committee is, therefore, bound once again to express its **deep concern** at the large number of *talibé* children used for purely economic ends and the failure to give effect to Act No. 2005–06 in respect of Koranic teachers who make use of begging by *talibé* children for exclusively economic

purposes. The Committee reminds the Government that, under the terms of *Article 1* of the Convention, immediate and effective measures shall be taken as a matter of urgency to secure the prohibition and elimination of the worst forms of child labour and that, in accordance with *Article 7(1)* of the Convention, all necessary measures shall be taken to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including the provision and application of sufficiently effective and dissuasive penal sanctions. **The Committee, therefore, once again urges the Government to take immediate and effective measures, in law and practice, to ensure that persons engaged in the sale and trafficking of talibé children under 18 years of age for the purposes of economic exploitation, or who make use of these children for begging for purely economic purposes, are prosecuted effectively and that sufficiently effective and dissuasive sanctions are applied to them. In this respect, the Committee once again requests the Government to take the necessary measures to harmonize the national legislation so as to guarantee that the use of begging by talibé children for economic exploitation can be criminalized under section 245 of the Penal Code and under Act No. 2005-06. It requests the Government to provide information on the measures adopted in this respect and on the number of investigations conducted, prosecutions, convictions and penal sanctions imposed on such persons.**

*Article 7(2). Effective and time-bound measures. Clause (d). Children at special risk. Talibé children.* In its previous comments, the Committee noted that a partnership for the removal and reintegration of street children (PARRER) had been established in February 2007 and is made up of members of the Senegalese administration, NGOs, the private sector, development partners, religious organizations, civil society and the media. The Committee noted the ITUC's comments indicating that the Government had adopted measures to promote a programme of modern *daaras* administered or regulated by the State. It noted that the Government established the inspectorate for *daaras* in 2008 to implement the programme for the modernization of *daaras* and the integration of modern *daaras* into the public education system. It further noted that the Ministry of Education signed an agreement with PARRER for the development of a harmonized school programme for Koranic schools, launched in January 2011. In its reply to the ITUC's comments, the Government indicated that it was engaged in improving the management and framework of the system of teaching in *daaras*. A number of actions were also envisaged in its strategy for the prevention of begging by children, such as the implementation of social protection measures in the areas of origin of migrant children, the establishment of programmes of conditional transfers for vulnerable families, support for the creation of income-generating activities for *marabouts* and the broadening of the teaching curriculum in Koranic schools with a view to facilitating the integration of young *talibés* into active life. The Committee also noted that, according to the information contained in the report of the United Nations Special Rapporteur of 28 December 2010, the Care, Information and Counselling Centre for Children in Difficulties (the GINDDI Centre), under the Ministry of Education, has been responsible since 2003 for taking children off the streets and reintegrating them, and for providing psychological support and social assistance to girl and boy victims of trafficking (paragraph 68).

The Committee notes that, according to the ITUC, the harmonized school programme for Koranic schools of the PARRER is currently being implemented as a pilot measure in 20 *daaras* in four regions of Senegal (Dakar, Thiès, Fatick and Kaolack). The pilot programme is planned for three years (2011–14) and is to be progressively extended throughout the nation as from 2012–13. Children in the *daaras* concerned will not be compelled to engage in begging. The ITUC also reports that, while the former Government failed to enforce the laws in force, the new President elected in April 2012 has affirmed his commitment to modernizing *daaras* and should adopt the programme, making it a priority and accelerating its implementation at the national level, particularly in rural areas, from which most child *talibés* originate.

The Committee notes the Government's indications concerning the measures adopted for the protection or removal of vulnerable children or those who are victims of trafficking and exploitation. The Committee notes that these measures include the "Education and Family Life (EVF)" project in *daaras*, which envisages a number of activities, including training for Koranic masters and *talibé* children on the rights of the child and their protection, and the improvement of the living conditions and education of child *talibés* in *daaras*. The Committee also notes that, with a view to preventing the movement of children in the Kolda region (a border area), thought to be the biggest area of origin of child beggars, a pilot project has been established to provide financial allowances to families.

The Government adds that, in the context of the PARRER, a number of activities have been undertaken, including advocacy visits to major religious leaders and Koranic masters, measures of prevention and to remove children from the streets, and the development of broad awareness-raising campaigns. These various activities have led to a number of results being achieved, including the identification of 1,129 families at risk in the regions of Ziguinchor, Kolda and Kaolack, the establishment of 146 committees for the protection of child *talibés*, and the formulation and dissemination of Islamic arguments against child begging. However, the Committee observes that the Government has not provided recent statistics on the number of child *talibés* who have benefitted from the protection provided by the GINDDI centre. **The Committee requests the Government to continue its efforts for the protection of child talibés under 18 years of age from forced or compulsory labour, including begging. It requests it to continue providing information on the measures adopted, particularly in the framework of the programme financed by the PARRER, and the results achieved, with an indication of the number of talibé children who have been removed from the worst forms of child labour and who have benefitted from rehabilitation and social integration measures in the GINDDI centre. It also requests the Government to continue providing information on the measures adopted or envisaged in the context of the process of the modernization of the *daaras* system, and the progress achieved in the context of the harmonized school programme for Koranic schools.**

The Committee is raising other points in a request addressed directly to the Government.

## Uzbekistan

*(Ratification: 2008)*

The Committee notes the Government's reports dated 17 April, 4 June and 20 November 2012. The Committee also notes the communication of the International Trade Union Confederation (ITUC) dated 31 August 2012, as well as the Government's reply thereto dated 24 October 2012, and the communication of the International Organisation of Employers (IOE) dated 22 October 2012. The Committee further notes the communication from the Council of the Federation of Trade Unions, dated 11 October 2012, as well as the communication of the Chamber of Commerce of Uzbekistan, dated 17 October 2012. In addition, the Committee takes note of the report of the ILO technical advisory mission that took place in Tashkent, Uzbekistan, from 2 to 5 May 2012.

*Article 3(a) and (d) of the Convention. Worst forms of child labour. Forced or compulsory labour in cotton production and hazardous work. The*

Committee previously noted the various legal provisions in Uzbekistan which prohibit forced labour, including article 37 of the Constitution, section 7 of the Labour Code, and section 138 of the Criminal Code. It also noted that section 241 of the Labour Code prohibits the employment of persons under 18 years in hazardous work, and that the "list of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of age" prohibited children from watering and gathering cotton by hand. The Committee further noted the Government's statement that the participation of children below 18 years of age in activities on a family farm is not an infringement of the Convention. The Government further indicated that the Association of Farmers of Uzbekistan, the Council of the Federation of Trade Unions and the Ministry of Labour and Social Protection had adopted, in May 2011, the "Joint Statement concerning the inadmissibility of using forced child labour in agricultural works", which asserted that virtually all cotton was harvested by farm owners who had no interest in making extensive use of children for the harvesting of cotton.

However, the Committee also noted the assertion of the IOE that, despite the legislative framework against forced labour, school children (estimates ranging from half a million to 1.5 million school children) are forced by the Government to work in the national cotton harvest for up to three months each year. The Committee also noted the ITUC's allegations that State-sponsored forced child labour continued to underpin Uzbekistan's cotton industry. The ITUC stated that despite the Government's claim that almost all of the cotton in Uzbekistan is produced on private farms, the reality is rigid state control of all aspects of the cotton industry, whereby the forced mobilization of children is organized and enforced by authorities. The ITUC referred to a 2010 study which found that the mobilization of children during the cotton harvest by the central Government was systematic, utilized the school system, and left little room for choice on the part of children, their parents, school authorities and even farmers. The ITUC further stated that approximately half of all cotton picked in Uzbekistan is the result of forced child labour, and that it is estimated that hundreds of thousands of children are forced out of school each year to pick cotton during school hours. The ITUC alleged that these children are required to work every day, even on weekends, and that the work involved is hazardous, involving carrying heavy loads, the application of pesticides and harsh weather conditions, with accidents reportedly resulting in injuries and deaths.

The Committee further noted the conclusions from several United Nations bodies regarding the practice of mobilizing school children for work in the cotton harvest. In this regard, it noted that the Committee on Economic, Social and Cultural Rights expressed its concern at the situation of school-age children obliged to participate in the cotton harvest instead of attending school during this period (24 January 2006, E/C.12/UZB/CO/1, paragraph 20), and that the Committee on the Rights of the Child expressed concern at the serious health problems experienced by many school children as a result of this participation (2 June 2006, CRC/C/UZB/CO/2, paragraphs 64–65). Moreover, the Committee on the Elimination of Discrimination Against Women expressed its concern regarding the educational consequences of girls and boys working during the cotton harvest season (26 January 2010, CEDAW/C/UZB/CO/4, paragraphs 30–31) and the UN Human Rights Committee stated that it remained concerned about reports that children are still employed and subjected to harsh working conditions, in particular for cotton harvesting (7 April 2010, CCPR/C/UZB/CO/3, paragraph 23).

In addition, the Committee noted the information from UNICEF concerning the cotton harvest of autumn 2011. UNICEF completed observation visits in 12 regions, finding that: (i) children aged 11–17 years old had been observed working full time in the cotton fields across the country; (ii) the mobilization of children had been organized by way of instructions passed through *Khokimiyats* (local administration), whereby farmers are given quotas to meet and children are mobilized by means of the education system in order to help meet these quotas; (iii) in some instances, farmers had also made a private arrangement with schools to pick their cotton often in return for material resources or financial incentives for the school; (iv) children were predominantly supervised in the fields by teachers; (v) in over a third of the fields visited, children stated that they were not receiving the money themselves; (vi) quotas for the amount of cotton children were expected to pick generally ranged between 20 to 50 kilos per day; (vii) the overwhelming majority of children observed were working a full day in the field and as a result, were missing their regular classes; (viii) children worked long hours in extremely hot weather; (ix) pesticides were used on the cotton crop that children spent hours hand picking; (x) some children reported that they had not been allowed to seek medical attention even though they were sick; and (xi) that the only noticeable progress towards the eventual elimination of the use of children in cotton picking was observed in the Fergana region.

Additionally, the Committee noted that the Committee on the Application of Standards of the International Labour Conference (Conference Committee), in June 2011, echoed the deep concern expressed by United Nations bodies, the representative organizations of workers and employers and non-governmental organizations, about the systematic and persistent recourse to forced child labour in cotton production, involving an estimated 1 million children. The Conference Committee emphasized the seriousness of such violations of the Convention and urged the Government to take the necessary measures, as a matter of urgency, to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children below the age of 18.

The Committee notes the statement of the IOE in its most recent comment that the Government is ignoring the issue of forced child labour in the country. The IOE states that the information and data available from national media and other organizations at the national and international levels indicate that the cotton harvest of 2012 does not differ, or slightly differs, from the previous one. The IOE states that, although the Uzbek Prime Minister issued an annual order in early August 2012 to ban the use of both forced and voluntary child labour during the 2012 cotton harvest, and despite the wide diffusion of the order in schools in the country, the extensive use of labour of teenagers and young persons was registered in all regions of the country following the disposition to formally commence the national cotton harvest.

The Committee also notes the comments of the ITUC that the forced mobilization of children by the State to pick cotton during the harvest is serious, systematic and continuous, and that this practice takes place year after year, despite the Government's denials. The ITUC indicates that during the autumn 2011 cotton harvest, children were forced to pick cotton by hand during term time, under threat of punishment, such as expulsion from school, in order to meet quotas set for each region by the central Government. The ITUC also states that independent monitors assessing the 2011 cotton harvest reported that in some more densely populated areas, such as Andijan, some schools took children out of school to pick cotton for 15 to 20 days, while others sent children to pick cotton after classes. However, the ITUC alleges that the situation was reported to be much worse in less densely populated regions, where children had to work for long hours. The ITUC reiterates that the participation of children in the annual cotton harvest is not a result of poverty or family need, but that this participation is organized and enforced by the authorities, channelled through local administration and directly benefits the Government. The ITUC reasserts that during the harvest, cotton quotas are set for each region, and that regional governors (*Hokims*) are appointed to ensure the delivery of these quotas. Such quotas are subdivided down through the hierarchy of state institutions, and the regional governor assigns schools quotas for harvesting cotton. Directors of schools and colleges face dismissal if their institution's cotton quota is not met, and parents have little choice but to allow their children to participate in the harvest. In addition, the ITUC indicates that conditions appear to be worse for students above the age of 16 who attend colleges, and that these children may be sent to work on remote farms for

up to two and half months in extremely poor conditions.

The Committee notes the statement of the Chamber of Commerce of Uzbekistan that it does not consider the issue of forced child labour, or the practice of employing children for cotton picking, to be an issue in the country. The Committee also notes the statement of the Council of the Federation of Trade Unions in Uzbekistan that the Government's report is a genuine reflection of the measures taken by the Government to implement the Convention.

The Committee notes the Government's statement that a distinction should be made between legitimate child work and activities prohibited as one of the worst forms of child labour. The Government also indicates that the increased politicization of the alleged large-scale exploitation of the forced labour of children in the cotton harvest is a method of unfair competition in the global cotton market. The Committee further notes the Government's statement that the Government Order No. 82 of 26 March 2012 approved the Plan of additional measures for the implementation of the Forced Labour Convention, 1930 (No. 29), and the Worst Forms of Child Labour Convention, 1999 (No. 182), 2012–13 (Plan on additional measures). Noting the copy of this Plan on additional measures submitted with the Government's report, the Committee observes that this Plan includes measures to maintain effective monitoring for the prevention of forcing children to work, measures to strengthen the monitoring of the attendance of pupils and steps to establish personal responsibility of heads of educational institutions concerning the full attendance and safety of pupils. The Government also states that pursuant to Letter No. 01-523 of the Ministry of Education dated 8 September 2012, the Ministry of Education of the Autonomous Republic of Karakalpakstan and the central education boards of Uzbek provinces and Tashkent were warned not to allow pupils in general education schools to be employed as cotton pickers. The Government also refers to the report of a non-governmental organization, wherein a person interviewed stated that the cotton harvest in the region of Khorzem this year was different from previous years, as children were not picking cotton but continued to attend school. The Government states that this difference was due to the ban on children picking cotton. However, the Committee observes that this report also contains several statements that children continue to be mobilized to work in the cotton harvest in other regions, particularly students in lyceum and colleges.

The Committee, therefore, observes that while several sources indicate that there may have been a decline in the number of children under the minimum age for admission to work who are compelled to work in the cotton harvest, children between 16 and 18 years of age who attend colleges continue to be forced to work during this period, instead of attending school. In this regard, the Committee recalls that the prohibition on the worst forms of child labour, including forced labour and hazardous work, applies to all children *under the age of 18*. Therefore, in light of the broad consensus among the United Nations bodies, the representative organizations of workers and employers and non-governmental organizations with respect to the continued practice of mobilizing school children for work in the cotton harvest, often under hazardous conditions, the Committee must express its **serious concern** regarding the Government's continued insistence that children are not involved in the cotton harvest in Uzbekistan. **The Committee urges the Government to take immediate and effective time-bound measures to eradicate the forced labour of, or hazardous work by, children under 18 years in cotton production, as a matter of urgency. It requests the Government to provide information on progress made in this regard in its next report.**

*Articles 5 and 6. Monitoring mechanisms and programmes of action to eliminate the worst forms of child labour.* The Committee previously noted the Government's indication that a programme had been approved for on-the-ground monitoring to prevent the use of forced labour by school children during the cotton harvest. The Government also indicated that the supervision of labour legislation and regulations (including the prohibition on employing children in adverse working conditions) was carried out through specifically authorized legal and technical inspections of the Ministry of Labour and Social Protection and trade union officials. The Government indicated that the Ministry of Labour and Social Protection, in collaboration with the social partners, had implemented workshops to raise awareness among farmers on the inadmissibility of the use of child labour in agricultural works, and that the State Labour Inspection continued to carry out monitoring in farms.

The Committee also noted the IOE's indication that it remained uncertain as to whether the implementation of the measures adopted would be sufficient to address the deeply rooted practice of forced child labour in the cotton fields. It also noted the ITUC's statement that the monitoring of forced child labour needed to be completely independent. In addition, the Committee observed that the Conference Committee expressed regret that, despite the Government's indication that concrete measures had been undertaken by the labour inspectorate regarding violations of labour legislation, no information was provided on the number of persons prosecuted for the mobilization of children in the cotton harvest.

The ITUC states that evidence indicates that the legislative and policy measures in place have had little effect in eradicating the ongoing and systematic mass mobilization of forced child labourers for the cotton harvest. The ITUC indicates that there is a vast disparity between the legal and policy situation and the continued practice of state-sponsored forced labour. It alleges that Government has not implemented its own national laws and policies.

The Committee notes the Government's statement that, as part of the Plan on additional measures, the Ministry of Labour and Social Protection, the Ministry of Internal Affairs, with the Council of Ministers of the Autonomous Republic of Karakalpakstan, and the administration of the regions and Tashkent, will establish systematic monitoring to provide effective control to prevent enterprises, establishments and organisations from forcing children to work, and to ensure that the legislation on the working conditions of minors is respected. In this regard, the Government states that the Council of the Federation of Trade Unions of Uzbekistan has designed a structure to ensure the effective monitoring of the prohibition to compel children to work, and to ensure compliance with the relevant legislation concerning working conditions for minors and the Convention. This structure is composed of working groups established by the chairpersons of local trade union associations. The Government states that these working groups examined companies and organizations in Uzbekistan to assess compliance with the minimum age for employment and the prohibition of the worst forms of child labour, but that no evidence was found of the use of the worst forms of child labour. The Government further indicates that on 27 June 2012, the Association of Private Farmers, the Committee of the Women of Uzbekistan and the Ministry of Labour and Social Protection adopted a joint decision to conduct local outreach campaigns among farmers and that seminars for private farmers on the ILO Conventions were held in August 2012 in every region in the country. Moreover, the Government indicates that at a meeting of the special national working group for organizing nationwide awareness-raising campaigns to prevent the recruitment of students for cotton-picking, special local units of this working group were formed in August 2012. In addition, the Committee notes the Government's statement that the State Labour Inspectorate of the Ministry of Labour and Social Protection performs regular check of compliance with labour legislation governing minors. The Government indicates that in its 2012 inspections, the State Labour Inspectorate identified 37,818 cases of labour law violations, issued 1,273 instructions and initiated 1,221 administrative proceedings. However, the

Committee once again notes with **concern** an absence of information as to whether any of the violations detected during these inspections pertained specifically to the worst forms of child labour, particularly the forced labour of, or hazardous work by, children under 18 years of age engaged in the cotton harvest.

The Committee once again observes that the Government has taken significant awareness-raising and preventive measures regarding the mobilization of children during the cotton harvest. In the Committee's view, this would appear to amount to an implicit and tacit admission that such child labour occurs within the country. The Committee must, therefore, once again note with **regret** the absence of information from the Government on the concrete impact, if any, of the monitoring activities undertaken pursuant to the Plan on additional measures, by the Ministry of Labour and Social Protection and the social partners. **The Committee accordingly requests the Government to provide information on the concrete impact of the measures taken to monitor the prohibition of the use of forced and hazardous child labour in the agricultural sector. It also requests the Government to provide specific information on the number and nature of violations detected specifically with regard to the mobilization of children under 18 to work in the cotton harvest. Where possible, the information should be disaggregated by sex and age.**

*Part V of the report form. Application of the Convention in practice. Forced or compulsory labour in cotton production and hazardous work.* The Committee previously noted the Government's assertion that children are not involved in the cotton harvest. The Committee considered it essential that independent monitors be granted unrestricted access to document the situation during the cotton harvest. The Committee also noted the statements in 2010 from the ITUC, the European Trade Union Confederation (ETUC), the European Trade Union Federation – Textiles, Clothing and Leather (ETUF-TCL), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) and the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), as well as the joint communication of 2010 from the European Apparel and Textile Confederation (EURATEX) and the ETUF-TCL indicating that a mission must be carried out as soon as possible in order to address the practice of child labour in the cotton sector and to initiate steps towards its eradication. The Committee further noted that the Conference Committee expressed its serious concern regarding the insufficient political will and the lack of transparency of the Government to address the issue of forced child labour in cotton harvesting. It urged the Government to accept a high-level ILO tripartite observer mission that would have full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to assess the implementation of Convention No. 182. The Conference Committee also strongly urged the Government to receive this ILO high-level tripartite observer mission in time to report back to this Committee, and strongly encouraged the Government to avail itself of ILO technical assistance, and to commit to working with ILO-IPEC. In this regard, the Committee noted the statement of the Government indicating that technical assistance or alternative cooperation with ILO-IPEC could not be reduced only to the issues of forced labour of children in cotton harvesting. In addition, the Committee noted the statement of UNICEF that its findings following the visits undertaken in 12 regions of the country were only snapshots that could not replace substantive and independent monitoring under the auspices of the ILO, which UNICEF continued to advocate for.

The Committee notes the statement by the IOE that the Government has not shown any will to accept the tripartite observer mission recommended by the tripartite Conference Committee. The Committee also notes that the ITUC, in its communication, urges the Government to invite an ILO high-level tripartite observer mission to visit the country, and also to accept ILO technical assistance to eradicate forced child labour in the cotton industry, including through work with ILO-IPEC. The ITUC further states that once again during the 2011 harvest, the cotton fields were strictly patrolled by police and security personnel, in an attempt to prevent independent monitoring, and that persons seeking to monitor the harvest experienced harassment and intimidation.

The Committee notes the Government's statement that it has made every effort to eliminate the worst forms of child in the country, and that for this reason, there are no grounds for inviting an ILO high-level mission to the country to examine the use of child labour. The Government states that this should not be seen as refusal to cooperate with the ILO, and that the examination of the application of the Convention should address all of the worst forms, not only cotton-picking. The Government further indicates that a seminar entitled "Implementation of ILO Conventions ratified by Uzbekistan" was held in May 2012. The Government states that this seminar was organized by the Ministry of Labour and Social Protection, and included participation of ILO officials from both Headquarters and the Moscow Bureau, during which participants had an opportunity to discuss various issues related to the fulfilment by Uzbekistan of its commitments within the ratified ILO Conventions. In this regard, the Committee notes the statement in the mission report of the Technical Advisory Mission that the ILO delegation attending the seminar underlined that the Technical Advisory mission should not be seen as replacing the high-level mission which had been requested by the supervisory bodies. This mission report also indicates that the ILO delegation indicated to the Government that the Office was prepared to pursue technical assistance, and that the delegation highlighted that high-level tripartite missions were not sanctions, but instead an important way forward in helping to verify facts and resolve implementation gaps.

Therefore, the Committee must once again note with **serious concern** that the Government has yet to respond positively to the recommendation to accept a high-level tripartite observation mission. The Committee's concerns are reinforced by the evident contradiction between the Government's position that children are not removed from school for work in the cotton harvest, and the views expressed by numerous UN bodies and social partners that this worst form of child labour remains a serious problem in the country. It, therefore, considers an ILO mission to be both necessary and appropriate, to fully assess the situation of children's engagement in the cotton sector. **The Committee, therefore, urges the Government to accept a high-level ILO tripartite observer mission, and expresses the firm hope that such an ILO mission can take place in the very near future. It also strongly encourages the Government to avail itself of ILO technical assistance in respect of the situation in question.**

The Committee is raising other points in a request addressed directly to the Government.

**[The Government is asked to supply full particulars to the Conference at its 102nd Session and to reply in detail to the present comments in 2013.]**

REPORT OF THE COMMITTEE ON THE  
APPLICATION OF STANDARDS

OBSERVATIONS AND INFORMATION CONCERNING  
PARTICULAR COUNTRIES







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

**Report of the Committee on the Application of Standards**

PART TWO

**OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES**

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

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

The Worker members indicated that the failure of member States to respect their reporting obligations was regrettable and constituted a serious situation. The governments mentioned had to comply with their obligations as soon as possible and the Office should accompany them in this regard.

The Employer members insisted that non-compliance with the obligation to send reports hampered the operation of the supervisory system. The majority of reports – 69.53 per cent of those requested under article 22 of the ILO Constitution and 89.78 per cent of those requested under article 35 – had been received. However, ten countries had not submitted reports that had been due for two years. For the system to function properly, reports needed to be presented regularly with high-quality information, and countries needed to consider the implication of ratifying a Convention carefully, as they were also responsible for reporting on its application. Technical assistance from the Office should be maintained in order to lighten governments' workload in terms of reporting obligations.

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

The Committee took note of the information provided.

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

In these circumstances, the Committee expressed the firm hope that the Governments of Burundi, Equatorial Guinea, San Marino, Sierra Leone and Somalia which to date had not presented reports on the application of ratified Conventions, would do so as soon as possible, and decided to note these cases in the corresponding paragraph of the General Report.

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

A Government representative of Seychelles explained that the two first reports on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), were being finalized and would be submitted during the current session of the International Labour Conference. She noted that the compilation of those reports was made possible due to the ILO's support in providing distance training on international labour standards and reporting to the newly recruited cooperation officer at the Ministry of Labour and Human Resources Development. The reports were being prepared in consultation with workers' and employers' organizations and other stakeholders while a consultant was working on the review of the Merchant Shipping Act, 1992, and the drafting of Regulations for the domestication of the Maritime Labour Convention, 2006 (MLC, 2006). Once the two reports were submitted, the Government would no longer have outstanding first reports on ratified Conventions.

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

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

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

- **Bahamas**
  - since 2010: Convention No. 185;
- **Equatorial Guinea**
  - since 1998: Conventions Nos 68, 92;
- **Kazakhstan**
  - since 2010: Convention No. 167;
  - since 2011: Convention No. 185;
- **Kyrgyzstan**
  - since 2006: Convention No. 184;
  - since 2010: Convention No. 157;
- **Sao Tome and Principe**
  - since 2007: Convention No. 184;
- **Seychelles**
  - since 2007: Conventions Nos 147, 180;
- **Vanuatu**
  - since 2008: Conventions Nos 87, 98, 100, 111, 182;
  - since 2010: Convention No. 185.

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

A Government representative of Mauritania recalled that his Government made every effort to transpose ratified Conventions into domestic legislation and to submit reports on their application. The failure to respond to the comments of the Committee of Experts made with respect to the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), the Employment Policy Convention, 1964 (No. 122), the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182) was due to a lack of technical capacity as regards drafting reports. The ILO Office in Dakar had been informed of this problem and technical assistance would be offered to the Ministry of Labour. In addition, this issue was reflected in the Decent Work Country Programme (DWCP) signed with the ILO in 2012, and the Government would spare no effort to reply to the comments of the Committee of Experts and to submit reports in a timely manner.

A Government representative of the Democratic Republic of the Congo emphasized that her Government appreciated the importance of the comments of the Committee of Experts. Seventy per cent of all the reports due had been prepared and, now that they were complete, they could be submitted before the end of the work of this Committee. The Government committed itself to submitting the remaining reports before 1 September 2013.

A Government representative of Algeria indicated that his Government had examined this question with the competent service of the Office and that three reports had been submitted. The report on the application of the Labour Inspection Convention, 1947 (No. 81) would be communicated as soon as possible.

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

The Committee underlined the vital importance, to permit ongoing dialogue, of clear and complete information in response to comments of the Committee of Experts. In this respect, the Committee expressed serious concern at the large number of cases of failure to transmit information in response to the comments of the Committee of Experts. The Committee recalled that governments could request technical assistance from the Office to overcome any difficulties in responding to the comments of the Committee of Experts.

The Committee urged the Governments of Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Dominica, Gambia, Grenada, Guinea-Bissau, Equatorial Guinea, Guyana, Kiribati, Libya, Mali, Mauritania, Mongolia, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Syrian Arab Republic, Thailand, Tajikistan and Zambia, to make all efforts to transmit as soon as possible the required information. The Committee decided to note these cases in the corresponding paragraph of the General Report.

(d) *Written information received up to the end of the meeting of the Committee on the Application of Standards*<sup>1</sup>

**Algeria.** Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

**Angola.** Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

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

**Central African Republic.** Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

**Chad.** Since the meeting of the Committee of Experts, the Government has sent some reports due on the application of ratified Conventions and replies to the majority of the Committee's comments.

**Djibouti.** Since the meeting of the Committee of Experts, the Government has sent some reports due on the application of ratified Conventions.

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

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

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

**Kiribati.** Since the meeting of the Committee of Experts, the Government has sent the first reports on the application of Conventions Nos 100, 111, 138 and 182 due since 2011.

**Lao People's Democratic Republic.** Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

**Lebanon.** Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

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

**Libya.** Since the meeting of the Committee of Experts, the Government has sent some reports due on the application of ratified Conventions.

**Malawi.** Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

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

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

**Nigeria.** Since the meeting of the Committee of Experts, the Government has sent the first report on the application of Convention No. 185 due since 2010.

**Sao Tome and Principe.** Since the meeting of the Committee of Experts, the Government has sent some reports due on the application of ratified Conventions.

**Sudan.** Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

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

**Uganda.** Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

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<sup>1</sup> The list of the reports received is in Appendix I.

## B. Observations and information on the application of Conventions

### Forced Labour Convention, 1930 (No. 29)

#### MALAYSIA (ratification: 1957)

The Government provided the following written information.

The National Action Plan against trafficking in persons and smuggling of migrants (2010–15) had been introduced. There were eight core areas covered by the Action Plan and these were as follows: (i) establishment of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (the Council); (ii) strengthening of the existing law relating to anti-trafficking in persons and anti-smuggling of migrants; (iii) establishment of shelter homes; (iv) collaboration with civil society groups; (v) capacity building for enforcement agencies; (vi) documenting standard operating procedures in relation to anti-trafficking in persons and anti-smuggling of migrants; (vii) international/bilateral cooperation; and (viii) raising awareness.

The Council which was established in 2008 and headed by the Secretary-General of the Ministry of Home Affairs, had the objective of formulating and overseeing the implementation of the National Action Plan on the prevention and suppression of trafficking in persons including the support and protection of trafficked persons.

In 2010, the original Anti-Trafficking in Persons Act, 2007 (Act 670) was amended to include the following: (i) trafficking in persons which was defined as all action involved in acquiring or maintaining the labour or services of a person through coercion, for the purpose of exploitation. The profit in trafficking came not from the movement of person but from the sale of a trafficked person's services or labour in the country of destination; and (ii) smuggling of migrants which meant arranging, facilitating or organizing, directly or indirectly, a person's unlawful entry into or unlawful exit from any country of which the person was not a citizen or a permanent resident. There were presently six gazetted shelter homes for victims of labour trafficking. Each shelter could accommodate 200 persons at any one time and had been in operation since 15 August 2010. In addition to government-operated shelters, the Government also actively cooperated with civil society groups for the establishment of additional shelters and the provision of counselling and skills training for the trafficked victims. Capacity building was also an essential component of efforts to heighten the investigative and intelligence gathering of enforcement agencies. Towards this end, front line agencies such as the Immigration Department, the Royal Malaysia Police, the Malaysian Maritime Enforcement Agency, the Royal Malaysian Customs and the Department of Labour were actively pursuing training courses either locally or in cooperation with other countries such as Australia and Brazil.

Peace, prosperity and rapid development of the country had attracted foreigners, the majority of whom were looking for job opportunities, especially those from countries which were experiencing political and economic instability. At the same time, the country needed foreign workers in certain sectors such as services, plantation, industrial, construction and manufacturing. The existence of anti-trafficking law supplemented by the Employment Act, 1955 and other labour legislation addressed the issue of labour exploitation. In order to regulate the recruitment of the foreign workforce, the Government had signed Memoranda of Understanding (MOU) with at least 13 countries of origin including a specific MOU on the recruitment and placement of domestic workers. All the MOUs were aimed at benefiting equally both employers and employees. A case in point was the MOU on the re-

ruitment of Indonesian foreign workers which was signed in 2003 and subsequently there were a series of negotiations to further strengthen the greater bilateral cooperation between the Governments of Malaysia and Indonesia. The Government would not tolerate transgression of the Anti-Trafficking in Persons Act. As of April 2013, 442 such cases were taken to court and 174 cases were pending trial under the Anti-Trafficking in Persons Act, 2007. The implementation of this law would continue to be the core commitment of the Government in handling of issues concerning forced labour.

In addition, before the Committee a **Government representative**, referring to and supplementing the written information provided, emphasized that his Government had taken various steps in its constant endeavour to monitor, prevent and suppress the problem of trafficking in persons, including the ratification of the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the "Trafficking Protocol"). In addition, 30 state specialist prosecutors had been appointed and guidelines had been issued on the handling of cases of trafficking in persons. Various measures had also been taken to avoid misidentification between the crimes of trafficking in persons and the smuggling of migrants. Capacity building was essential in ensuring that the personnel of all the agencies and non-governmental organizations involved in efforts to combat trafficking in persons had the relevant knowledge and skills, particularly in the areas of policy, prevention, protection, rehabilitation and prosecution. In that respect, it was of great importance to share knowledge and experience with foreign partners. Standard operating procedures had also been developed for the committees of the Council for Anti-Trafficking and Anti-Smuggling of Migrants and a national referral system was being developed to screen all cases and reports of trafficking in persons and smuggling of migrants. Government action in the field of capacity building included the seminar conducted in 2011 by the Attorney-General's Chambers for participants from non-governmental organizations, private agencies, universities and public agencies on the rights of employees and the roles and responsibilities of employers.

He emphasized that trafficking in persons was a complex crime that commonly involved crime syndicates operating in organized, structured and well-established networks. A comprehensive and coordinated response was therefore essential, backed up by cooperation and collaboration at the national, regional and international levels. As the problem of trafficking in persons was relatively new in the country, it had been necessary to focus on the constant and widespread dissemination of information, as well as investing in capacity building and obtaining the support of community leaders to shape public opinion. Efforts were being made to establish close cooperation and coordination between enforcement agencies, the relevant ministries and agencies, including state governments and local authorities, with regard to information sharing, entry point control, prevention, investigation and prosecution with a view to ensuring the timely protection of victims and the punishment of perpetrators. The Government was also placing emphasis on a systematic and effective information management system to improve inter-agency coordination and raise public awareness through the dissemination of the relevant information.

**The Employer members** emphasized their wholehearted support for the Convention and their commitment to the elimination of forced labour, including trafficking in persons for the purpose of forced labour. They also supported the initiative to set new standards to supplement the Con-

vention. They recalled that Malaysia was primarily a country of destination of migrant labour and, in the same way as other countries of destination, there appeared to be a number of issues in the country in relation to migrant labour. There were reports of migrant workers being subjected to such practices as having their passports retained by their employers, wages remaining unpaid and being deprived of their liberty, which constituted problems in relation to the application of the Convention and the law in general. Two Governments, Indonesia and Cambodia, had suspended the sending of their citizens to work in Malaysia, although the Government of Indonesia had recently lifted the suspension following the conclusion of an agreement with the Government of Malaysia that Indonesian migrant workers could retain their passports, earn market wages and benefit from one day of rest each week. The Employer members noted that there appeared to be some progress on the issue, particularly in relation to the agreement with the Government of Indonesia. They also noted the adoption of the Anti-Trafficking in Persons Act, 2007, which established penal sanctions for individuals convicted of trafficking for forced labour. It appeared that the Government was actively prosecuting violations of the Act and obtaining convictions. The Employer members hoped that the convictions were accompanied by adequate punishment and would like to see statistical data on that issue. The numerous other measures mentioned by the Government representative were also of interest.

**The Worker members** recalled that forced labour was prohibited by the Constitution and legislation. The Anti-Trafficking in Persons Act had been adopted in 2007 to combat a phenomenon that had been described as early as 2001 as a scourge that was growing with technological progress in transport and organized crime. Malaysia was a country of destination and, to a lesser extent, a country of origin and transit for trafficked men, women and children, especially for prostitution and forced labour. Although the new legislation provided for severe sanctions, there was no avoiding the fact that the Government had failed to supply any information on the sanctions imposed. An Interpol report referred specifically to the forced prostitution of Ugandan women in Malaysia, some of whom had been diverted while travelling to China or Thailand and had been forced to engage in prostitution. There were no precise figures. However, the vast majority of the victims of human trafficking were part of the 2 million workers in a regular situation and roughly 1.9 million workers in an irregular situation, essentially from Indonesia, Nepal, India, Thailand, China, the Philippines, Burma, Cambodia, Bangladesh, Pakistan and Viet Nam. Children were often exploited as cheap labour or for sex exploitation, forced marriage, criminal activities, armed conflict or begging. United Nations Children's Fund (UNICEF) had highlighted the fact that the trafficking of children was considered normal in the country. Cheating migrants out of their wages, confiscating their passports, placing them in debt bondage and housing them in warehouses were common practice. The trafficking in person for the purpose of forced labour was one of the most lucrative businesses in the world. Yet the Government had cited only 844 victims of trafficking who were under court protection, pursuant to section 51 of the 2007 Act, and 2,289 others who had been granted temporary protection for 14 days under section 44 of the Act. Either the Government was not in possession of accurate statistics, or its presentation of the facts was over-optimistic. In any event, a veritable gulf existed between the information that it had provided and the data supplied by non-governmental organizations and international institutions.

Recalling that the Convention required the illegal exaction of forced or compulsory labour to be punished by penalties that were truly effective and strictly enforced,

the Worker members regretted that the Government's report contained no information on the penalties imposed in practice. That showed that the Government was not doing enough to combat the problem and was not really trying to eradicate forced labour, which had traumatic moral and physical effects on those concerned, many of whom subsequently experienced great difficulties in reintegrating into society. And yet, as a signatory since 2009 to the Trafficking Protocol, the Government should be aware of the provisions of article 6 on that subject. The Worker members considered that it appeared obvious that the Government was respecting neither the letter nor the spirit of the Convention and that greater efforts were needed to implement the observations of the Committee of Experts. The case under discussion was particularly serious, and probably only represented the tip of the iceberg.

**The Worker member of Malaysia** emphasized that the estimated 2.2 million migrant workers in a regular situation in Malaysia, as well as the estimated 2 million workers in an irregular situation, were engaged, not only in plantations, which used to be their main employer, but also in manufacturing, services and domestic work. The migrants were from neighbouring countries and were brought in by recruitment agencies. However, there was no proper monitoring mechanism for migrant workers, there had never been a comprehensive policy for foreign labour and the Government had no knowledge of the exact numbers of workers concerned. While in most cases there were no agreements between the Government and the Governments of countries of origin, in 2011 an agreement had been signed with the Government of Indonesia under which Indonesian domestic workers had the right to retain their passports, earn market wages and benefit from one rest day a week. Although the Government seemed to consider the agreement with Indonesia as the answer to the problems experienced by migrant workers, the reality was quite different. There continued to be a complete failure to speak honestly and openly about the institutionalized nature of the abuse that they suffered, while discussions between the governments concerned tended to focus on maximizing profits, minimizing costs and keeping market rates competitive. And yet, Indonesian migrant domestic workers suffered from various forms of violence. Over half of them suffered physical abuse, 15 per cent were sexually abused and their poor working conditions included no weekly paid rest day, the non-payment and wrongful deduction of wages, improper accommodation, long working hours, multiple jobs and undernourishment. Investigations by non-governmental organizations showed that almost half of migrant domestic workers were below the age of 21, which was the minimum legal age for domestic work in Malaysia. Recruitment agencies subjected migrant domestic workers to harsh treatment, including the retention of their passports, searches and confiscation of the contact details of their embassies and of non-governmental organizations which could protect them. The agreement concluded with the Government of Indonesia might have been more effective if there was a proper mechanism to monitor its implementation.

Migrant workers from Bangladesh also suffered from severe abuse. Following the lifting of the ten-year freeze on their recruitment by the Government of Malaysia in 2006, thousands of Bangladeshi workers had been recruited and cheated by approved outsourcing companies, which retained their passports and failed to renew their work permits, leaving them in an irregular situation. Under a programme launched in 2011, the Government had approved 340 agents to register and legalize the migrant workers, including issuing them with new passports and work permits. However, many of the agents were, in prac-



tice, the same outsourcing companies which had subjected them to abuse. A year and a half since the launch of the programme, and six months after the final deadline for the completion of the legalization process, thousands of workers were still in an irregular situation. They had not only lost one year's wages, but had no passports and lived in fear of arrest, detention and maltreatment, and were often threatened by their agents. Although complaints had been filed, none of the agents had been arrested. An example was an agent which, according to reports from the workers concerned, had registered over 5,000 workers, collected money from them, retained their passports and continued to threaten them. No action had been taken despite the numerous complaints made to the Bangladesh authorities. The authorities of Malaysia and Bangladesh should therefore be called upon to investigate the situation immediately and to retrieve and return the workers' passports. He called on the Government to draw up a clear roadmap to ensure the rights of all domestic and migrant workers in the country, improve screening to identify victims of abuse and trafficking, and provide victims with legal aid, counselling and other forms of assistance. The Government needed to have the political will to impose severe penalties under the Anti-Trafficking in Persons Act as a deterrent to abuse by traffickers, agents and employers. The discussion of the case by the Committee was particularly welcome and offered hope to the workers concerned.

**The Employer member of Malaysia**, stating that forced labour could not be condoned, fully supported the initiatives and positive actions of the Government in combating and eliminating forced labour, especially trafficking in persons. The root cause of foreign workers having huge debts even before leaving their country needed to be addressed urgently. He therefore urged the ILO and the other relevant United Nations agencies to work closely with the countries of origin to address the situation of informal recruiters imposing high fees on foreign workers. Governments of the countries of origin should ensure that exorbitant fees were not imposed on their nationals seeking employment abroad as these workers were already contributing tremendously to their country through the remittances they sent home. His organization had been calling for clearer and consistent policies on the recruitment of foreign workers with a view to reducing the role of informal recruiters. In this regard, he referred to two initiatives carried out under the ILO TRIANGLE Project in which the Malaysian Employers Federation was involved, notably: the study for the ASEAN (Association of Southeast Asian Nations) Confederation of Employers (ACE) to develop a compendium of best practices to be used by countries of origin and destination in managing the pre-departure, the employment and post-employment of foreign workers; and the forthcoming "Guidelines for Malaysian Employers on Managing the Employment of Foreign Workers". He wished that similar collaborations with the ILO Regional Office in Bangkok could be replicated in other countries in the region. He expressed the sincere hope that with the positive initiatives in place, the forced labour issues, especially those pertaining to the employment of foreign workers, would be better managed and eventually eliminated.

**The Worker member of Indonesia** highlighted that Malaysia was one of the largest countries of destination for migrant workers in South-East Asia, and that there were approximately 2 million migrant workers from Indonesia. Due to loans at exorbitant interest rates, most migrant workers could not afford to return to their home countries, and some were in bonded labour. A large number of migrants were working in hazardous situations, including long working hours, and faced physical and sexual abuse. Turning to the specific situation of women domestic

workers and their vulnerability to abuse, including harassment and rape, she recalled that the Government of Indonesia had imposed a ban imposed on sending Indonesian domestic workers to Malaysia. The ban had been lifted after the signing in 2011 by the Governments of Malaysia and Indonesia of a Memorandum of Understanding (MOU) on provisions on minimum wages, rest days, and the right of domestic workers to retain their identity documents. However, in practice employers or private recruiters were still retaining passports of domestic workers and the MOU was not being properly implemented. In addition, the MOU allowed for overtime payment instead of providing the one day of rest, without a proper mechanism to monitor such overtime payments. The lack of effective enforcement of the MOU could result in encouraging slavery-like practices and she considered that the Government had yet to demonstrate its strong commitment to protect domestic workers against forced labour.

**The Worker member of Cambodia** drew attention to the exposure to forced labour of women and girls migrating to Malaysia as domestic workers. The lack of employment opportunities led many women to migrate, and out of the 20,909 workers migrating in 2010, 18,038 were domestic workers. He pointed to situations of forced labour at the hands of employers or informal labour recruiters operating in Malaysia, as well as Cambodia, through illegal salary deductions, non-payment of wages, and passport confiscation. Legal protection to address excessive working hours, psychological, physical and sexual abuse against domestic workers was also insufficient as the Employment Act excluded domestic workers from key labour protections. Workers who wished to leave an abusive employer without permission lost their legal status and often faced penalties under immigration law. This increased their reluctance to leave an abusive employer exposing them to forced labour practices. While noting the Cambodian Government's announcement to freeze the sending of migrant workers to Malaysia as a response to the abovementioned violations, he hoped that the Government of Malaysia would also stop tolerating forced labour practices against migrant domestic workers.

**The Worker member of the Philippines** highlighted that Malaysia had become a country of origin and destination, as well as a transit country for trafficking in persons, especially of women and children. The majority of the victims of trafficking were migrant workers from Indonesia, Nepal, India, Thailand, China, the Philippines, Burma, Cambodia, Bangladesh, Pakistan and Viet Nam. In 2009, there were approximately 2 million migrant workers in a regular situation and an almost equal number in an irregular situation in the country. Migrant workers in plantations, construction sites, textile factories and domestic service experienced restrictions on movement, fraud in wages, passport confiscation or debt bondage. A significant number of young women were recruited for work in restaurants and hotels and subsequently coerced to work in the sex industry; many subcontracting companies recruited workers who were then submitted to conditions of forced labour. He drew attention to the very low number of prosecutions under the Anti-Trafficking in Persons Act and the lack of information on specific sanctions applied to those convicted, as well as the deportation of some victims of trafficking who had been given protective orders at an initial stage. The speaker urged the Government to intensify its efforts to: (i) investigate and prosecute labour trafficking offences; (ii) identify labour trafficking victims; (iii) prosecute cases of trafficking-related corruption by government officials; and (iv) enhance collaboration with trade unions, non-governmental organizations and international organizations to improve services for victims in public shelters.

The Government representative reaffirmed his Government's firm commitment to regularize and increase its collaboration with the social partners in the country, and cooperate with other governments and the international community with a view to minimizing, if not eliminating, trafficking in persons across borders. As shown in the National Action Plan on trafficking in persons and smuggling of migrants (2010–15), the Government set out policies to minimize the possibility of trafficking in persons, through collaboration and constructive dialogue with the social partners and civil society. Regional cooperation with the Asian countries to regulate cross-border migration of workers, especially those without proper documentation, was also important in the context of efforts to combat trafficking in persons. Through the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants, the Government had innovated appropriate and workable mechanisms and approaches in tackling and managing the issue over the past three years. While the concerns raised before the Committee were shared by the Government, the responsibility to address the issue of trafficking in persons should not be put on the Government alone. Rather, collective efforts were needed, involving all parties concerned, including the social partners. Due to the importance of enforcement, the enforcement agencies would provide full cooperation to the parties concerned to address and resolve this issue in an expeditious manner.

The Employer members stated that it was the first time that this case was being discussed in the Committee and, unlike the Worker members, they did not consider the observation of the Committee of Experts merely describing the "tip of the iceberg". The Government did not deny that there were forced labour issues in the country and had provided information on the constructive measures it had taken to address them. The Employer members encouraged the Government to work with the social partners and with other countries in the region, in particular countries of origin, to address the issue of forced labour. In this regard, more emphasis could be placed on memoranda of understanding such as the one with the Government of Indonesia with a view to ensuring protection of the rights of workers from these countries, concerning hours of rest, leave, as well as wages, and that workers could keep their passports. They asked the Government to submit in 2014 a report to the Committee of Experts on the progress made.

The Worker members, recalling that Malaysia had ratified the Convention in November 1957, observed that there had been a sharp increase in human trafficking for forced labour in the country. Linked as it was to globalization, it was a phenomenon that was to be found in many countries. In 2007, Malaysia had adopted the Anti-Trafficking in Persons Act that provided for penal sanctions of up to 20 years in prison. However, no information was available on any specific sanctions that might have been imposed under the Act. The overwhelming majority of persons trafficked in Malaysia were drawn from the 4 million foreign workers in the country, whether in a regular or irregular situation, most of them originating from South-East and South Asia. A great many of them had been deceived about the type of work they would be expected to do, about their wages and about the treatment they would be subjected to, such as sexual exploitation, debt bondage or worse. The victims of forced labour were often treated as criminals when they were found in an irregular situation.

The Worker members considered that the Government was respecting neither the letter nor the spirit of the Convention, that the case under discussion should be followed up very closely by the Committee and that the Government should implement the Committee of Experts' rec-

ommendations without delay. They called on the Government to pursue its efforts to combat trafficking, notably as part of the National Action Plan on trafficking in persons and smuggling of migrants (2010–15), and to provide information on the steps taken and the results obtained. Recalling that under Article 25 of the Convention, States were required to apply effective penal sanctions strictly in cases of forced labour, they called on the Government to provide information on the specific sanctions that had been imposed on persons sentenced under the Anti-Trafficking in Persons Act. The Worker members indicated that in June 2009 the Indonesian Government had placed a moratorium on the placement of domestic workers in Malaysia in order to protect its nationals and that since then the two countries had signed a revised MOU on the employment of Indonesian domestic workers. Unlike the previous agreement, the MOU stipulated that Indonesian domestic workers were allowed to keep their passports while in Malaysia. They were also entitled to one day of rest per week and to be paid according to the going market rate. The Worker members noted, however, that the agreement did not appear at all to be respected. They urged the Government to take all necessary steps for the MOU to be applied both in law and in practice and invited it to request appropriate ILO technical assistance.

### **Conclusions**

The Committee took note of the oral and written information provided by the Government representative and the discussion that followed concerning trafficking in persons and the vulnerable situation of migrant workers with regard to the exaction of forced labour.

The Committee noted the information provided by the Government representative outlining the various measures taken to combat trafficking in persons and smuggling of migrants, including the implementation of the National Action Plan against trafficking in persons and smuggling of migrants (2010–15) which encompassed capacity building for law enforcement agents and awareness raising, as well as measures to provide victims of trafficking with shelters. It also noted the Government's information that, given the high number of migrant workers in certain sectors such as services, plantations, construction, manufacturing and domestic work, the Government had signed Memorandum of Understanding (MOUs) with 13 countries of origin to regulate the employment and recruitment of migrant workers, including a specific MOU on migrant domestic workers.

While noting the policies and programmes adopted by the Government to address trafficking in persons, as well as a number of cases filed under the Anti-Trafficking in Persons Act, the Committee noted the concern expressed by several speakers regarding the magnitude of this phenomenon. The Committee therefore urged the Government to reinforce its efforts to combat trafficking in persons. In this regard, it requested the Government to pursue its efforts to strengthen the capacity of the relevant public authorities, including the labour inspectorate, so as to enable them to identify victims and to deal effectively with the complaints received. In addition, it requested the Government to continue to take measures to provide victims of trafficking with adequate protection and compensation. Moreover, noting an absence of information in this regard, the Committee requested the Government to provide information on the specific penalties imposed on persons convicted under the Anti-Trafficking in Persons Act.

While noting the bilateral agreements signed between the Government of Malaysia and other countries to regulate the conditions of employment of migrant workers, the Committee noted with regret the absence of information from the Government on any additional measures taken to provide protection to the large number of migrant workers in the

country. In this regard, the Committee noted the information provided by several speakers that workers who willingly entered Malaysia in search of economic opportunities subsequently encountered forced labour at the hands of employers or informal labour recruiters, through means of restrictions on movement, non-payment of wages, passport confiscation and the deprivation of liberty. The Committee recalled the importance of taking effective action to ensure that the system of employment of migrant workers did not place the workers concerned in a situation of increased vulnerability, particularly where they were subjected to abusive employer practices, which might cause their employment to be transformed into situations that could amount to forced labour. The Committee therefore urged the Government to take appropriate measures to ensure that, in practice, victims were not treated as offenders and were in a position to turn to the competent judicial authorities in order to obtain redress in cases of abuse and exploitation. Moreover, noting an absence of information on the number of prosecutions concerning the exploitative employment conditions of migrant workers, the Committee urged the Government to take immediate and effective measures to ensure that perpetrators were prosecuted and that sufficiently effective and dissuasive sanctions were imposed. The Committee encouraged the Government to continue to negotiate bilateral agreements with countries of origin, to ensure their full and effective implementation, so that migrant workers were protected from abusive practices and conditions that amounted to the exaction of forced labour once they were in the country, and to work with the countries of origin to take measures for their protection prior to departure.

The Committee requested the Government to accept a technical assistance mission to ensure the full and effective application of this fundamental Convention. It requested the Government to provide a detailed report to the Committee of Experts addressing all the issues raised by this Committee and the Committee of Experts for examination at its next meeting. The Committee expressed the hope that it would be able to note tangible progress in the application of the Convention in the very near future.

#### PARAGUAY (ratification: 1967)

A Government representative expressed satisfaction at the fact that the measures adopted in the context of the application of the Convention, and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), had been noted with interest, and that recognition had been given to the process of formulating a National Strategy for the Prevention of Forced Labour. Forced labour was a criminal offence under national law; even so, her Government considered that, to tackle this scourge, States should promote the empowerment of vulnerable groups, including indigenous peoples. Her Government recognized that the particular geographical features of the Paraguayan Chaco hampered government initiatives, since it accounted for 60 per cent of national territory while harbouring barely 2 per cent of the population, comprising, *inter alia*, more than a dozen indigenous peoples, large Mennonite communities, and small- and large-scale producers. The progress made since the last meeting of the Committee of Experts included: Comprehensive Act No. 4788 of 13 December 2012 against the trafficking of persons, which contained specific definitions relating to the trafficking of persons, forced labour, economic exploitation and debt bondage; the National Strategy for the Prevention of Forced Labour, which was being formulated with the active participation of trade unions, employers' associations and the support of the ILO Special Action Programme to Combat Forced Labour (SAP-FL); registration of, and issuing of identity cards to, more than 6,000 indigenous persons through the Civil Registry programme; the holding of workshops to raise awareness and provide informa-

tion on forced labour in various locations in the interior of the country, including Chaco; the training of 898 indigenous persons by the National Service for Vocational Promotion and of 325 indigenous persons by the National Labour Training System; and the training of more than 200 women in fishing and domestic work by the Directorate for the Social Promotion of Working Women. She also referred to the implementation of 78 labour inspection visits in the Chaco region, covering 62 enterprises and a total of 808 workers; on those occasions, the inspection staff had not detected any situations involving forced labour or debt bondage. With the support of the ILO, a process had been launched to strengthen and modernize the labour inspection services. Regarding the adoption of legislative measures, a law was being drawn up for establishing a Ministry of Labour, Employment and Social Security of Paraguay, which was currently being examined in the Chamber of Deputies of the National Congress; and an Organic Act concerning the prison system had received preliminary approval in the Chamber of Deputies and was now before the Senate.

The speaker observed that some of the issues raised by the Committee of Experts in its observation on Convention No. 29 had been dealt with by the Government in its reports sent in 2012, particularly relating to the Protection of Wages Convention, 1949 (No. 95), and Convention No. 169. She emphasized that the observations made on forced labour had been addressed by the national Government with the full participation of various public institutions, the social partners and non-governmental organizations. She addressed some aspects referred to in the report of the Committee of Experts, such as: the fact that the latter had noted the complaint from the Central Confederation of Workers-Authentic (CUT-A) and the International Trade Union Confederation (ITUC), even though the Government had only received a complaint from the CUT-A; the ordinary meetings held by the National Commission on Fundamental Rights at Work and the Prevention of Forced Labour, established through Decision No. 230 of 2009; the setting up of a technical committee for the modernization of the administrative processes of the labour inspectorate; the future creation of a special inspection unit for the detection of forced labour; information and awareness-raising activities relating to labour rights carried out by the Chaco Regional Labour Directorate; the signing of a general collaboration agreement between the Ministry of Justice and Labour (MJT) and the Rural Association of Paraguay (ARP), for the registration of citizens and the issuing of identity cards to them, as well as the regularization of workers. She stated that consideration was being given to establishing a directorate of indigenous labour at the Ministry, which would be responsible for coordinating the mediation system, inspection services and worker training, taking into account the necessary free and informed prior consultation of indigenous peoples, with regard to all present and future measures. She also reiterated the request to the trade union federations and non-governmental organizations to identify the specific establishments and locations where situations of forced labour had supposedly been detected, so that the relevant checks could be made.

The Employer members stated that many of the points raised in the Committee of Experts' report were longstanding issues that had even been taken up by this Committee in previous years. The case referred to a number of matters, largely concerning the situation in the Paraguayan Chaco. Although the Government's latest report contained a whole range of details, notably on the National Programme for Indigenous Peoples (PRONAPI) and the inspection visits during which, as the Government representative confirmed, no instances of forced labour had been found, the fact remained that fines had been

imposed and that the country's labour legislation had been infringed. A report by an external source that was noted by the ILO had found clear evidence of forced labour in Paraguay. Furthermore, although the Government's latest report contained fairly detailed information, there were still points on which the Committee of Experts' comment sought additional explanations. Regarding sanctions, the Employers felt that further adjustments needed to be made to the administrative and penal procedures and to the bill on the prison system currently before Congress. They noted, however, that the Government was making a genuine effort to comply with the Committee of Experts' requests and to bring its legislation into line with the spirit and substance of the Convention. That said, there were still a number of observations that needed clarification, for which the answer might well be the offered ILO technical assistance in implementing the programmes currently being carried out.

The **Worker members** indicated that, since 1997, the Committee of Experts had regularly made comments concerning debt bondage among the indigenous communities of the Chaco. During its examination of the case in 2008, this Committee had highlighted the unmanageable situation of landless peasants and their particular vulnerability to begging and prostitution when they were obliged to leave their lands and move to cities as a result of the intensive cultivation of soya. The Committee had also highlighted the situation of children carrying out hazardous work, such as in brickworks, quicklime factories, quarries and certain sectors of the informal economy, and violence carried out against the National Peasants' Organization (ONAC). The Committee had expressed the firm hope that constructive measures would be taken urgently, and the Government had requested technical assistance from the Office. The election of a new President, who had announced agrarian, education and health reforms and the development of production to put an end to poverty and forced migration, had served to kindle the hope that legislation would be brought into line with ILO standards. A policy of transparent foreign investments had also been announced. However, the situation had not progressed favourably: violations had been identified that could fall under the Convention, Convention No. 169 or even the Worst Forms of Child Labour Convention, 1999 (No. 182), along with other Conventions, given that discrimination was also involved. Emphasizing the specific nature of migration in Paraguay, the Worker members referred to the report of the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (April 2012), which cited numerous violations, and that of the Committee Against Torture (November 2011), which continued to express its concern at the fact that indigenous peoples living in Paraguay were still being exploited for work. Moreover, the United Nations Permanent Forum on Indigenous Issues had concluded, at the end of a mission to Paraguay in 2009, that a system of forced labour existed in the Chaco region and had made recommendations concerning, in particular, debt bondage and the issue of restoring land rights, which was at the root of the impoverishment and indebtedness of indigenous communities. Members of indigenous communities had lost their land to large agricultural enterprises and the ecosystem that characterized their ancestral lands had almost disappeared.

The Worker members pointed out, however, that the Constitution of Paraguay recognized the rights of indigenous peoples to have their own political, social, economic, cultural and religious systems and that indigenous languages were protected. In addition, a national policy on indigenous peoples had been adopted and the Chaco Indigenous Peoples Institute had been created. The speaker described the labour system that members of in-

igenous communities were subjected to in practice: transport to workplaces far from their home communities, no documents setting out working conditions, threats of reprisals if complaints were made, no wages in certain cases, etc. With regard to the comment made by the Committee of Experts, the Worker members recalled the comments of the CUT-A and the National Confederation of Workers (CNT) concerning forced labour in agricultural ranches and factories in the Chaco and the lack of measures by the Government to end the practice, and emphasized that imposing effective penalties was an essential element in the fight against forced labour. With regard to prison work, the Worker members underlined the fact that the Government had undertaken to amend the Act on the prison system (Act No. 210 of 1970), under the terms of which work in prison was compulsory for persons subjected to security measures in a prison establishment, within the framework of the adoption of a Prison Code, then through the adoption of a new Code of Penal Procedure. However, the Government had provided no information on the state of the reform process. Simple technical assistance would not suffice to overcome the mistrust that had built up between the peoples of the Chaco and the Government; action would need to be taken involving all those on the ground. Severe measures should be contemplated.

A **Worker member of Paraguay** stated that the Paraguayan authorities were perfectly aware that the Conventions on forced labour and on indigenous peoples were being violated. He explained that 95 per cent of the land in Paraguay belonged to big *haciendas* and that the extension of the development model based on cattle-raising in recent years had been at the expense of the indigenous peoples. The Government had provided little or no information on the debt bondage of indigenous communities. He drew attention to the Government's lack of political will to take any effective steps to eliminate forced labour. The most serious problems were the expulsion of the indigenous peoples from the Chaco and the debts incurred by workers to feed themselves, as it was the employers who fixed the prices for food. He stressed the particularly grave situation of women in domestic employment and the general state of extreme poverty and destitution in the country, especially among ethnic groups in the Chaco, and urged that an agreement be reached to eliminate forced labour.

The **Employer member of Paraguay** highlighted that the Employer delegation agreed with the statement made by the Government representative and stressed his group's commitment in helping to eradicate the problem of forced labour once and for all. The problem affected the Paraguayan Chaco, a large and sparsely populated area that was difficult to access, where inspections and monitoring were scarce owing to lack of budgetary and human resources. The employers in the country were supporting the Bill to create a Ministry of Labour, Employment and Social Security with the aim of tackling such problems and it had participated in tripartite work on the basis of Act No. 4788 (Comprehensive Act against Trafficking in Persons) of December 2012. The 78 inspections carried out had identified no cases of forced labour and the role of ILO technical capacity building in working towards complete eradication of the practice was important. He referred to the progress that it had been possible to make in applying public policies thanks to the creation of a regional labour office in the Chaco locality of Irala Fernández, although even more offices should be established. He highlighted the awareness-raising work on labour laws and social security issues carried out by the Federation of Production, Industry and Commerce and drew attention to programmes to fight child labour in sugar cane plantations and construction material plants

undertaken by the Paraguayan Industrial Union (UIP) – a member of the Federation – along with its participation in a forum for equal opportunities for women in the workplace, supported by the Ministry of Justice and Labour. He underlined the social responsibility programmes run by many enterprises and the judicial safety that prevailed in the country, and urged the members of the Committee of Experts to examine the reality in the country for themselves. He reiterated the will of the employers in the country to work with the trade unions and national authorities to achieve full respect for fundamental rights.

**The Government member of Colombia**, speaking on behalf of the Government members of the Committee which were members of the Group of Latin American and Caribbean Countries (GRULAC), highlighted that the Committee of Experts had taken note of the adoption by the Government of various measures designed to prevent forced labour, notably the creation in 2009 of a Commission on Fundamental Rights at Work and the Prevention of Forced Labour which had drawn up an action plan comprising awareness-raising measures, training for labour inspectors and the establishment of an office of the Department of Labour in central Chaco. She reiterated the commitment of the GRULAC countries to eradicating forced labour throughout the region and they encouraged the Government to keep up its efforts in that regard. They hoped that the ILO would continue its collaboration with a view to giving effect to the Convention.

**The Worker member of Brazil** recalled that the problem of forced labour in Paraguay was not a recent one. The Committee of Experts had been commenting on debt bondage in the Chaco region since 1998. The majority of indigenous peoples working in the Chaco region had only temporary jobs, were hired by intermediaries, and transported to the workplace far from their communities. Their work contracts were conducted orally, so that in the event of a breach of contract, the indigenous workers had no proper recourse and could not defend their rights. Among the most serious cases were situations on cattle farms where workers had worked a lifetime without remuneration except food. Such farms also employed women as domestic workers, whose remuneration did not cover the cost of transportation from their communities. Child labour was also present on these farms. The lack of land was at the centre of the vulnerability of these indigenous peoples, as 82 per cent of the country's land was owned by 2 per cent of landowners. The Government had adopted awareness-raising measures, but it was necessary to take measures to combat the forced labour and provide protection to the victims.

**The Worker member of the Bolivarian Republic of Venezuela** highlighted that her country watched what was happening to the indigenous peoples of the Paraguayan Chaco with great concern, as getting a person into debt so that they could then be coerced into working against their will, was not only a violation of the Convention but also of the most basic human rights. The case under discussion was that much more serious because it involved indigenous peoples of the American continent, and it represented a great step backwards in the social justice enshrined in the preamble to the ILO Constitution. What difference was there between slavery in the colonial era and the inhumane practices suffered by workers in the Chaco and their families, who in many cases worked for no more than bed and board? Concentrating land into large ranches increased the vulnerability of the area's indigenous groups and corruption prevented the public authorities from discharging their duties appropriately, as well as preventing the restitution of ancestral lands, which encouraged violations of the Convention. Politicians had tended to favour landowners and ranchers, a situation that had been aggravated by the coup d'état and affected in-

igenous people, peasant farmers, workers, and poor and vulnerable families in particular. She urged this Committee to take the appropriate steps to restore the rights of the indigenous peoples of the Chaco who were subjected to inhuman working conditions.

**The Worker member of the United States** underlined that the interviews conducted by the International Trade Union Confederation (ITUC) in Paraguay in 2012, pointed to the involvement of large landowners in cases of forced labour, particularly the Mennonite community. This had been verified by reports from the United Nations Permanent Forum on Indigenous Issues. The Mennonite community was one of the major agribusiness entrepreneurs, and had purchased a large amount of land in central Chaco. This had forced the indigenous populations to live in increasingly restricted areas, leaving only the option to work as labourers on ranches owned by Mennonites. These workers were subjected to conditions of forced labour, including women and children. The Government had indicated to the ILO that situations of forced labour had not been identified in the inspections carried out in ranches or major agricultural undertakings. However, the Government had never provided statistics on the number of cases where infringements of the Labour Code had been detected, the number of fines that had been imposed on employers or the compensation that had been granted to workers. State institutions were not present in several of the areas of central Chaco, including both labour inspection and health services. Despite several recommendations that the Government adopt a regional plan of action to combat forced labour, no action had been taken in this regard. Such a plan had to include the involvement of the Mennonite community. International support was also required for Paraguayan civil society and the Government.

**Another Worker member of Paraguay** indicated that the workers' situation in Paraguay had been the constant subject of the Committee of Experts' observations, and this was one of the worst forms of labour and exploitation. The Central Confederation of Workers (CUT) fully supported workers who were subjected to forced labour and urged the Government to take drastic and effective measures to ensure that the services of the Ministry of Justice and Labour reached the most isolated areas of the country, where both nationals and foreigners were liable to fall victim to forced labour. He requested the business sector's support in drawing up a tripartite roadmap to prevent and eradicate forced labour in Paraguay, and emphasized the importance of the cooperation of the social partners and the ILO. Forced labour affected not only the indigenous peoples of the Chaco but also the populations of Caaguazú, Alto Paraná and Canindeyú.

**The Government representative** stated that establishing a Ministry of Labour and Social Security was one of its top 100 priorities. The Ministry should transcend the temporary nature of a government, particularly as the Committee of Experts and the trade union federations had both recommended that it be established. A department of indigenous labour and a special team of inspectors to identify forced labour should also be set up within the Ministry of Justice and Labour, with free, prior and informed consultation of indigenous peoples. Several developments had taken place in the fight against forced labour, in collaboration with the local ILO Office in Paraguay: (i) a study of the existing legislation on forced labour, linking it to the legislation on child labour; (ii) regional workshops to gather information, in preparation for the national strategy on the prevention of forced labour, focusing on prior consultation with indigenous peoples, so that they could set out the most appropriate and coherent roadmap with which to tackle that issue and consultations would be carried out in central Chaco, in the Department

of Itapúa, in the locality of Juan Caballero and in the capital. Specific workshops would also be organized with representatives from indigenous organizations, entrepreneurs, trade unions and civil society; and (iii) meetings with the Director of the ILO International Labour Standards Department and the Office specialists on forced labour and indigenous and tribal peoples. The speaker highlighted some of her Government's achievements, such as the adoption by the Executive of the National Human Rights Plan, with the involvement of civil society and the cooperation of the United Nations High Commissioner for Human Rights. Several training and professional education courses had been organized to enable participation, especially young people of working age and members of the native communities of the Chaco and the eastern region to acquire abilities and skills that would give them access to decent work. Furthermore, restructuring had taken place within the Committee responsible for giving effect to the judgments of the Inter-American Court of Human Rights and the recommendations of the Executive Inter-Institutional Commission for Compliance with International Judgements (CICSI). It would be in charge of adapting domestic legislation in an effort to find an effective solution to the devolution of ancestral lands to indigenous communities. Existing domestic legislation did not provide for any procedural remedies that enabled those lands to be devolved. In addition to those plans, the Government had a long history of defending workers' rights and preventing forced labour, such as Act No. 4788 (Comprehensive Act against Trafficking in Persons) of 2012 against trafficking in persons, and the ratification of the Domestic Workers Convention, 2011 (No. 189). Reaffirming her Government's commitment to fighting forced labour, in close collaboration with the social partners and the ILO, she urged the ILO to set up a permanent office in Paraguay, with the aim of making solid progress in the struggle to improve working conditions.

The Employer members took note of the Government's goodwill to overcome the present difficulties, in particular the recent adoption of measures to prevent trafficking in persons, the continuation of the tripartite programme to prevent forced labour, awareness-raising workshops for civil servants and indigenous people and training for workers in the fishing and domestic service sectors. They also took note of the strengthening of labour inspection in the Chaco region, especially in the locality of Teniente Irala Fernández, and of the legislation that would shortly be adopted to create a Ministry of Labour and Social Security, which would have a special division for indigenous peoples. The Employer members also took note of the Paraguayan workers' request that further measures be taken to prevent forced labour and that support be given to indigenous communities, particularly in the sugar industry, domestic work and cattle rearing. The Government should implement a regional action plan to strengthen institutions and should work with the social partners to provide opportunities to indigenous peoples with a view to preventing forced labour and child labour. The Employer members considered that the recently elected Government should continue receiving ILO technical assistance in order to bring national legislation and practice fully into line with the Convention and expressed the hope that, in its next report, the Government would be able to comment on its progress. They also asked the Office to include information on Paraguay in its general report on technical cooperation worldwide.

The Worker members underlined that, for them, there were two major issues: the question of debt bondage and more general problems relating to the rights of the indigenous peoples of Chaco; and the question of prison labour and the conformity of Act No. 210 with the Convention. With regard to those two issues, they deplored the re-

peated failure to comply with the provisions of the Convention and the continuing inertia of the Government. The Worker members asked for technical assistance to be strengthened and expanded to encompass all interested parties, including the indigenous peoples, who formed an alliance with the trade unions. The technical assistance might usefully focus on the following four components: drawing up a tripartite regional action plan to reinforce actions that had already been taken, but were still insufficient in terms of the prevention and elimination of forced labour and the protection of victims of forced labour and debt bondage; increasing labour inspection resources, especially in relation to work on ranches; allocating sufficient material and human resources to the competent authorities for receiving workers' complaints and reports of forced labour; and ensuring, in connection with the application of Convention No. 169, consultations with indigenous peoples on administrative and legislative measures affecting them, particularly with respect to territorial and social security issues. The Worker members expressed their agreement with the Employer members to request the Government to prepare a report on the application of the Convention and send it as soon as possible.

### **Conclusions**

The Committee took note of the statement by the Government representative and the discussion that followed. The Committee recalled that it had discussed this case in 2008 and in particular the situation of the Paraguayan Chaco indigenous workers who were trapped in debt bondage. The Committee noted that the outstanding issues concerned the need to take measures to strengthen the action of the different entities involved in the fight against debt bondage in the Chaco region.

The Committee noted the comprehensive information provided by the Government representative outlining the various measures taken to combat debt bondage in the Chaco region, in particular the formulation of a national strategy for the prevention of forced labour as well as the carrying out of awareness raising and training activities. Concerning the situation of vulnerability faced by indigenous workers, the Committee noted the information provided by the Government representative in relation to the measures taken to combat poverty, including training and professional education courses and the civil registration programme. Finally, the Committee noted that the Government would make an effort to find an effective solution to the devolution of ancestral land to indigenous communities.

The Committee also noted the deep concern expressed by several speakers regarding the persistence of the economic exploitation faced by indigenous workers in certain sectors, particularly the agricultural sector. The Committee therefore expressed the firm hope that the Government would take immediate and effective measures in the framework of a coordinated and systematic action to protect indigenous communities in the Chaco from the imposition of forced labour. The Committee stressed the importance of adopting a tripartite regional action plan, which would define priorities and specific goals, with regard to the prevention and protection of victims, and would identify the entities responsible for the implementation of such measures.

While it considered that the measures adopted to combat poverty were important, the Committee hoped that the Government would take into account the fact that the programmes implemented needed to have the objective of ensuring the economic independence of those who were victims of debt bondage and to include support and reintegration measures for victims. The Committee requested the Government to take measures to improve the economic situation of the most vulnerable categories of the population so that they could escape from the vicious circle of dependence.

With regard to the issue of the prosecution of those who exact forced labour, the Committee expressed its serious concern at the lack of information on cases brought to justice. The Committee urged the Government to take appropriate measures to ensure that in practice victims were in a position to turn to the competent judicial authorities. In this regard, the Committee recalled the importance of having sufficiently specific provisions in national legislation to allow competent authorities to prosecute and punish the perpetrators of such practices. Furthermore, the Committee urged the Government to take measures to strengthen the capacity of the relevant public authorities, in particular the labour inspection, so as to enable them to deal effectively with the complaints received, to identify victims and restore their rights in order to prevent them from being trapped again in situations of forced labour. In this regard, the Committee underlined the importance, given the geographical particularities of the Chaco region, to ensure that the labour inspectorate had adequate resources to access workers in remote areas.

Regarding the need to bring the Act on the prison system (Act No. 210 of 1970) into conformity with the Convention, by ensuring that prisoners awaiting judgment and persons detained without being convicted were not subject to the obligation to perform prison work, the Committee expressed the firm hope that the Government would take the necessary measures in order to ensure that, in the framework of the adoption of the new Penal Code of Procedure, national legislation would be brought into conformity with the Convention.

Noting that the Government had reaffirmed its commitment to put an end to bonded labour in the indigenous communities of the Paraguayan Chaco as well as in other parts of the country that may be affected, the Committee hoped that the Committee of Experts would be able to note tangible progress in its next examination of the case in 2013. It also requested the Office to provide strengthened and expanded technical assistance to encompass all interested parties, including the indigenous peoples.

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#### Labour Inspection Convention, 1947 (No. 81)

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##### MAURITANIA (ratification: 1963)

A Government representative emphasized that since 2009 the country's labour administration, which had previously been somewhat abandoned, had received special attention from the President of the Republic and valuable ILO technical assistance and the United Nations Development Programme (UNDP). He asserted that the allegations presented by the General Confederation of Workers of Mauritania (CGTM) regarding the lack of independence of labour inspectors and the lack of resources for them to do their work were inaccurate and smacked of disinformation. The 40 labour inspectors and controllers recently recruited had been selected through a highly selective competition, after which they had been provided with more than two years' high quality theoretical and practical training. Through a UNDP-administered project to improve workers' skills in the administration and in public services, the regional labour inspectorates now had significant equipment and resources for their work. Labour inspectors, who already enjoyed a special status that guaranteed them legal protection, would shortly benefit from a status reinforced by financial benefits which would ensure their independence and impartiality. From the technical standpoint, ILO support in the form of a methodological labour inspection manual had been of great importance. The annual report of the labour inspectorate was almost ready for publication and would in future be sent on a regular basis. However, it had not been possible to put the statistics applied by regional labour inspector-

ates to good use because of a shortage of labour statisticians, he therefore requested ILO technical assistance to reinforce the capacity of the labour administration in that area. With regard to the CGTM's allegations concerning occupational diseases, he insisted that they were unfounded and that neither the National Social Security Fund nor the national occupational health office had had cause to cite any occupational diseases in the enterprises referred to by the CGTM. In conclusion, he said that it was his country's objective to build up a competent and well-equipped labour inspection system working closely with the social partners and that the conclusions of the Conference Committee would serve as a useful catalyst in that regard.

The Worker members regretted that the Government had for over 30 years, despite the insistence of the Committee of Experts, persistently refused to respect the spirit and letter of the Convention. The Government had taken no effective steps to institute a labour inspection system within the measures of Article 1 of the Convention, nor had it fulfilled its obligation under Article 6 to give labour inspectors a status guaranteeing their independence and impartiality. To show just how little importance the Government attached to labour inspection, the 2007 decree granting labour administration a special status did not grant the employees concerned the same allowance to which other administrative bodies were entitled. They referred to cases in which labour inspectors had been refused entry to workplaces in total impunity. They indicated that, in accordance with Article 3(2) of the Convention, labour inspectors should devote most of their time to monitoring workplaces. However, the real problem was that labour inspectors had neither the operational funds, the means of transport or the local offices to discharge their duties. As to human resources, there were only 70 inspectors and controllers for the entire country. They recognized the importance of the methodological manual on labour inspection that the ILO had prepared. But, they noted that it called for the extension of the scope of labour inspection to informal enterprises, the number of which was steadily increasing, which even further highlighted the inadequacy of the means available to the labour inspection services. They reaffirmed the imperative nature of the principle of employment security and the independence of labour inspectors from changes of government or from any external influence. They also expressed regret that the Government had refused to recognize the trade union that inspectors had wished to form. The Government still needed to understand that the publication of an annual report on the activities of the labour inspection services was an obligation under Article 20 of the Convention, as well as a valuable tool for assessing and enhancing the effectiveness of inspection activities. Having mentioned a number of other problems, such as difficulties of recruitment and shortcomings in the organization of labour administration, they emphasized that the allocation of funds by the Government remained the key to ensuring that the State was able to discharge its obligations under the Convention. The Committee must identify all such shortcomings and failures so as to request the Government to take all necessary steps to give full effect to a Convention the importance of which could not be underestimated.

The Employer members reviewed the background of the case, which had been double-footnoted in 2012. Although the Convention had been ratified in 1963 and the Government had shortly thereafter drawn up implementing regulations with ILO assistance, the Committee of Experts had made 14 observations drawing attention to problems of implementation. The Employer members had noted with regret in 2000 that, in view of the time that had passed since ratification and the adoption of the regula-

tions, there had been a significant lack of progress. The lack of labour inspectors on the ground meant that the Government could not supply reports to the Committee of Experts for evaluation, and the absence of such reports indicated the absence of a functioning labour inspection system. Although the Government had indicated that it had an inspection service comprising eight regional offices coordinated by a central service, it was not able to provide details and statistics to support that claim. Despite the adoption in 2007 of special regulations for the labour administration establishing the status of labour inspectors and controllers, it remained clear to the Committee that labour inspectors still did not have the independence necessary to properly perform their functions. The Employer members noted the comments of the CGTM emphasizing that labour inspectors had less than satisfactory conditions of work and lacked financial and material resources. This year, the Government representative had stated that 40 labour inspectors had been recruited since 2009 and had undergone a two-year training course, but no such information had been included in the Government's reports submitted from 2009 to 2012. The Government had also advised that a number of ILO training courses had been undertaken since 2008, labour inspectors had received a methodological guide, a "tool kit" for inspectors had been devised and would be received during the course of 2013 and that, with World Bank assistance, there had been improvements in the equipment of labour inspectors. However, no information had been provided on the nature of this equipment or whether it had been deployed and training provided to inspectors in its use. The Employer members called upon the Government to provide information on projects and initiatives without delay, and to implement with ILO technical assistance the Decent Work Country Programme, which was in the process of being concluded. Finally, they urged the Government to ensure the implementation of the measures called for in previous comments of the Committee of Experts, including the need for effective cooperation between the labour inspectorate and the judiciary, the availability of statistics concerning workplaces liable to inspection, and the need for the publication of an annual report on the operation of the inspection services.

A **Worker member of Mauritania** emphasized that the role of labour inspectors was even more vital in Mauritania because the legislation was constantly being violated and there was no culture of social dialogue and collective bargaining. Moreover, the country was very large and road infrastructure was poor, numerous multinational enterprises had set up in the country, which had increased subcontracting and precarious work, and forced labour was widespread. Despite that, and the many calls from the supervisory bodies and trade unions, the Government had remained inflexible and refused to take the necessary measures to ensure that the labour inspection services were in a position to cover the entire country effectively and guarantee legal protection for workers. For that purpose, the inspection services needed to have sufficient trained staff, adequate material and logistical resources and the power to issue warnings and penalties to enterprises that failed to respect labour legislation. Of the 13 regions, seven had inspection offices, but three were ill-suited to the task. Some had no vehicles, which meant that inspectors could not respond to requests and complaints from workers in remote areas. As a result, and as the situation had not improved, the Government should be called upon to take rapid action to create appropriate working conditions for inspectors, recruit a sufficient number of inspectors, guarantee continuous training, open properly equipped offices where they did not exist and enhance the powers of inspectors to impose sanctions.

**Another Worker member of Mauritania** acknowledged that labour inspection was facing several problems, which could only be resolved through common efforts. The Government had made some efforts, particularly by recruiting a number of labour inspectors, but much remained to be done, especially for training. However, he wished to highlight that national political interests should not be brought before this international body, where some parties might be tempted to exaggerate problems for reasons of political expediency.

**The Worker member of France** emphasized that any legislation should be accompanied by a labour inspection system to monitor its application, in both law and practice. For some years, the Committee of Experts had been requesting the Government to make efforts to give effect to the provisions of the Convention. The function of inspection services was made even more difficult by the immense territory they had to cover with very few resources, which made supervision almost impossible. Moreover, they should be free to carry out supervision and to report any violations they identified in full transparency. The Government had confined itself to reiterating its 2009 statements concerning the recruitment of 40 labour inspectors. However, the Government had been requested to take the necessary steps to ensure that labour inspectors received adequate training and had the powers and resources necessary to take effective action. The Government had made no progress in that regard. As a result, it should again be requested to take prompt action to enable labour inspectors to fulfil their supervisory and advisory functions by providing them with material resources, and to focus on inspection with a view to eliminating child labour, which was becoming increasingly widespread.

**The Worker member of Denmark**, speaking on behalf of the Worker members of other Nordic trade unions, expressed deep concern at the complete lack of a labour inspection system in Mauritania. He recalled that there were 80 inspectors in total and only one inspector was appointed to cover five regions without access to indispensable transport and communication facilities. The lack of a sufficient number of inspectors made it impossible to guarantee the confidentiality of inspections and to ensure an effective collaboration between inspectors, employers and workers. Furthermore, labour inspectors were the only public employees who had not been granted the allowance awarded to all other administrative departments by a 2007 decree. The inadequacies of the labour inspectorate had a particularly strong impact on child labour in the country. Although the United Nations Children's Fund (UNICEF) and the United Nations Committee on the Rights of the Child reported a high incidence of child labour, particularly in the agricultural sector, and the existence of caste-based slavery, no child labour investigation had taken place for the past year. He concluded that the Government had offered no proof of its commitment to comply with its obligations under the Convention. The Committee should therefore urge the Government to establish a functioning labour inspection system.

**The Government representative** wished to dispel some confusion which seemed to have arisen during the discussion concerning the surface area of the country. Although Mauritania was a vast country of 1.3 million square kilometres, only one third of that area was inhabited. The number of employees in the country was 90,000 concentrated in four urban centres. The inspection offices were located in areas where there was a concentration of enterprises and it would be unreasonable to open inspection offices in areas where there were no workers. Moreover, it should be noted that the situation had changed in Mauritania since the examination of the case in 2000 by the Conference Committee. All inspection services now had



vehicles and offices which were properly equipped with computers, telephones, etc. With regard to the question of the allowance that had not been paid to labour inspectors, the decree granting the allowance was being finalized. Finally, he acknowledged that the absence of annual reports represented a problem, as such reports enabled an evaluation of the inspection services. ILO assistance would be very useful in that respect and to help the country compile reliable labour statistics.

The Worker members emphasized that the present case was a serious one, as shown by the footnote to the observation of the Committee of Expert. The key question was whether or not inspectors were in a position to discharge their mandate. The Government should therefore take the following measures: the establishment of a labour inspection system based on the socio-economic aims contained in the Convention; the creation of a system to monitor application of the Convention; the strengthening of human resources in the inspection service by recruiting a sufficient number of labour inspectors; the provision to labour inspection services of operational offices; the allocation to inspection services of financial and material resources; and the provision of annual reports to the Office on the activities of the inspection services and a report on the progress achieved for examination by the Committee of Experts at its next session.

The Employer members reiterated that labour inspection was crucial for any labour relations system to function properly. While it might be true, as the Government claimed, that the number of labour inspectors had increased and that the labour inspection services were concentrated in urban areas rather than being spread out, the Government had not provided any indication on the effectiveness of those services. Labour inspection was the face of accountability in matters of labour relations in a country and therefore labour inspectors should be professional and independent, should carry a sense of authority and their work should be backed by effective sanctions.

### Conclusions

The Committee noted the statement by the Government representative and the discussion that followed relating to various issues including the effective functioning of the labour inspection system on the territory of the country, the lack of human and material resources including transport facilities, insufficient salaries and benefits and the lack of independence and stability of employment of labour inspectors.

The Committee noted the Government's indications concerning its efforts to establish an effective and well-structured labour inspection system with the necessary material and human resources. It noted the information on the recent recruitment of 40 additional labour inspectors and controllers and their subsequent training for two years at the National Administration Institute (ENA) in addition to practical training, and the indications that labour inspectors had at their disposal improved equipment and material means, as well as a methodological guide and a "tool kit" that had been drafted with ILO support. The Committee also took note of the information that labour inspectors would soon be granted a particular status with financial advantages of a nature such as to guarantee their independence and impartiality, and that the Government was in the process of finalizing the annual report for submission to the ILO. It noted the Government's request for technical assistance.

While noting the information on the progress made, the Committee also noted that the issues concerning the insufficient wages and benefits of inspectors, the lack of independence and stability of employment of labour inspectors, as well as the failure to communicate to the ILO annual reports on the work of the labour inspection services were all issues

which had already been raised in the discussion of the case in 2000, as well as in the Committee of Experts' reports for three decades. The Committee deeply regretted the lack of progress made since that time.

With regard to the status and conditions of service of labour inspectors in particular and the recruitment of inspectors with sole regard to their competence and qualifications, the Committee emphasized that failing to provide inspectors with remuneration commensurate with their responsibilities was likely to lead to situations in which labour inspectors would find themselves treated with disrespect, detracting from their authority. Emphasizing that these matters had been pending for decades, the Committee expressed the firm hope that the Government would soon take the necessary action in keeping with Article 6 of the Convention to take the announced measures that offered labour inspectors stability of employment and independence as regards changes of government and improper external influences. It further stressed that the publication of annual inspection reports containing the statistical information required under Article 21 of the Convention was important to enable an objective evaluation of the progress referred to by the Government.

The Committee emphasized the importance of the functioning of an effective labour inspection system in the country and the need to strengthen the human, financial and material means available to the labour inspection services to enable them to cover all workplaces liable to inspection. It expressed the firm hope that labour inspectors would have suitably equipped offices and would be able to carry out effective inspections and to prepare and send annual inspection reports to the ILO. It also requested the Government to provide a detailed report to the Committee of Experts addressing all the issues raised by this Committee and the Committee of Experts for examination at its next meeting. The Committee asked the ILO to provide technical assistance to the Government as requested by it to strengthen the labour inspectorate. It requested the Government to put in place a national mechanism to follow up on the application of the Convention in the country.

### PAKISTAN (ratification: 1953)

The Government provided the following written information.

The Committee of Experts had requested the Government, in its observation made at its last session (November–December 2012), to clarify the extent to which the provinces, following the Constitutional Amendments of 2010, were still subject to legally binding guidance given at the federal level in the field of labour, including on labour inspection, and the extent to which competence in the field of labour in this respect would remain at the federal level. The Government, in reply to this request, indicated that following the 18th amendment to the Constitution, the subject of labour had been devolved to the provincial governments, which now assumed full responsibility for labour legislation and administration. Through the enactment of the Industrial Relation Act of 2012, the federal Government assumed the function of registration of inter-provincial trade unions, conciliation and adjudication on industrial disputes, and some other related matters. The former Ministry of Human Resource Development, now regrouped under the Ministry of Overseas Pakistanis and Human Resource Development, continued to assume the responsibility to interact with provincial labour departments on the application of international labour standards and to report within the supervisory mechanism on ratified ILO Conventions.

The Committee of Experts had further asked the Government to specify the implementation measures that had been taken at provincial level with regard to the subjects and points raised by the Committee previously in relation to the 2006 and 2010 labour inspection policy documents

## Labour Inspection Convention, 1947 (No. 81)

Pakistan (ratification: 1953)

and, if so, to specify those measures. The Government indicated in that regard that, under the 18th Amendment to the Constitution, all previous laws and regulations on workers' rights at the workplace were protected under the new article 270 AA, until they were annulled, amended or repealed by provincial parliaments being the competent authority. Article 270 states: "Notwithstanding omission of the Concurrent Legislative List by the Constitution (Eighteenth Amendment) Act 2010, all laws with respect to any of the matters enumerated in the said list including Ordinances, Orders, rules, by-laws, regulations and notifications and other legal instruments having the force in Pakistan or any part thereof, or having extra-territorial operations, immediately before the commencement of the Constitution (Eighteenth Amendment) Act 2010, shall, continue to remain in force until altered, repealed or amended by the competent authority." The provinces were also responsible for implementing all measures in connection with the Labour Policy 2010, the Inspection Policy 2006 and national plans of action, including the tripartite Occupational Safety and Health Council. Efforts were under way at the level of the provinces to rationalize labour laws under the Decent Work Country Programme, in consultation with the social partners. The Prohibition of Employment of Children Act had already been drafted by all the provinces. They had also promulgated the provincial laws on industrial relations.

The Committee of Experts had also asked the Government to provide copies of any labour laws adopted in the provinces and to indicate any other legal texts which, in accordance with Parts I and II of the report form, implemented the provisions of the Convention at the provincial level. It had also requested the Government to provide information on the mandate and operation of the coordination mechanism at the federal level, and any institutional arrangements envisaged and/or created in this respect. The Government indicated in this regard that, as the provinces were still in the process of finalizing their laws, the copies of amended/adopted laws would be provided as soon as this task was completed. The laws still in force were the following: the Factories Act 1934; the Shops and Establishments Ordinance 1968; the Payment of Wages Act 1936; the Workmen Compensation Act 1926; the Employment of Children Act 1991; the Road Transport Workers Employment Ordinance 1969; the Minimum Wages Ordinance 1961; and the Minimum Wages for Unskilled Workers Ordinance 1969. Under the new system, the provinces would play a much more proactive role in applying ILS and reporting through the federal Government. This would require strengthening the capacity of the Ministry responsible for human resources development to coordinate with provincial departments and report to the ILO supervisory bodies. It also required a compliant labour administration with the active involvement of employers' and workers' organizations. In this respect, the Government had initiated a project with the assistance and guidance of the ILO, and the Government fully appreciated the role of the ILO and was looking forward to early completion and the functioning of this key project as soon as possible.

Furthermore, the Committee of Experts had requested the Government to clarify whether the restrictive policy banning labour inspections had also been abandoned in the Province of Sindh and/or in other provinces and, if not, to indicate the measures taken at the competent level to bring the labour inspection policy into line with the requirements of the Convention so that labour inspectors could perform their duties in accordance with the provisions of the Convention. The Government indicated that there was no ban in the Province of Sindh or any other province on inspection. Details of inspections by the Sindh Labour Department from 2008 to 2012 were: (i)

number of inspections: 2,540 in 2008, 2,628 in 2009, 1,836 in 2010, 2,259 in 2011 and 2,086 in 2012; (ii) number of prosecutions: 1,296 in 2008, 508 in 2009, 445 in 2010, 2,833 in 2011, and 398 in 2012; and (iii) number of relevant decisions: 732 in 2008, 299 in 2009, 342 in 2010, 335 in 2011 and 176 in 2012.

Noting that the Amendment to the Constitution might result in changes in the organization and legal framework applicable to the labour inspection system in the provinces, the Committee of Experts had also expressed its wish to receive more information, in accordance with Parts I and II of the report form, including, but not limited, to: (i) the organizational structure (if possible with organizational chart) and administrative arrangements; the central authority at the provincial level competent for labour inspection in each province; (ii) the legislative framework for labour inspection at the provincial level, including any law on labour inspection, concerning the status, powers and obligations of labour inspectors in each province; (iii) statistics on the number of labour inspection staff per office in each province; and (iv) the material means available, such as office facilities, means of transport for inspections and applicable reimbursement rules. The Government had indicated in this regard that the provinces were responsible for the implementation of labour laws in industrial and commercial establishments. The Provincial Directorate of Labour Welfare through their field formation carried out inspections in establishments under various labour laws. The field formation comprised labour inspectors, labour officers, Assistant Directors, Deputy Directors and Director/Joint Directors. Labour inspectors carried out inspections in shops and establishments, while labour officers were responsible to conducting inspections in industrial units under the various labour laws applicable. Assistant Directors, Deputy Directors and Director/Joint Directors conducted super inspections of the work carried out by labour inspectors and labour officers. In case of violations of labour laws, those responsible were prosecuted by the concerned inspectors. Following the 18th Constitutional Amendment, a coordination mechanism existed at the federal level. Transport facilities were given to the inspection staff in Balochistan. In other provinces, this facility was available to Joint Directors and above.

Finally, the Committee of Experts had asked the Government to take the necessary steps to ensure that annual inspection reports were published by each province containing detailed up-to-date information on the subjects covered by Article 21 of the Convention. The Government, in reply to this request, indicated that the report has been published up to 2007 and that the observation of the Committee had been noted with a view to compliance.

In addition, before the Committee, a **Government representative** stated that his Government attached great importance to the work of this Committee and considered that the expertise provided through the ILO supervisory system and the social partners helped governments to apply ILO Conventions in a more effective and fruitful manner. Over the past three months, Pakistan had been in the process of democratic transition with an interim government in place for conducting national and provincial elections. He sought the social partners' understanding for the fact that the interim government had not been able to make adequate preparations for participation in the Conference, and that the newly elected Government had only recently been able to finalize the workers' and employers' delegations that would be reaching Geneva on 11 June 2013. He emphasized that the Government deeply deplored the tragic accident at a factory in Karachi in which many innocent lives had been lost, and assured the Committee of its strong commitment to fully investigate the accident through a judicial tribunal and to work on an

urgent basis in consultation with the workers' and employers' federations, as well as the ILO, to avoid the recurrence of such accidents in future. The Government had also taken steps to provide compensation to the victims and their families.

He added that the Government had signed a Joint Statement of Commitment with the ILO and the social partners, on the basis of which a plan of action would soon be finalized which would address the issue of labour inspection and safety of workers in its entirety. As regards the specific comments of the Committee of Experts, Pakistan had ratified the Convention in 1953. Ever since ratification, the Government had enacted a number of laws and policies to give effect to the measures laid down in the Convention and had also put in place inspection machinery which administered those laws. He concluded that, by empowering the provincial governments on the legislative and technical fronts, the inspection system would be strengthened. The Government would continue to place considerable emphasis on improving the working environment. The focus of the inspection system in the country would be on the prevention, protection and improvement of conditions of work for all workers in all workplaces, including those employed in small and medium-sized enterprises or engaged in informal economic activities, with punishment for non-compliance.

**The Worker members** wished to make a preliminary statement concerning the late appointment of Workers' and Employers' delegates of Pakistan to the Conference. Even though the Conference invitation had been sent to the Government in February 2013, it was only in May that a very small delegation had been formed and approved for a limited period of ten days (11–21 June). That decision had been taken even though the Government knew that the case of Pakistan appeared on the long list of cases before the present Committee. It should be emphasized that the situation was unjustifiable and therefore unacceptable, since it was absolutely impossible for the workers of Pakistan to report on their situation in the Committee. Such a situation should not have the effect of weakening the conclusions that the Committee would adopt.

The Worker members said that for a very long time the Government of Pakistan had not sent any report or information due under Articles 20 and 21 of the Convention or, if it had, such information was incomplete and did not allow any evaluation of whether the Convention was actually being implemented. Furthermore, the concise information provided in 2008 did not contain any reply to the observation of the Committee of Experts or to the points raised in 2006 and 2007 by the Pakistan Workers Federation (PWF), and the report sent by the Government in 2010 merely reproduced the information which had previously been sent in 2007. In 2011, the Committee of Experts had pointed out that the report due had not been received. However, the Government had replied to the observations made by the Pakistan Workers Confederation (PWC) in March 2012 on the implementation of labour inspection policy and had indicated that the planned policy (establishment of computerized registries, the "one inspector, one enterprise" approach, training of inspectors, etc.) had encountered institutional problems relating to the division of legislative powers between the provinces and the centre. They regretted that that reform had been blocked even if, according to the Government's last report, the provinces were in the process of drawing up new labour legislation, including in the area of occupational safety and health, as part of the ILO Decent Work Country Programme. The Government had not supplied any information on the specific question of the establishment of a new labour inspectorate. Moreover, it could not use the argument relating to the distribution of powers between the provinces and the central level to evade its

obligations under the Convention. The wording of article 19(7)(b) of the ILO Constitution dealing with the application of standards by federal States showed clearly that that argument was baseless. Furthermore, they recalled that the PWC and the All Pakistan Federation of United Trade Unions (APFTU) had indicated that the labour inspection system of Punjab and Sindh provinces had become ineffective further to the adoption of restrictive policies obliging labour inspectors to obtain the employer's permission before carrying out an inspection. These organizations had also drawn attention to the abolition of inspection visits and their replacement by a voluntary self-declaration mechanism, and also to federal restrictions, which had resulted in an increase in child labour. It should be noted that the Government had stated in March 2012 that the Government of Punjab had abolished the system which had been the subject of criticism.

The Worker members declared that it would be interesting to receive full information from the federal Government on the situation of labour inspection in all provinces, especially the number of enterprises by province, the exact number of workers and of inspections actually carried out, and also on issues raised during inspections. However, that information should not replace the annual inspection reports which had to be supplied under the Convention. The Government initiative to draw up a summary table of the situation for four months of 2012 which, incidentally, showed a total lack of efficiency, should be pursued and expanded, and the annual inspection reports should be published as requested by the Committee of Experts. Recalling the central role of the priority Conventions, and particularly Convention No. 81, the Worker members emphasized that it was necessary not only to pursue the strategic approach envisaged by the Governing Body, but also to adopt a realistic approach to make the Government understand that the Convention was not the source of administrative burdens, but constituted a tool at the service of employers, workers and the Government itself.

**The Employer members** expressed their regret that Workers' and Employers' delegates had only received that very day approval to attend the Conference. This situation undermined the tripartite nature of the Committee and the ability to have a constructive dialogue, particularly in view of the fact that this case was being heard for the first time. The present case related to Convention No. 81, which was one of the four ILO governance Conventions. The Convention dealt with the service of labour inspection which, as regards organization and sustainability, mostly concerned governments. However, its implementation impacted on employers and on the general perception of investors in a country with respect to a variety of matters such as the rule of law and the ease of doing business. The Employer members considered that labour inspection should be flexible and able to respond to the challenges of the world of work through an adequate use of resources. Resources should also be devoted to health and safety protection for workers. That allocation of resources would benefit both the employer and the worker. A good system of labour inspection was a fundamental element for effective labour administration: labour inspection was at the service of employers, as well as workers, and both workers and employers should benefit from information, services and better understanding of their respective roles and responsibilities.

The Employer members observed that in general that the Committee of Experts had raised concerns about the labour inspection system following the adoption of restrictive policies in the provinces. It was the 14th observation made by the Committee of Experts on the application of the Convention in Pakistan. Positively, while the Worker members had reiterated the restrictions contained

in the laws, the Employer members wished to highlight that the Government had also indicated that certain strategies in the Punjab province had not had the desired effect, which demonstrated a critical reflection on what was working and what was not. The information requested by the Committee of Experts on how labour inspection was structured and functioning was important to ensure that there was no legal vacuum. It was also important to determine the priority mechanisms for inspection and the resources available (people and materials) so that resources could be allocated to the publication and distribution of annual inspection reports. The Employer members noted the reference to increases in child labour due to inadequate labour inspection and considered it a matter of concern, although the information provided had not come with a data-driven baseline and required careful monitoring. They emphasized that Convention No. 81 was a flexible instrument, as it allowed the exclusion of some sectors from its application (for instance mining or transport) and the definition of the branches subject to inspection (through a declaration annexed to the ratification of the Convention). They considered that the main challenge related to this Convention was the lack of resources to ensure the proper functioning of labour inspection. Therefore, countries such as developing countries were obliged to give priority to some types of inspection. The labour market in Pakistan was characterized by a higher degree of informality (around 80 per cent) and it was important that particular priorities were established to ensure the effective functioning of labour inspection, which was arguably in a very early phase of development.

They referred to their comments during the general discussion concerning the relevant General Survey on labour inspection to the effect that it was necessary to be realistic, for example, through the definition of priorities that could be covered with existing resources, finding new ways to use resources more effectively, especially by employing new technologies and elaborating strategies aimed at extending labour inspection progressively. In this regard, they encouraged the Government to take a strategic approach to managing the challenges at hand, in consultation with the representative employers' and workers' organizations, so as to avoid serious matters, such as the increase on child labour due to the inadequacy of labour inspection systems.

**The Government member of the Islamic Republic of Iran** highlighted the recent democratic election in Pakistan and the peaceful transfer of power. Although belatedly, he expressed his Government's condolences to the families of the workers who had lost their lives in the Karachi fire in September 2012, described as the deadliest industrial accident in the history of the country. Pakistan had ratified 34 ILO Conventions, including all the fundamental and priority Conventions, and the Government and its social partners had the political will to fully implement the obligations arising from the respective Conventions by actively engaging with one another and the ILO. He acknowledged the 18th Amendment of the Constitution of Pakistan, which tended to ensure maximum decentralization and provincial autonomy. The Government's initiative to devolve a number of important matters including labour relations and labour inspection to the provincial levels entailed radical restructuring of the federal and provincial bureaucracy. His Government expected that the ILO would appreciate the gravity of the complex transition period and provide the necessary technical assistance to the Government. He expressed his Government's hope that the social partners would bear with it during the transition process. His Government also expected that the Office would allocate additional resources to the promotion of the ILO priority Conventions in the Asia and Pacific region, particularly for highly populated States like

Pakistan, where the full implementation of those Conventions remained a priority.

**The Worker member of Japan** stressed that effective labour inspection was essential to ensure that the rights of workers as expressed in domestic law were protected. As in Bangladesh, the absence of effective labour inspection in Pakistan had had tragic consequences since the last session of the Conference. On 11 September 2012, a fire had started in the basement of a factory in Karachi and had quickly spread to engulf the three upper floors of the building. All exits had been locked or blocked at the time of the fire and many of the windows had been covered by iron bars, condemning over 300 workers to death, many of whom had been the sole source of income for their families. She emphasized that the factory had received SA8000, certification that it had met international standards in areas including health and safety, child labour and minimum wages. Subsequent reports had demonstrated that the factory audits undertaken by a private auditing firm had been deeply flawed. Surviving workers had explained that they had been warned of a visit by inspectors and coached to lie about their working conditions, under threat of dismissal. There were roughly 10,000 industrial units and five industrial estates in Karachi that employed hundreds of thousands of workers, with the only difference to that factory being that they had not yet caught fire. Measures necessary to ensure occupational safety and health were completely absent in industrial units, and the Government did little to ensure that such measures were taken. The Sindh province, in which Karachi was located, had no functioning labour inspection system and thus no regular inspection of industries. Despite the employers' legal obligation to ensure that workplace hazards were minimized or eliminated, they had little incentive to bear the costs necessary to meet this obligation, knowing that they would never be held accountable by the Government. As of the late 1990s, administrations in Punjab and Sindh, under pressure from the industry lobby, had barred labour inspectors from entering factory premises. The Punjab province had recently overturned the ban. In the Sindh province, inspectors were required to provide prior notice of inspection to management, thus ensuring that the inspection would be a complete farce. One of the key problems was that the subject of labour relations had been devolved entirely to provincial governments. Before the constitutional amendment in 2010, all labour laws had been promulgated by the federal Government and implemented by the provinces. Following the amendment, the federal Government no longer had the power to legislate on labour-related matters, including labour inspection. The provincial governments had developed laws on labour relations which, in the absence of coordination, had led to a patchwork of labour laws and regulations which did not meet international standards and often replicated the inconsistencies of the 2012 Industrial Relations Act. The provinces had not yet promulgated labour inspection legislation and had no obligation to respect the inspection policy adopted by the federal Government in 2006.

**The Government member of Turkey** indicated that he took note of the great efforts demonstrated by the Government of Pakistan in the process of the 18th Amendment to the Constitution, which ensured maximum provincial autonomy by devolving a number of important issues, including labour relations, from the centre to the provinces. He considered that this development marked a critical step towards improving working life, as well as strengthening and institutionalizing democratic federalism in Pakistan. While taking note of the recent elections in the country, which might have caused some timing problems for the social partners, he expressed appreciation of the commitment for the Government to-

wards the work of the ILO. In conclusion, he underlined the will of the Government to fully implement its international obligations concerning labour matters.

**The Worker member of Singapore** indicated that there was a critical shortage of labour inspectors in the country. In Baluchistan, a province with hundreds of coal mines in which many workers had been killed or injured, there were only 59 inspectors (43 workers had been killed in 2011 following a series of explosions at a coal mine at Sorang near Quetta, where workers had reported that they were working virtually without protective equipment and that the mine owners took few if any safety precautions). In the Khyber Pakhtunkhwa (KPK) province, there were only 62 inspectors, and in Sindh only 130. Concerning the requirement of adequate training, most inspectors were given the most rudimentary training, and only very few were provided with specialized training to identify potential problems in specific industries. With respect to the requirement to provide transport facilities, in most cases inspectors were required to use their own vehicles and to bear the travel costs, which substantially limited the effectiveness of labour inspection. As regards the requirement of adequate penalties for violations of the legal provisions enforceable by labour inspectors or the obstruction of inspectors in the performance of their duties, this requirement was not met in Pakistan. While labour inspectors had a legal right to access company records, this rarely happened in practice as management either refused access or provided false records. Although an inspector could apply to court for access, the process could last many months and only led to an inconsequential fine. The fines for violation of the labour law were extremely low (5,000 Pakistan rupees (PKR) or approximately US\$50) and did not dissuade management from violating the law. Since 2007, there had been no published report on labour inspection, as there was no authority to even collect this information. The labour inspection crisis in Pakistan was measured in the number of workers killed and injured every year because the State had failed to enforce the law. She recommended: that labour inspection laws and procedures be immediately promulgated, in consultation with workers' and employers' organizations; that the provincial governments develop a well-trained force of inspectors to carry out inspections; that inspectors be able to inspect without prior notice to management; that, when an inspector had reasonable cause to believe a situation to constitute a threat to the health or safety of workers, the inspectors be empowered to act immediately; that occupational safety and health laws be passed at the level that covered all industrial, commercial and other establishments, strictly enforced and provide for dissuasive penalties for violators and compensation for victims; and that a mechanism be put in place whereby labour inspections were closely supervised through a tripartite committee to bring to an end to the blatant violations of the law.

**The Government member of China** stressed that the 18th Amendment to the Constitution guaranteed the full autonomy of the provinces and that a number of labour inspection powers had been devolved to them. The Government was currently in a transitional phase and needed more time to implement labour legislation, for which it should receive ILO technical assistance.

**The Worker member of the United States** referred to the accident at a garment factory in Karachi which had killed 300 workers and to the fire at a shoe factory in Lahore that had killed 25 workers. Extensive failings by the Government had played a major role in these deaths. She highlighted that some provinces had banned labour inspection and, while Punjab had overturned the ban, there continued to be little enforcement of safety laws. She emphasized that, instead of investing resources in effective labour inspection, the Government had embraced a volun-

tary system of private industry-driven auditing, which revealed serious problems. For example, three weeks before the fire in Karachi, the factory had been awarded an SA8000 certification, the so-called gold standard of safety. An entity related to the organization that had developed this certification had licensed an Italian corporation to certify the factory. Without actually inspecting or even setting foot in the factory, the certification society had then subcontracted the inspection to a Pakistani corporation controversial for its high rate of certification. She expressed doubts as to whether the social auditing industry which had grown to a multi-billion dollar per year activity was effectively protecting the rights of workers. Private inspections were usually scheduled allowing factories time to prepare. The inspectors at the enterprise in Karachi had been given forms supposedly signed by employees stating that they had received safety and evacuation training, but this had not been the case. She expressed astonishment that the certification society had refused to release the inspection report on the factory citing confidentiality requirements. Often the information collected during these private inspections remained the property of the factories, and the employees, unions and even governments never received any information about what had been discovered. According to the requirements of the Convention, the essential work of labour and safety inspections should not be carried out by private auditing. To this end, the Government should pass legislation that created an effective labour inspection system that was consistent with the Convention. She urged the Government to provide all the information requested by the Committee of Experts and suggested that the ILO send a technical mission to Pakistan to assist with the development of an effective labour inspection system.

**The Government member of Sri Lanka** underlined that Pakistan was an important member of the ILO and that its huge population and projected industrial expansion added to its importance. She expressed appreciation of Pakistan's active engagement with the ILO and its long-standing efforts to fully meet its international obligations in the field of labour. She noted the 18th Amendment to the Constitution of Pakistan which ensured maximum provincial autonomy. While considering that such devolution of power to the provincial level would strengthen and institutionalize democratic federalism in Pakistan, she underlined that such a process involved complex transition, including the restructuring of federal and provincial bureaucracy, a factor that the Conference needed to take into account. She expressed appreciation of the recent elections in Pakistan and the peaceful transfer of power and emphasized the overlapping of the dates of the ILC with the formation and taking of the oath by the new Government. She highlighted the Government's will to fully implement its international obligations concerning labour issues.

**The Government member of India** indicated that a sound legislative framework backed by an effective labour inspection system was the key to ensuring the welfare of workers. Under the Convention, labour inspection was a sovereign function to be effectively discharged by national governments. He underlined the very important role of the ILO in helping member States, especially developing countries, strengthen their regulatory system. Having heard the statement of the Government representative of Pakistan, he noted the various measures being taken by the country with a view to strengthening its institutions and legislative machinery. The ILO should extend all technical cooperation to member States in their efforts to bring about improvements in the world of work.

**The Government representative** took note of the comments made by the Worker and Employer members and requested understanding for the exceptional circum-

stances that had led to the delay in participation of the national social partners. In light of the valuable guidance provided by the Committee, he expressed his Government's commitment to work hard to address the important issues that had been highlighted so as to improve compliance with international obligations, maintain high standards of safety and security at the workplace and improve the labour inspection system. He once again expressed his Government's regret at the tragic incident that had taken place in a Karachi factory and its deep commitment to take steps to rectify the situation. In this regard, the Government had taken immediate measures to compensate the victims of the incident: the families of 214 out of 259 dead workers had received an amount of PKR900,000 per person; an additional amount of PKR400,000 per person was likely to be paid to the legal heirs under the Workmen Compensation Act; all of the injured had been paid compensation of PKR150,000 per person; and employers' associations had undertaken to make employment arrangements for those who had been rendered jobless in the wake of the accident. He once again referred to the Joint Statement of Commitment signed by his Government with the ILO and the social partners. As regards labour inspection, the Government would take measures in line with international standards and in consultation with the social partners. The new mechanism for coordination between the centre and the provinces was in place and would soon be up and running. The mechanism would resolve institutional problems, since the provinces would share their work with the centre, help address the issue of the capacity of inspectors, follow a preventive approach instead of just focusing on awarding fines and penalties, by reaching out to the informal economy, and provide data for scrutiny by civil society and the social partners. Due note had been taken of the comments on the need to put in place adequate penalties for violations of legal provisions, to provide adequate transport facilities and bear other costs for inspection, and to ensure that data were effectively collected and reports were published regularly. He reaffirmed that inspections were not banned in Pakistan and that the Government would work towards the removal of any existing impediments in the conduct of inspections in any of the provinces. As regards the number of inspectors, the data were as follows: 83 in Punjab; 81 in Sindh; 68 in KPK; and 59 in Balochistan. The Government was committed to work towards the improvement of the situation, keeping in view the availability of resources. While highlighting the challenges arising from the redistribution of legislative powers to provinces, he emphasized that the federal Government would remain seized of its responsibilities in terms of reporting on the relevant ILO Conventions and their implementation. He requested ILO technical assistance to help improve the labour inspection system in Pakistan.

The Worker members said that the Committee's conclusions should cover three points. Firstly, the Government should, as a federal State, ensure that the provinces provided the conditions necessary for the application of the Convention throughout the entire territory, without exception. Secondly, it should supplement the information it had provided in 2012 in order to paint a full picture of the situation of labour inspection in all the provinces, specifically indicating for each province the exact number of workers, regardless of their status, the visits that inspectors had conducted and the issues examined during the inspections. Thirdly, it was necessary to ensure that the Government would, on the one hand, collaborate with the ILO both to apply the Convention and to monitor the progress made on decent work on the ground and, on the other, receive technical assistance from the ILO in order to achieve the full application of the Convention. That would facilitate the application of other Conventions,

especially those on occupational safety and health. Technical assistance should also be provided on the obligations concerning inspection reports, as set out in Articles 20 and 21 of the Convention. In addition, the initial results of the legislative reforms should be reflected in the report that was due in 2013. They also emphasized that, in view of the long-standing nature of the case and that it was impossible for Pakistani workers to speak out, owing to the Government's attitude, they could have asked for the case to be placed in a special paragraph. They had, nonetheless, requested that the protests of the Worker and Employer members should be clearly reflected in the report and stated that they would not hesitate to highlight the situation at the plenary session of the Conference.

The Employer members, while understanding that a tremendous reform was taking place in Pakistan, notably with regard to decentralization, urged the Government to provide all the information requested by the Committee of Experts and to meet all of its reporting requirements. They encouraged the Government to continue its efforts towards strengthening labour inspection, to accept ILO technical assistance and to uphold its cooperation with the ILO so as to ensure lasting progress.

### **Conclusions**

The Committee noted at the outset its disappointment at the failure of the Government to accredit its workers' and employers' organizations in time for their attendance at the discussion of this case before the Committee.

The Committee noted the oral and written information provided by the Government representative and the discussion that followed concerning the effectiveness of labour inspections and the enforcement of legal provisions in the context of the delegation of competence to the provinces in the area of labour legislation and administration, as well as the recent fire in a garment factory in Karachi, in which nearly 300 workers had lost their lives. The specific issues addressed included the human and material resources of the labour inspectorate, restrictive policies for inspections, private and voluntary self-assessments in enterprises and the regular publication and communication to the ILO of annual inspection reports.

The Committee noted the Government's commitment to address all the issues that had been raised and its assurance to the Committee that there were no bans on inspections in any province. It noted the Government's indications that, through the delegation of powers to the provincial governments, the inspection regime would be strengthened and would enable inspectors to work more efficiently and effectively adopting a preventive approach. It also noted the measures announced by the Government to compensate the victims and their families affected by the factory fire in Karachi and to avoid the recurrence of such incidents in the future. The Committee also took note of the information concerning the signing of a Joint Statement of Commitment in the province of Sindh with the ILO and the social partners for the establishment of a plan of action to address the issues of labour inspection and occupational safety and health in view of the serious accidents that had taken place in the country. The Committee further noted the Government's request for technical assistance.

The Committee emphasized the importance of an effective system of labour inspection in all provinces for both employers and workers, including the need for adequate training of labour inspectors and the provision of sufficient human and material resources. While being aware of the financial conditions the country was facing, the Committee expressed the hope that adequate resources would be allocated to the labour inspection services and that priorities would be agreed upon and a strategic and flexible approach adopted, in consultation with the representatives of the social partners. The Committee recalled that the publication of annual inspection

reports containing the statistical information required under Article 21 of the Convention was very important in enabling an objective evaluation of the extent to which the legal provisions relating to conditions of work and the protection of workers while engaged in their work were being respected in each province.

The Committee requested the Government to include in its report to the Committee of Experts due in 2013 complete information on all the issues raised, as well as detailed data in an annual report on the work of the labour inspection services in each province on all the items listed in Article 21 of the Convention, including information on workplaces liable to inspection and the number of workers employed therein, statistics of inspection visits, violations and the penalties imposed, industrial accidents and cases of occupational diseases. It finally expressed the hope that the steps taken concerning the application of this governance Convention would be reflected in the Government's next report to the Committee of Experts. The Committee welcomed the request by the Government for technical assistance and hoped that this assistance would enable the Government to effectively apply the Convention.

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**Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**

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**BANGLADESH (ratification: 1972)**

The Government provided the following written information.

The country was fully committed to complying with ILO principles to promote labour rights and trade union activities in Bangladesh. Bangladesh had so far ratified a total of 33 ILO Conventions, including seven fundamental Conventions. Regarding allegations of harassment of trade unionists and trade union leaders, notably in the garment sector, the Government was taking serious action on any violation of labour standards. To keep harmony and peace in society and for the welfare of industry as a whole, its law enforcement agencies did their duty as per the law of the land. There was no illegal threat or police harassment or arrest and detention of trade unionists and trade union leaders carried out by the law enforcement agencies and there had been no case of death under police custody or any illegal arrest. The victims, if any, were accused of their misdeeds and criminal activities, creating violence and crisis in the industrial sector, blocking roads and vandalizing factories which hampered the economic activities of the country to a huge extent. To make the situation normal, the law enforcement agencies took actions as per the law.

The aim of that action was not in any way to harass any trade union leader, to resist or to disrupt trade union activity in the country. The Government of Bangladesh strongly believed that freedom of association could be exercised in a situation that was free from violence or threat. It should be noted that no trade unionists had been detained for their activities. Regarding the registration of the Bangladesh Garments and Industrial Sramik Federation (BGIWF), the union was functioning without any obstacle. Due to allegations of violations of its constitution and unfair labour practices by the BGIWF, the Department of Labour, according to the provisions of the Bangladesh Labour Act, had filed a case in the Labour Court against the BGIWF in 2008 seeking permission to cancel its registration. The case was still pending in the Labour Court. If the allegation was proved, the union could lose its registration. The federation could appeal to the higher court for justice.

With regard to the amendment of the Bangladesh Labour Act 2006, to keep pace with the changing global scenario in the world of work, the Government had initi-

ated the amendment of the Labour Act to bring it more into line with ILO Conventions. Extensive tripartite consultations on the content of the amendment had been held, in particular in the Tripartite Labour Law Review Committee and the Tripartite Consultative Council. The whole drafting process had been shared with the Dhaka ILO Office to make it more compatible with international labour standards. The amendment had now been placed before Parliament and it was hoped that it would be enacted in the form of a bill in the current session of Parliament starting on 3 June 2013. In the amendment proposal for the Labour Act, special importance was being given to ensuring workers' welfare, industrial safety, transparency in trade union registration, the wage payment system, and the promotion of trade unionism and collective bargaining. In this respect: (a) the provision regarding the submission of the list of workers intending to form trade unions to factory owners/management had been deleted; (b) workers would be able to obtain support from external experts in collective bargaining; (c) workers would have the right to form participation committees through direct election which could act as bargaining agents at workplaces under special circumstances. But this would not be a substitute for the trade union, and would rather facilitate trade union activities and collective bargaining. The amendment would thus bring the Labour Act more into conformity with international labour standards.

Regarding export processing zones (EPZs), the EPZ Workers' Welfare Associations and Industrial Relations Act, 2010 (EWWAIRA 2010) provided for the formation of workers' welfare associations (WWAs) with a right of collective bargaining. All elected executive committees of WWAs were actively performing their activities as collective bargaining agents with full freedom. Between January 2010 and March 2013, the Bangladesh Export Processing Zone Authority (BEPZA) had arranged referendums in 260 enterprises out of 339 eligible enterprises. Accordingly, 186 WWAs had so far been constituted. The BEPZA planned to arrange referendums in all the factories by 31 December 2013. WWAs would also have the right to call strike/work stoppages at the workplace from 1 January 2014. In order to promote the welfare of the workers in EPZs, the Government had formulated the "Constitution and Operation Procedures of EPZ Workers' Welfare Fund, 2012", which was already in force. In case of grievances, any worker could get an amicable solution by consultation with the counsellors appointed in EPZs. Additionally, EPZ Labour Tribunals and the EPZ Labour Appellate Tribunal had been established to settle complaints in EPZ areas. The BEPZA had already organized 392 training/awareness/motivational programmes for WWA members and workers regarding their rights and responsibilities and would ensure training programmes for WWA members/workers once a month in all zones. The BEPZA was always positive towards the formation of a WWA federation which would ensure full freedom of rights for workers. EPZs were restricted bonded areas and the BEPZA was committed to ensuring the security of foreign nationals and Foreign Direct Investment (FDI). However, workers/WWA members were at liberty to do anything within the legal framework of the Constitution of Bangladesh outside the bonded area. Development partners had visited the different EPZ areas of Bangladesh and witnessed some referendums and elections for workers' associations and workers' welfare associations in EPZs and had expressed their satisfaction over free, fair and credible elections. The Government of Bangladesh was very committed to ensuring collective bargaining in EPZs. The EWWAIRA 2010 was only valid up to 31 December, 2013. It was planned to work with the ILO to find ways of bringing the EPZ areas under the purview of national labour law to ensure freedom of association,

the right to bargaining and other issues concerning labour standards.

Concerning the exercise of the authority given by Rule 10 of the Industrial Relations Rules (IRR), 1977, to the Registrar of Trade Unions (RTU) to enter trade union offices, inspect documents without judicial review, it should be noted that in normal situations the RTU did not enter the office of any trade union or federation for inspection unless the secretary or president of the trade union applied to the RTU for the removal of irregularities. In the context of Bangladesh, generally trade unions were reluctant to hand over offices and documents to the newly elected executives. Besides, the RTU frequently received complaints about embezzlement of union funds resulting in chaos in the establishment affecting productivity and the good environment. The RTU was the registering authority and could play a vital role in settling issues as per the provisions of the law. The role of the RTU in the matter was always subject to review by the judicial authority which guaranteed impartiality and objectivity. After the adoption of the rules under the Labour Act which had already been drafted, the IRR 1977 would no longer be applicable. This issue would be addressed after the amendment of the Labour Act when formulating the rules.

ILO technical assistance was already being provided to improve compliance with the Convention, particularly in the ready-made garment and shrimp industries. The initiatives taken included implementation of an ILO–International Finance Corporation (IFC) funded the better work programme in the ready-made garment sector and a USAID-funded project in the shrimp sector. In the ready-made garment sector, the preparatory phase of the better work programme had been under implementation, namely “Promoting Fundamental Principles and Rights at Work in Bangladesh”. The project would contribute to ensuring the successful implementation of a potential fully-fledged better work programme in Bangladesh. The project aimed to support the amendment of the BLA 2006, improving the trade union registration system, capacity building for employers and trade unions and awareness raising. There were some concerns among the better work programme team relating to its implementation in Bangladesh. With the revision of the BLA 2006, the concerns would be allayed and the programme could be started soon. Further, to improve the labour standards situation in the shrimp sector, the Government of Bangladesh, the Bangladesh Shrimp and Fish Foundation (BSFF) and the Bangladesh Frozen Food Exporters Association (BFFEA) had already signed an agreement with the development partners for the implementation of a USAID-funded project. The BEPZA was looking forward to ILO technical cooperation for the further improvement of the workers’ rights in EPZs in Bangladesh.

In conclusion, it should be noted that the high propensity for the migration of workers from one factory to another had been a major reason for trade unionism not having taken root in Bangladesh, particularly in the garment sector. Other factors in the non-expansion of trade unions could be lack of education and awareness. The Government was trying to address this situation by organizing education, training and awareness programmes for workers through industrial relations institutes. The Government had recently introduced the online registration of trade unions on a pilot basis. The implementation of promotional activities under ILO technical assistance would surely improve labour law compliance in the country, including ensuring freedom of association and the right to bargaining in accordance with the Convention.

In addition, before the Committee, a **Government representative** referred in particular to the range of measures taken with respect to the allegations of harassment of trade unionists and trade union leaders; the registration of

the BGWIF; the amendment of the Bangladesh Labour Act, 2006; EPZs; Rule 10 of the Industrial Relations Rules, 1977; and the technical assistance received from the ILO.

**The Employer members** indicated that the Committee had examined this case on 18 occasions since 1983, most recently in 2008. At that time, the Committee had requested the Government to eliminate all restrictions on freedom of association and to bring its legislation into conformity with the Convention. The Government had reiterated on different occasions that it was working on the amendment of its legislation, but that there were no positive results. The Committee had expressed the hope, when it last examined this case, that the new Labour Act would be in conformity with the Convention. However, when the Committee of Experts had examined the Bangladesh Labour Act, 2006, it observed that all the provisions considered contrary to the Convention had remained. The Conference Committee had been then forced to request the Government once again to amend its legislation. The Employer members indicated that, according to their understanding, the Bangladesh Employers’ Federation (BEF) had participated in the elaboration of a new Labour Act in the framework of the Tripartite Labour Law Review Committee and that the new Labour Act would be enacted by Parliament in June 2013. The Employer members expressed the hope that this could be considered as a positive development and that the new law would be in full conformity with the Convention. With respect to the implementation of the Convention in practice, the Employer members agreed with the Committee of Experts that workers’ and employers’ organizations could only exercise their rights in conditions free from threats, pressure and intimidation of any kind. This year, the case concerned allegations of violence and harassment of trade union leaders and trade unionists and the refusal to register unions in several sectors. The Employer members urged the Government to take the necessary measures to investigate the allegations related to violence and harassment of workers and to ensure full compliance with the Convention.

With respect to the EWWAIRA, the Employer members noted that the Committee of Experts had made 13 observations on the provisions of the Act with respect to the right to organize and the right to strike. Concerning the right to strike, they recalled their opinions as put forward in the framework of the examination of the General Survey and the general discussion in 2012. They reiterated that the right to strike was not expressly mentioned in the Convention and that there was no consensus in the Committee in that respect. The Committee of Experts had also referred to the existence of a multitude of complex regulations related to the EWWAIRA that hindered the establishment of workers’ organizations and, in this respect, had urged the Government to bring its legislation into full compliance with the Convention. With respect to Rule 10 of the Industrial Relations Rules, 1977, the Employer members expressed their understanding that this provision had been repealed by virtue of the adoption of the Bangladesh Labour Act, 2006. They welcomed the establishment in EPZs of industrial relations offices to settle complaints and requested the Government to provide additional information in that regard. They also welcomed the information provided by the Government concerning the technical assistance already provided by the ILO, as well as the better work programme under implementation, and expressed the hope that it would successfully implement the Convention in the ready-made garment sector. They expressed their support for the amendment of the Bangladesh Labour Act, 2006, the improvement of the procedures for trade union registration and the development of awareness-raising activities. They urged



the Government to request ILO technical assistance to help it bring its law and practice into full compliance with the Convention.

The Worker members observed that, since the Conference Committee had last met, the world had watched in horror as over 1,000 garment workers had perished in Bangladesh. In November 2012, in the Tazreen Fashions factory in Dhaka, over 100 workers trapped inside by locked doors had died either from the smoke and the flames, or as they leapt from the windows in a desperate attempt to escape. In April 2013, the nine-story Rana Plaza building had collapsed on the outskirts of the capital city. The building had housed garment factories that produced apparel goods for retailers based in the United States and the European Union (EU). Large cracks in the walls had appeared the previous day, alarming both workers and building engineers. Nevertheless, the management of the garment companies had insisted that the workers report to work. Both of these unimaginable tragedies were, in part, the result of the fact that, until very recently, unions had been essentially prohibited from operating in the massive garment industry. With collective representation, workers could have more easily removed themselves from the hazardous workplaces before it was too late and insisted that the hazards be addressed. Furthermore, it had been reported that the previous week the police had opened fire at a protest by former workers at Rana Plaza factories who had taken to the streets to complain of their treatment by the authorities.

For many years, the Committee of Experts had reiterated its serious concerns with regard to the numerous deficiencies in the laws as they related to freedom of association and the utter failure of the Government to ensure that workers could exercise this fundamental right in practice. Regrettably, up to now, the Government had failed to act on the Committee of Experts' recommendations. Moreover, in its current report the Committee of Experts requested the Government to take the necessary measures without delay to carry out investigations regarding the murder of trade unionists. The Worker members recalled that Mr Aminul Islam, President of the BGIWF Savar and Ashulia regional committee, had been found dead on 5 April 2012. His corpse showed signs of torture and, from the information available, it appeared that he had not been the victim of random violence, but rather targeted for his trade union work. His murder had no doubt been meant to send a clear message to trade unions not to organize in the garment industry. Although some suspects had been interrogated, no one had been arrested, and much less prosecuted for this crime. Particularly troubling was the statement made by the Prime Minister casting doubt on the fact that Mr Islam had never been a labour activist, even after the murder had featured in the international media. The Government could delay no further in making sure those responsible for Mr Islam's murder were arrested and prosecuted appropriately. Furthermore, although it had referred to the killing of two bidi cigarette workers and the wounding of over 35 others by security guards on 16 July 2012, the Government had provided no information whatsoever as to the steps it had taken to prosecute the plant manager, who gave the order to the guards to open fire on a crowd of 3,000 workers who had staged a demonstration at the factory gates in an attempt to recover unpaid wages and to seek a pay raise. For several years, the Committee of Experts had also extensively criticized the law regulating labour relations for the tens of thousands of workers in EPZs. The EWWAIRA established a legislative framework for the exercise of labour rights in EPZs. However, the law fell well short of the Convention in that, among other things, workers were prohibited from forming trade unions but instead only workers' associations. The EWWAIRA, rather than ad-

ressing the many shortcomings in the law, as identified by the Committee of Experts, extended the effective date of the existing scheme for another three years. Even this flawed Act could not be fully utilized, as rules and regulations still needed to be promulgated for many of the provisions of the Act to take effect. For example, a federation of workers' associations could not be legally formed until the BEPZA had issued regulations. The BEPZA had yet to issue those regulations, thereby deliberately preventing workers' associations from forming a federation in EPZs. There had also been no progress on bargaining in EPZs, largely due to BEPZA's insistence that there was no room for collective bargaining on any working conditions above the minimum standards already established in the EWWAIRA and in BEPZA Instructions 1 and 2. The Government had still not signalled its intent to amend the Act, thereby depriving workers in EPZs of the possibility of even forming or joining trade unions.

With regard to the Labour Act, the Worker members observed that the Committee of Experts had, since its promulgation, expressed deep regret that it did not contain improvements over the Industrial Relations Ordinance of 1969 and, in some respects, made the situation worse. There had in fact been a tripartite process to revise the Labour Act for over a year, and indeed worker representatives had participated actively in this process. As the Committee of Experts had noted, however, the revisions being considered when the report had been prepared "do not take into account most of the observations previously raised by the Committee". That still remained true and, in fact, even fewer issues with regard to freedom of association were addressed in the proposed amendments. The Worker members expressed concern regarding the revision of the Labour Act as they understood that the proposals had just been submitted to Parliament for deliberation. In their view, addressing only one issue fully would represent serious contempt for the work of the Committee of Experts. Although the amendments proposed some improvements in areas unrelated to freedom of association, they introduced other changes prejudicial to unions and workers. The Government needed to take this opportunity to ensure that the amendments addressed the observations of the Committee of Experts.

Finally, roughly 29 new unions have been registered in the last few months. The long standing failure, or indeed refusal, to register trade unions, particularly in the garment sector, had always been a question of political will, and not a legal matter. Because of the substantial external pressure applied by foreign governments and the ILO, the Government had again permitted unions to be registered. It was obvious that the Government would stop registering unions as soon as the pressure was off. Indeed, that had been the case before. The registration of trade unions or employer associations should be a mere formality. For too long, the registration process had been tantamount to obtaining previous authorization. Industrial relations were built on the foundation of a sound legal framework, recognized worker and employer representatives, and collective bargaining. These did not exist today in Bangladesh. Instead, the legal framework was deeply flawed, most workers worked without representation due to a long-standing policy of refusing to register unions and collective bargaining coverage was minimal at best. If the Committee was to avoid the tragedies of recent months, it should urge the Government to make changes.

The Worker member of Bangladesh expressed his shock following the recent incidents in the ready-made garment sector where numerous lives had been lost. While acknowledging the Government's efforts in the rescue operations, in the provision of medical treatment and compensation, as well as in rehabilitation programmes, he considered that the tragedy could have been avoided had

there been adequate supervisory and monitoring mechanisms in the country. Inadequate security and inspection services had failed to ensure industrial safety. He urged the Government to take the necessary steps to strengthen labour inspection, the fire services and building inspection and to identify those buildings that were currently at risk in order to ensure that such incidents could never happen again. He also urged the Government to take measures so that those responsible were punished. He emphasized that the ready-made garment sector employed 3.5 million workers, most of whom were rural women. This had helped the empowerment of women. However, the profits had not been adequately distributed and workers in the sector did not enjoy decent working conditions. He expressed his support for sustainable development in the ready-made garment sector. The effective implementation and enforcement of international labour standards, including the right to organize and to bargain collectively, were the only alternative to uphold labour rights. He believed that the better work programme would help in this regard and urged the Government to take steps to ensure its full implementation. With respect to the registration of trade unions, he indicated that, under the Labour Act, upon receiving an application for registration of a new trade union, the registry authority had to provide the list of leaders to the employer. This gave the opportunity for unscrupulous employers to dismiss trade union leaders. He welcomed the fact that the proposed new Labour Act, as amended, would repeal this provision and expressed the hope that it would be enacted in the near future. He referred to other provisions of the Labour Act that were not in conformity with the Convention. With respect to measures for online trade union registration, he called on the Government to take steps to improve the system and to train workers to familiarize them with it. While welcoming the steps taken by the Government in order to allow labour courts and the Labour Appellate Tribunal in EPZs, he indicated that freedom of association almost did not exist there. Moreover, the Labour Act was not applicable in EPZs. He emphasized that participation committees and workers' welfare associations could not replace the work of trade unions.

**The Worker member of the United States** stated that horrendous yet preventable disasters in the Bangladesh garment industry since 2005 had taken the lives of over 1,800 workers. In the shipbreaking industry, there were over 40,000 workers, among them many teenagers migrating from the poorest parts of the country, who worked with virtually no protections or rights and no union representation. Three attempts to create workplace-based unions had been denied registration by local governments, even though 70–95 per cent of workers supported the union and allies had provided expert advice. In this industry, at least one worker had died every month since 2005. The National Institute of Preventive and Social Medicine (NIPSOM) had found that 88 per cent of the workers interviewed had suffered some form of accidental injury while working in the Chittagong shipbreaking yards. At least now, after the death of well over 1,000 workers at Rana Plaza, people in positions of power were noting that the freedom to form unions was central to any solution. The highest United States diplomat for South Asia had bluntly stated in his Senate testimony the previous week that: "had there been a union representative on the ground at Rana Plaza that tragedy would not have happened". Among the many well-documented, continuous and systematic violations of the Convention that explained why there was no union representative present, the persistent refusal of the Government to register trade unions was obvious, basic and undeniable. No doubt the Government would point to the very recent registration of over 27 garment workers' unions. However, 21 of these were reg-

istered after the November 2012 Tazreen fire and increased media attention. How many lives would have been saved by making it possible to have a union representative present by taking the first simple step of recognizing a union's legal existence by processing and communicating its registration to workers and their elected leaders? Yet, even when this simple step was taken, it was necessary to remain vigilant. Most of the garment workers who had successfully registered new unions since the Tazreen fire had faced termination and other anti-union discrimination and none had been able to secure formal collective bargaining agreements. Given the difficulties faced by workers in organizing unions, their survival was dependent on broader civil society allies, nationally and internationally. Worker allies, like the Bangladesh Centre for Workers Solidarity, had repeatedly been harassed and charged with criminal offences and had their legal registration challenged and revoked. Once again, in the context of international pressure, the Government had undertaken to restoring this registration, which it had to honour. The accord on fire and building safety that had been negotiated and signed by local unions, the Industrial Global Union and UNI Global Union, and non-governmental organization allies with international brands and local suppliers offered a way forward in industrial relations in the Bangladesh garment sector. It supplemented and improved Government efforts that had so often failed. However, just as commitment and action were required by multinational companies and local producers, legally recognized and registered workplace unions were central to this solution. The tripartite accord urgently required the Government to register and respect the growth and day-to-day operations of real unions with a strong presence in the workplace, as well as action from the Government and the ILO. More multinational companies whose supply chains drew heavily from the Bangladesh garment industry should sign on. He called on the Government to honour many recent commitments to register unions and respect organizing and bargaining rights. The international labour movement would remain watchful for positive developments, and return to this and other forums to support Bangladesh's workers as they sought to claim their rights.

**The Employer member of Bangladesh** reaffirmed the commitment of the BEF to the promotion of freedom of association in the country. Despite being one of the least-developed countries in the world, confronted with many challenges and upheavals, Bangladesh had made remarkable progress in fulfilling the targets of some of the Millennium Development Goals and was visible in global affairs in terms of exports, particularly ready-made garments, shrimps, leather and leather goods, frozen foods, jute and jute goods. However, Bangladesh needed to significantly improve its overall governance standards, attain sound political systems and stability and address social safety nets and security issues so that it offered decent work for all its citizens. While appreciating the observations made by the Committee of Experts, he stressed that, while workers had the right to negotiate and resolve issues through discussion, in practice, in most cases, a different scenario was observed, involving vandalism, blockades, fires, the destruction of equipment and machinery. This took place with the support of certain external miscreants, who were in no way believed to be actual workers or trade union leaders, resulting in a chaotic situation at the factories. At times, such unrest had taken place based on rumours spread by some external quarters to serve narrow interests. In such cases, the police and law enforcement agencies needed to take immediate action to protect the life and properties of workers and employers. The BEF had never supported any illegal arrests or harassment; rather, it strongly believed that freedom of asso-

ciation could be exercised in a situation that was free from violence, pressure or threats. With regard to the registration of the BGIWF, he indicated that this matter was pending in court and a final verdict was awaited. Regarding the amendment of the Labour Act, the BEF had played a pioneering role in the formulation of various suggestions intended to make it more user-friendly and attain a win-win situation. It had volunteered to host a tripartite consultative council meeting in the beginning of 2013 to consider the amendment, which was now at the final stage and likely to be enacted by Parliament in June 2013. Furthermore, he understood that the Government had a plan to gradually implement freedom of association in EPZs and suggested that the Government should consider accelerating this process, keeping in conformity with international standards and investors' needs. The BEF strongly felt that the Government should exercise its regulatory tools more efficiently to better facilitate the functioning of trade unions in the country, taking into account workers' and employers' welfare.

**The Government member of Norway**, speaking on behalf of the Government members of Denmark, Finland, Iceland, Norway and Sweden, expressed deep concern about the working conditions in Bangladesh, including freedom of association and collective bargaining. The current situation was alarming and she referred, in this context, to the tragic incident in a textile factory where many workers had lost their lives. Deploring the lack of opportunities for trade unions and workers to exercise their rights of freedom of association, the Governments' interference in the administration of trade unions, as well as lengthy legal processes for the registration of trade unions, she questioned the willingness of the Government to comply with the Convention. At the same time, it was reassuring that the Government was about to take measures to ensure the protection of working conditions, decent wages and the right of freedom of association and collective bargaining. She called on the authorities to act expeditiously and decisively to bring the law and practice fully into compliance with Conventions Nos 87 and 98. Welcoming the steps taken so far by the authorities, she strongly encouraged them to continue working closely with the ILO to make sure that the amended legislation addressed the requests of the supervisory bodies. The adoption of amendments to the legislation was a crucial, but only first step, in the process, and subsequent measures to ensure the effective implementation and enforcement of the new legislation were equally critical. Recognizing the significance of ready-made garments to the economy and their contribution to development, she emphasized that the Decent Work Agenda, including well-functioning occupational safety and health, was of utmost importance to secure a long-term and prosperous industry. The Nordic countries provided support for the Decent Work Agenda in Bangladesh, including in the areas of occupational safety and health and fundamental principles and rights at work. Welcoming the adoption of a joint statement by the tripartite partners with the ILO, on 4 May 2013, she expressed the hope that this would help to ensure workers' rights and representation, but emphasized that this was first and foremost the responsibility of the Government. She urged the Government to cooperate fully and to respond in substance to the requests made by the Committee of Experts, and endorsed the efforts of the Office to help in this regard. It was only by engaging with the social partners that compliance could be secured in national law with ILO Conventions, among which Conventions Nos 87 and 98 were of particular importance. The setting up of an effective labour inspection was equally important. The authorities should work with the social partners, producers and buyers to take measures to ensure responsible supply chains, in line with ILO standards and corpo-

rate social responsibility principles. To this end, the Government was strongly advised to continue to fully avail itself of the technical assistance of the ILO, including comments and advice made on all relevant draft legislation.

**The Government member of Switzerland** expressed her country's support for the people of Bangladesh following one of the worst industrial disasters of recent years. The dramatic incidents that had occurred in textile factories showed how urgent it was to act and to work towards the effective application of occupational safety legislation in the country. The discussions under way on reforming labour law should lead to rapid reforms that would improve, in particular, protection for fundamental rights, such as freedom of association and collective bargaining, as well as occupational safety and health. The Government should promote freedom of association and ensure that its law and practice were fully in line with the Convention. It should also enter into genuine social dialogue, which was the only guarantee of the effective application of occupational safety and health legislation, as textile workers must be assured of safe and decent working conditions as a matter of urgency. In that regard, the Government and the social partners should agree to establish a better work programme as quickly as possible after Parliament's adoption of the labour law reform, in accordance with international Conventions. The Office should ensure coordination between activities relating to respect for fundamental principles and rights at work, the national security plan and the agreement signed by multinationals in the textile sector.

**The Worker member of Australia** emphasized that, in the wake of the Tazreen and Rana Plaza disasters, much had rightly been heard about the responsibility of employers, and the global brands which sourced their garments through those employers, to ensure that workplaces were safe and that they complied with labour laws. However, as the fundamental ILO Conventions made clear, it was the responsibility of the Government to adopt, maintain and enforce laws that secured and protected the fundamental labour rights of its workers. At present, the Government of Bangladesh was failing to fulfil that responsibility, and in particular it was failing to meet its international obligations to ensuring the conformity of its labour laws with the Convention. The provisions of the Labour Act which gave rise to the greatest concern, included those excluding entire classes of workers from the rights and protections under the Act, or from key parts of the Act, such as the right to establish workers' organizations and to organize. Other provisions in the Act imposed an excessively high minimum membership requirement for union registration. Restrictions were placed on anyone holding office in a union who was not employed or engaged in the establishment covered by that union. New provisions of the Act establishing a penalty of imprisonment for acts by workers or trade unions aimed at "intimidating" any person to become, continue or cease to be a trade union member or officer were excessively broad and risked capturing legitimate trade union activities. There were also a range of provisions which constituted unacceptable administrative interference in the rules, elections, affairs and activities of trade unions. There was a lack of clarity in the Act concerning the extent to which collective bargaining was permitted above the enterprise level and numerous restrictions were imposed on the right to strike which were inconsistent with the Convention. There were also many other restrictive provisions in other laws. She acknowledged that a process was under way in Bangladesh to reform a limited number of provisions in the Labour Act which had been facilitated by the ILO and had involved consultation with the social partners. However, the proposed package of amendments, as it currently

stood, only directly addressed one of the many legal problems identified by the Committee of Experts, which continued to call for more extensive changes. The Government should bear in mind that the adoption and enforcement of laws fully guaranteeing and protecting freedom of association and collective bargaining was in the longer term interest and benefit of everyone. Trade union rights and freedoms were critical to ensuring that workers could join together to defend and pursue their rights, and therefore to ensuring that the workers were better placed to respond to the immense challenges that they faced within and outside their workplaces. They were also critical to the attainment of decent work in Bangladesh and to the country meeting its ambitious objective of moving from a low- to a middle-income country by 2021.

**The Government member of the United States** said that recent tragic events in Bangladesh that had resulted in immense loss of life, with over 1,000 people killed in the Rana Plaza building collapse in late April and over 100 in the Tazreen factory fire in November 2012, served to re-emphasize the importance of discussing the application of the Convention by Bangladesh. Sadly, the link between worker safety and health and the right to freedom of association had never been clearer. Workers who could organize robust unions were better able to advocate adequate working conditions, including workplace safety. Consequently, the prevention of future tragedies would require improved guarantees of a stronger voice and role for workers and the protection of freedom of association, the right to organize and collective bargaining. Her country retained long-standing and serious concerns relating to workers' rights and working conditions in Bangladesh. A petition filed by the American Federation of Labour and Congress of Industrial Organizations (AFL-CIO) under the Generalized System of Preferences Act remained under review and a decision on how to proceed would be taken soon. The recent tragedies demonstrated the need for more urgent and coordinated action among all stakeholders, and especially the Government, to address those concerns by improving legal protections and the good governance necessary to enforce their implementation. The highest priorities were the enactment of robust amendments to the Labour Act, beyond those presently under consideration, alongside improvements in union registration procedures and the improved enforcement of laws and regulations. The aim was to secure genuine and sustainable protection of the fundamental rights to freedom of association and to organize, as well as occupational safety and health, focusing on the ready-made garment sector and EPZs, but also more broadly throughout Bangladesh. She expressed appreciation of the positive statements by the Government following the recent workplace tragedies and welcomed its stated commitment to ensuring compliance with the Convention and promoting freedom of association in Bangladesh. However, it was now time to move from words to actions. She urged Bangladesh to take the measures recommended by the Committee of Experts to bring its law and practice into full conformity with the Convention and to make use of the expert advice and assistance of the ILO for that purpose.

**The Worker member of the Philippines** emphasized that the universal right of workers to establish and join organizations of their own choosing was not observed in law or practice in Bangladesh. The experience of the Philippines demonstrated the exploitation faced by workers in EPZs, who often faced dismissal or discrimination for trade union activities, while employers could refuse to recognize unions or to negotiate, or might even set up their own company-dominated or "yellow" unions. Over the years, very many workers had lost their jobs, been harassed, beaten or arrested when attempting to exercise their fun-

damental right to freedom of association in EPZs. Some 360,000 workers were employed in the eight EPZs in Bangladesh. However, even as reforms were considered to the Labour Act, EPZ workers remained excluded and relegated to a separate law that prohibited them from establishing unions. The Government appeared to have promised investors to keep EPZs union free. Enacted nearly ten years previously in response to a Generalized System of Preference petition filed in the United States, the EWWAIRA, for the first time, established a legislative framework for the exercise of labour rights in EPZs. However, the Act fell well short of international standards. In place of unions, the Act currently provided for the establishment of "workers' welfare associations", on which the workers representatives were often handpicked or appointed by employers. The formation of many such associations had been at the initiative of the BEPZA, not the workers. There had been almost no progress on collective bargaining in EPZs, largely due to BEPZA's position that workers could not bargain on working conditions above the minimum standards established in the Act and in BEPZA instructions, even though the law clearly established the full entitlement of workers to negotiate collectively over wages, hours and conditions of work. Many workers' association leaders reported that they had been harassed, suspended, dismissed without cause and/or subject to other forms of retaliation. In one case, workers from the Ishwardi EPZ had held a demonstration in 2012 concerning serious violations of their rights, including harassment and discrepancies over wages and leave. Following the unrest, 291 workers, including the presidents of workers' associations, had been dismissed. In negotiations with international buyers and the owner, the factories had agreed to reinstate the leaders and the other 289 workers and had sought BEPZA's approval to remove them from an EPZ "blacklist". However, BEPZA had refused permission to reinstate the workers on the grounds that there was no prior practice or any provision in BEPZA rules and regulations allowing for the reinstatement of a terminated worker. Most troubling, the communication from the owner confirmed the existence of a black list.

**The Government member of Canada** offered sincere condolences to the people of Bangladesh following the collapse of the Rana Plaza building. He emphasized that Canada remained concerned about dangerous working conditions in the garment sector in Bangladesh and expected all of its trading partners to ensure safe working conditions consistent with international standards. He applauded the recent ILO high-level mission to Bangladesh and the Office's coordination efforts in the country. He urged the Government to implement in full the resulting plan of action and to work together for that purpose with the ILO, employers, workers and other stakeholders. He also urged the Government to take all the necessary measures to bring the national legislation into full conformity with the Convention, in accordance with the comments of the Committee of Experts. While noting the proposed amendments to the Labour Act, which had been submitted to Parliament, he observed with concern that they were not consistent with international standards. He emphasized that freedom of association was an essential element for the functioning of the labour system, such as enabling workers to protect themselves including through participation in occupational safety and health measures. He therefore hoped that the collective energy following the recent tragic industrial accidents would be sustained and would result in measurable progress on many fronts.

**The Worker member of Italy** said that it was not surprising that Bangladesh was receiving a high level of international attention concerning its poor working conditions, lack of health and safety, low wages, long working hours

and repression of labour rights, particularly in the ready-made garment industry. The Rana Plaza disaster had shown once again the many situations of violation of basic human rights and fundamental labour standards. Nor was it the only deadly workplace tragedy, as around 600 workers in the garment sector had been killed by fires since 2005. Moreover, up to now no one had been brought to justice. Garment production represented 80 per cent of Bangladeshi manufacturing exports, employing around 3.5 million people, mostly women. The rapidly growing number of factories mainly produced for Western brands, through a supply chain that placed increasing pressure on rights and labour costs. The race to the bottom in search of the lowest wages made Bangladesh a very attractive country for many suppliers who considered trade unions a danger to their profits. Until now the Government had facilitated this easy area for exploitation to attract foreign investment. She added that for many years the situation in the garment industry in Bangladesh had been characterized by anti-union violence, harassment and arrests. With the collusion of the authorities, employers in the sector had filed complaints against workers, unions and non-governmental organizations in criminal courts. Those cases were very costly, making it extremely difficult for workers to defend themselves. They often dragged on indefinitely and carried heavier sentences than cases in labour courts, thereby serving to intimidate workers engaged in trade union activities. One of the best known cases was that of Aminul Islam, who had been detained by the National Security Intelligence in 2010, beaten severely and sustained a fractured leg. The circumstances of his detention and the attempt to elicit a confession pointed to a targeted campaign against organizations that endeavoured to organize workers in the garment sector. Shortly afterwards, Aminul Islam had been abducted, tortured and his body dumped by the roadside. Now, a year after his death, little progress had been made in identifying and prosecuting those responsible and there were many indications of the involvement of the intelligence agencies in his death. She urged Bangladesh to ensure the effective implementation of fundamental United Nations and ILO human rights and labour instruments. The Government could not give the appearance to the world of expressing sorrow at the loss of life suffered without taking immediate action to ensure that workers enjoyed the basic right of association and that factories across the country complied with international labour standards.

**The Government member of India** noted with satisfaction the initiative to amend the Labour Act and believed that the progress made towards the amendment of the Act constituted a positive step that would help to resolve the issue. His Government had consistently encouraged dialogue and cooperation between the ILO and member States with a view to resolving all outstanding issues. Member States could also provide support to Bangladesh in view of the efforts that were being made by the Government for the implementation of the Convention.

**The Government representative** thanked the social partners for their comments and expressed appreciation of constructive criticisms, which could lead to positive developments. His Government always adhered to the recommendations of the Conference Committee and had carefully noted the points made during the discussion. He added that it was imperative for Bangladesh to comply with the requirements of the Convention, which had been ratified in 1972, one year after the country's independence. He reaffirmed that the Government was taking steps to address all the comments made by the Committee of Experts. Those included the amendment of the Labour Act through the inclusion of special provisions respecting the registration of trade unions to ensure that the situation was more comfortable for workers' organizations. The

amendments included the removal of the requirement to provide employers with lists of trade union members. The workers would undoubtedly benefit from the extension of collective bargaining. With regard to workers in EPZs, he recalled that they enjoyed a form of participation through welfare associations which, although not a substitute for trade unions, constituted a complementary mechanism to trade union action. It was to be hoped that they would be instrumental in the improvement of working conditions through improved social dialogue. The proposed amendments also included restrictions on the dismissal of workers during the process of the formation of trade unions. The amendments had been submitted to Parliament on 8 June. They were not yet in their final form and other suggestions could still be taken into account.

He emphasized the deep shock felt by the Government at the deaths in the Rana Plaza disaster. Special attempts had been made by all the respective services to rescue the victims, under high-level supervision, including the personal involvement of the Prime Minister. The Government had taken all the necessary steps for the criminal investigation of the Tazreen and Rana Plaza disasters. The criminal investigation of the Tazreen disaster had led to the arrest of some of those responsible, as well as the suspension of a number of inspectors. Following the Rana Plaza collapse, criminal charges had been brought against the owner of the building, the owners of the factory and the municipality. The owners of the building and the factory had been placed under arrest and the Department of Factories and Inspection had filed a case. The national occupational safety and health policy was in the final stages of preparation. He added that 22 unions had been registered during the first five months of 2013. The action taken in response to the recent tragedies in the garment sector included the recruitment of 800 additional inspectors by the Department of Factories and Inspection. The Deputy Director-General of the ILO had visited the country following the collapse of the Rana Plaza factory and had held discussions with the various stakeholders, including the Prime Minister. A national tripartite plan of action on constructions had been adopted, which included an assessment of factories in the ready-made garments sector using a high technology scanner. With regard to the case of Aminul Islam, he noted that the criminal investigation had recently identified two principal suspects. In conclusion, he expressed the willingness of the Government to enter into dialogue with all the concerned stakeholders, development partners and other interested parties. The issues raised concerning the rights of workers and their safety were of great importance, not only in the ready-made garment sector, but also in such other important export sectors as shipbuilding and machinery production. The constructive suggestions and criticisms made by the Employer and Worker members, as well as the Government members, were to be welcomed. Through the amendments that were before Parliament it was hoped to address all the comments of the Committee of Experts. Everyone was working towards the common goal of national development, which would be for the benefit of all citizens.

**The Employer members** thanked the Government representative for his responses to the statements made by various members of the Committee during the discussion. They welcomed the recognition by the Government of the need to change the national law to bring it into full compliance with the Convention and the commitment expressed to the principles of freedom of association. The Government should build on the steps that had already been taken to achieve full conformity with the Convention and supply a report on the steps taken this year to the Committee of Experts so that it could assess the progress made and consider any further measures that would need

to be adopted. The Employer members therefore encouraged the Government to ensure that the Labour Act was in full conformity with the Convention and to accept the technical assistance offered. They also encouraged it to continue and strengthen social dialogue so that the social partners could be involved in bringing national law and practice into conformity with the Convention.

The Worker members recalled that the Committee of Experts had called on the Government to carry out investigations into the serious allegations made, including murder, with a view to punishing those responsible. They therefore deeply regretted that the Government had taken little action in that respect and urged it immediately to investigate, arrest and prosecute those responsible for such crimes, and particularly the murder of Aminul Islam. The Committee of Experts had also repeatedly commented on the numerous flaws in the Labour Act, the EWWAIRA and the Industrial Relations Rules. Although the Government had made no effort to ensure that workers in EPZs had the right to organize into trade unions and were able to bargain collectively in practice, the offer to extend the provisions of the Labour Act to EPZ workers was to be welcomed. However, the Worker members were bound to express disappointment at the low level of the Government's ambition to address the many issues raised concerning the Labour Act. They urged Parliament not to rush through the amendments as they currently stood, but to work with the ILO to ensure their compliance with the observations of the Committee of Experts. The ILO should intensify existing efforts in that respect.

The Worker members added that the recent registration of trade unions appeared to depend entirely on the will of the Government. For years, it had refused to register new unions in many sectors, including the garment sector, and there was little to suggest that it would continue their registration once the spotlight began to dim. Moreover, they expressed concern at the continued defence of intervention in union affairs in the closing statement by the Government representative. They emphasized that one of the best ways to avoid another industrial disaster in Bangladesh was to ensure that workers could exercise their rights guaranteed by the Convention. They therefore expressed their appreciation to the international brands that had signed, with the global unions, the international accord on fire and building safety, which recognized the importance of trade union action in fire and building safety. They called on the ILO to intervene immediately with the Government to ensure that the labour legislation currently before Parliament was in compliance with the observations of the Committee of Experts, as there was no reason why those observations could not be addressed in full. The ILO should significantly increase its capacity for technical cooperation at the Dhaka Office in relation to freedom of association and collective bargaining including, but not limited to, the garment sector. The ILO and the relevant international organizations should work to ensure that those responsible for the murder of trade unionists were arrested and prosecuted. The Government should be requested to provide a report this year on compliance with its obligations under the Convention. Finally, the ILO Dhaka Office should submit full reports to the October 2013 and March 2014 sessions of the Governing Body on its activities and on the situation in the country with regard to freedom of association and fire and building safety.

### **Conclusions**

The Committee took note of the written and oral information provided by the Government and the discussion that ensued.

The Committee noted that the outstanding issues concerned: numerous allegations of arrests, harassment and

detention of trade unionists and trade union leaders, notably in the garment sector, and refusals by the Registrar to register new trade unions; the need to ensure freedom of association rights to workers in export processing zones (EPZs); and numerous provisions of the 2006 Labour Act and the 1977 Industrial Relations Rules which were not in conformity with this fundamental Convention.

The Committee noted the information provided by the Government, in particular that: the Bangladesh Garments and Industrial Sramik Federation (BGIWF) was functioning without any obstacle, pending the decision of the Labour Court before which the Government had filed a case for cancellation of its registration in 2008; and amendments to the 2006 Labour Act had been submitted to Parliament, following intensive tripartite consultations and advice from the ILO. The Committee further noted the information on: the number and function of workers' welfare associations under the EPZ Workers' Welfare Association and Industrial Relations Act of 2010 and the Government's plans, when it expired in 2014, to bring EPZs under the purview of the Labour Act with ILO assistance; the intention to formulate new industrial relations rules following the adoption of the amendments to the Labour Act; and the technical cooperation provided by the ILO to ensure the further improvement of workers' rights in EPZs.

The Committee did not address the right to strike in this case, as the employers do not agree that there is a right to strike recognized in Convention No. 87.

Stressing that a climate of full respect for freedom of association can make a significant contribution towards the effective protection of workers' safety, the Committee highlighted the fundamental nature of this right. The Committee called on the Government to take the necessary measures to ensure that workers and employers can exercise their freedom of association rights in a climate that is free from threats, pressure and intimidation of any kind and to carry out independent investigations into the allegations of arrest, harassment and violence against trade unionists. The Committee took note of the important commitments made by the Government to bring the law and practice into conformity with the Convention and urged the Government to ensure that the amendments to the Labour Act were adopted without delay and addressed the numerous points raised by the Committee of Experts concerning the Convention's application. The Committee expected that these changes would further give rise to a simplified and effective registration process. Noting the Government's statement that participation committees would not be used as a substitute for trade unions, but rather would facilitate trade union activities and collective bargaining, the Committee urged the Government to take the necessary measures to ensure that the amendments to the Labour Act did not undermine trade union rights. Encouraged by the Government's statement concerning the lapsing of the EWWAIRA in 2014, the Committee invited the Government to avail itself of ILO technical assistance aimed at ensuring that workers in EPZs were fully guaranteed their rights under the Convention. The Committee requested the Government to provide a detailed report on the progress made with respect to all the above matters for examination by the Committee of Experts at its meeting this year. The Committee also invited the Director-General to submit to the Governing Body in 2014 a detailed report on the situation regarding respect for freedom of association in the country.

### **BELARUS (ratification: 1956)**

The Government provided the following written information.

In recent years, relations between the social partners have substantially stabilized. As at 1 January 2013, 554 agreements (one general agreement, 47 sectoral wage agreements and 506 local agreements) and 18,351 collec-

tive agreements were in force in Belarus; at the various levels (national, sectoral, provincial, district and municipal), there were 319 councils for labour and social issues. In the last ten years, the number of agreements has increased by 50 per cent and the number of collective agreements by 40 per cent, while the number of councils has doubled.

All interested parties are involved in work on the recommendations made by the Commission of Inquiry, including the Federation of Trade Unions of Belarus (FPB), the Belarusian Congress of Democratic Trade Unions (CDTU) and employers' associations. In this regard, it is particularly necessary to highlight the positive role played by the Council for the Improvement of Legislation in the Social and Labour Sphere (hereinafter the Council), which has met twice in 2013, on 26 March and 30 May.

In 2012 there were no cases of trade unions being refused registration. There have been no instances in the Republic of Belarus of citizens being punished by being charged with administrative or criminal offences in respect of trade union activities. This issue is under special state supervision. All complaints are examined carefully. The results indicate that the cases of individual trade union activists being charged with administrative offences, to which the CDTU refers, are in no way connected with the trade union activities of the individuals concerned. With regard to the cases of Mr M. Kovalkov and Mr P. Stanevsky referred to by the CDTU, Mr Kovalkov was charged with an administrative offence and fined 35,000 Belarus rubles (around €3) for committing an administrative violation under section 18.14 of the Code of Administrative Offences of the Republic of Belarus (failure to observe road traffic signals and breaking rules on carrying passengers). Mr Kovalkov was not held in administrative detention. Mr Stanevsky, according to information from the Ministry of Internal Affairs, was in a public place near 38 Serdich Street (in Minsk) when he started being openly disrespectful to those around him and swearing obscenely at passers-by. Mr Stanevsky failed to react to repeated warnings from police officers and became aggressive. In order to put a stop to Mr Stanevsky's unlawful actions, the police officers used force and special measures (handcuffs). On 21 April 2011, the Frunzensky district court in Minsk found Mr Stanevsky guilty of an administrative offence under section 17.1 of the Code of Administrative Offences (petty hooliganism) and sentenced him to administrative detention for eight days.

With regard to trade union compliance with the provisions of Presidential Decree No. 24 "On receiving and using foreign direct aid" (28 November 2003), in 2012, the FPB and the Mogilev provincial organization of the Belarusian Agricultural Sector Workers' Union (ASWU) registered foreign direct aid for social assistance amounting to US\$23,031 with the Department of Humanitarian Activities of the Office of the President of the Republic of Belarus. There have been no instances of trade unions being refused registration of foreign direct aid. Thus, despite a number of unresolved disputes, recent years have seen a clear tendency towards stabilization in Belarus. Tension between the social partners has eased. There are still a significant number of controversial issues. It is obvious, however, that this is an integral part of the process of social dialogue, which is not free from disputes in any country.

The Government of the Republic of Belarus and the social partners are devoting the utmost attention to improving legislation, in line with the recommendations made by the Commission of Inquiry. In this regard, at a meeting of the Council for Improving Legislation in the Social and Labour Sphere, held on 30 May 2013, the issue was raised of the need to abolish the requirement that at least 10 per cent of the total number of workers in an enterprise was

needed to found a trade union, during discussion of the measures being taken in the country to implement the recommendations of the Commission of Inquiry and suggestions for further work. This requirement is contained in Presidential Decree No. 2 "On various measures to regulate the activities of political parties, trade unions and other public associations" of 29 January 1999 (hereinafter "Decree No. 2"). The Council supported the proposal made by the Government that it would be appropriate to exclude this provision from Decree No. 2 and instructed the Ministry of Labour and Social Protection, in its capacity as secretariat to the Council, to inform the Government of the Republic of Belarus accordingly so that the necessary action could be taken. The Ministry of Labour and Social Protection transmitted this suggestion to the Cabinet on 4 June 2013. A definite step has thus been taken towards implementing the recommendations of the Commission of Inquiry in terms of improving legislation on registering trade unions. It should be emphasized that the Government of Belarus is open to dialogue and the discussion of all problematic issues with the social partners and the ILO. In this regard, the Government of Belarus would favour holding a seminar, in conjunction with the social partners and the ILO, on developing social dialogue in the Republic of Belarus, at which future steps towards implementing the recommendations of the Commission of Inquiry should be identified. The Government of Belarus has repeatedly suggested such a seminar to the ILO, and also to the social partners within the framework of the Council for Improving Legislation in the Social and Labour Sphere.

In addition, before the Committee, a **Government representative**, referring to the written information provided concerning the application of the Convention, wished to add that trade unions were the most important organizations in society and represented 90 per cent of the economically active population. Her Government supported and applied the principles of trade union pluralism. The right of every person to join any trade union without prior authorization, provided that they respected the union's by-laws, was guaranteed in law. The two trade union federations operating in the country were the FPB and the CDTU. They participated in social dialogue and advisory bodies and in the preparation and conclusion of collective agreements. Unions, whether large or small, could take part in collective bargaining, as demonstrated by bargaining in two large enterprises, where the two organizations had been involved in preparing the collective agreement. The recommendations of the Commission of Inquiry provided guidance for the Government and the social partners with the aim of developing constructive cooperation. A positive trend had been seen in recent years, with no cases in 2012 of a trade union being refused registration. The Government paid particular attention to issues relating to the non interference by enterprise managers in the internal affairs of trade unions, irrespective of the size or affiliation of trade unions. The Trade Unions Act was a guarantee of trade unions independence in exercising their prerogatives, and any violation in that regard involved liability to criminal sanctions. If it was so provided for in a collective agreement, the law authorized an employer to work with trade unions to regulate certain matters.

With regard to social dialogue, the positive role played by the tripartite Council, which had been operating in its new format since 2009, should be emphasized. It consisted of seven members from each of the three sides, including representatives of the FPB and the CDTU. The Council functioned as an independent body, founded on the principle of pluralism and providing a forum in which each party could propose topical issues for inclusion on the agenda concerning the right to freedom of association, with a view to resolving them. The meetings held in 2013

had taken into account the proposals made by the FPB and the CDTU. The FPB's proposal to amend legislation on the conclusion of collective agreements had resulted in the creation of a tripartite working group that had been asked to make proposals in that regard. For its part, the CDTU had asked for the situation at the enterprise Granit to be discussed. The meetings had provided an opportunity for a constructive exchange of views and had again demonstrated the complexity of the current situation. Amending legislation was not a straightforward process, as it required balanced solutions to be found that were acceptable to all parties. Nevertheless, the Government realized that it was necessary to make progress towards implementing the recommendations of the Commission of Inquiry on legislative matters. The tripartite Council was the body best suited to do that. It had examined the issues at its last meeting, on 30 May 2013, at which it had supported the Government's proposal to amend Presidential Decree No. 2 by revoking the requirement for a minimum of 10 per cent of workers in an enterprise to establish a trade union. The Government and the social partners now needed ILO support to hold a tripartite seminar on developing social dialogue and tripartism. It had been proposed by the Government in 2011, but it had not yet proved possible to organize, as the CDTU was opposed to holding a seminar with the participation of the ILO. Such a seminar could, however, make a useful contribution to the development of social dialogue in Belarus, in the same way as the 2009 Minsk seminar, organized jointly by the ILO, the International Trade Union Confederation (ITUC) and the International Organisation of Employers (IOE), had done in enabling the creation of the tripartite Council.

The Government respected the principles on which the ILO was founded and the procedures relating to international labour standards. It also greatly appreciated the cooperation with the ILO, which had often helped to bring the parties closer together. The Government was open to dialogue and ready to discuss any problematic issues. It was fully aware of the fact that it had not yet fully carried out the tasks set out in the recommendations of the Commission of Inquiry. It therefore did not wish to delay, but would make all the necessary efforts to develop constructive relations with the social partners and cooperation with the ILO.

**The Worker members** said that it was discouraging to have to discuss once again a case on which the Committee of Experts had been commenting for over 20 years concerning the failure to comply with Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Conference Committee had also adopted a number of conclusions in view of the Government's failure to intensify its efforts to ensure that freedom of association and civil liberties were fully ensured. Numerous complaints had also been made to the Committee on Freedom of Association. In 2003, a complaint under article 26 of the Constitution had resulted in a Commission of Inquiry, the report of which contained 11 recommendations calling, *inter alia*, for free and independent trade unions to be able to play their proper role in the country's social and economic development. In 2010, when the situation in Belarus, in relation to the Convention, had been examined, the Conference Committee had noted a number of apparently positive developments involving the Council and the registration of some trade unions. At the time, the Conference Committee had nevertheless regretted that there had been no concrete proposals to amend Presidential Decree No. 2 on trade union registration, the Act on Mass Activities or Presidential Decree No. 24 on the use of foreign gratuitous aid, as requested by the Commission of Inquiry. In 2011, the Conference Committee had again discussed Belarus in the context of Convention No. 98 and had noted with regret

new allegations of interference in trade union activities, pressure and harassment. It had expressed its concern that the determination of trade union representativeness could not be meaningful until the Government first put in place the necessary measures to ensure full respect for freedom of association for all workers, and guarantees for the registration of freely chosen workers' organizations and the promotion of their right to collective bargaining. The European Union (EU) had also voiced its concern at the failure of Belarus to respect human rights and had emphasized the need to put a stop to the harassment of members of the opposition and civil society and decided to take restrictive measures so as to maintain the pressure on the country at least until October 2013. Because the rights guaranteed by Conventions Nos 87 and 98 were human rights, Belarus would have to respect them before those restrictions could be lifted.

They noted the Employer members had emphasized, that in 2012, the Government had been unwilling to send a report of its own accord in response to the many observations made by the Committee of Experts. This year's report again contained no new information concerning the implementation of the recommendations of the Commission of Inquiry in 2004. The Committee on Freedom of Association had also expressed its deep concern at the Government's lack of cooperation. The situation was therefore deteriorating after the glimmer of hope that had emerged from the discussion in 2010. There was a lack of willingness to cooperate with the ILO and there was more of a tendency to destroy independent trade unionism.

The request to amend Presidential Decree No. 2 on the registration of trade unions and its implementing regulations had not been welcomed by the Government, thereby perpetuating the minimum threshold of 10 per cent of the workforce. Under the new interpretation of paragraph 3 of Decree No. 2, other obstacles seemed to be raised for registration, the right of trade unions to elect their representatives in full freedom and to organize their administration. Other cases should also be noted. The management of the Granit enterprise had refused, in violation of the Convention, to grant the legal address required by Presidential Decree No. 2 to a new first-level organization, the Belarus Independent Trade Union (BITU); registration had been denied to independent trade unions, such as the Razam Union and Delta Style, and the leaders of the independent trade unions in several enterprises had all been dismissed; the CDTU had referred a case to the National Council of Labour and Social Issues concerning the refusal to register a first-level union in light of the 10 per cent membership threshold, even though the rule requiring a minimum of 10 per cent of the workforce was not applicable to first-level unions; temporary employment contracts were being used systematically to exert greater control over workers in order to obstruct the development of independent unions; and practices tantamount to forced labour existed in the wood processing industry.

The Worker members emphasized that the case merited the Committee's full attention since both the credibility of the ILO supervisory mechanisms and respect for the workers who belonged to independent trade unions were at stake. The EU, which had expressed its dismay with regard to the issues under discussion, was also concerned by the work of the Committee, which should take a firm stand regarding the Government's obligation to intensify its efforts to ensure that freedom of association and respect for civil liberties were fully guaranteed in law and practice.

**The Employer members** recalled that when the present case had been discussed by the Committee in 2007, they had noted an apparent change in the attitude of the Government towards the issues raised. On that occasion, the Government had recognized that the recommendations of



the Commission of Inquiry did not need to be adjusted to national conditions, had dropped the legislative proposals that went in the wrong direction, and had instituted social dialogue. Following the discussion of the case in 2010, the Employer members had considered that the Government had been cooperating with the ILO and that there was a positive social dialogue process. However, they had noted that much still needed to be done as fundamental legislative issues had not yet been addressed. Although the Government was faced with the diverging interests of employers and workers, the recommendations of the Commission of Inquiry addressed issues relating to anti-union discrimination and the registration of trade unions. At that time, it had then been the opinion of the Employer members that it was time for the Government to implement the recommendations of the Commission of Inquiry in law and practice.

The Employer members noted that the most recent comments by the Committee of Experts consisted of a follow-up to the recommendations of the Commission of Inquiry, although they wished to recall that the Committee of Experts had made comments on provisions of the Labour Code dealing with the right to strike, even though there was no consensus in the Conference Committee that the right to strike was recognized under Convention No. 87. The position of the Employer members on that issue had been stated clearly during this year's discussion of the General Survey and the General Report of the Committee of Experts, and it was their view that those points could not be reflected in the conclusions of the Conference Committee. The Committee of Experts had noted with regret that the Government's report contained no new information on the measures taken to implement the recommendations of the Commission of Inquiry or the requests made by the Conference Committee. The Committee of Experts had urged the Government to take the necessary measures to amend Presidential Decree No. 2, to eliminate the obstacles to trade union registration, although no information had been provided in that respect. The Employer members expressed deep concern at the failure of the Government to provide information concerning the status of Presidential Decree No. 2 and therefore assumed that no tangible measures had been taken for its amendment. However, they welcomed the indication by the Government representative that the tripartite Council had been operating again since 2009, that the relations between the social partners had stabilized and that a number of collective agreements had been concluded. They also noted that there had been no cases of the refusal to register trade unions in 2012 and that the Government had indicated an openness to enter into dialogue with the social partners and the ILO, as well as suggesting the holding of a seminar which could examine future measures to give effect to the recommendations of the Commission of Inquiry.

The Employer members noted with deep regret that it appeared that no substantial progress had been made in the implementation of the recommendations of the Commission of Inquiry. They therefore urged the Government to take the necessary steps, in consultation with the social partners, to ensure that freedom of association was guaranteed in law and practice. They called upon the Government to intensify its cooperation with the social partners for that purpose and to avail itself of the expert advice and assistance of the ILO. It was also imperative for the Government to provide a report on the measures implemented. They regretted to note that the progress hoped for, when the case had last been addressed by the Conference Committee, had not been achieved and emphasized that it was now time to move from words to action. They hoped to be able to note changes in the situation in the immediate future.

**The Employer member of Belarus** indicated that progress had been made with the recommendations of the Commission of Inquiry, particularly with regard to the national legislation, including more detailed regulations regarding the relations between the social partners. He referred to the equal treatment of all trade unions by employers; the eligibility for collective bargaining of all trade unions, including the CDTU; and the coverage of all workers by the law on unjustified dismissal irrespective of their membership in a particular trade union. Trade unions were being actively involved in the improvement of legislation in the National Council on Labour and Social Issues, and had participated in the development and implementation of the national policy on wages and working conditions. He considered that social dialogue was now systematically applied in the country and indicated that further technical assistance would contribute to a better understanding of social dialogue. In the current conditions and the problems the country was facing, sanctions were not justified. He would therefore welcome the decision of the United States Labor Department and the European Union to lift sanctions. Referring to the cooperation project "Eastern Partnership" he hoped for the normalization in the relationship between Belarus and the European Union. The Employers recognized that the 10 per cent threshold to establish a union was an issue, and indicated that a decision should be made taking into account the interests of both employers and workers. He requested a realistic assessment by the Committee concerning the development of social dialogue in the country.

**The Worker member of Belarus** recalled that the ILO had been making recommendations with regard to freedom of association in Belarus for almost ten years now, and the Government had been working on them constantly. He indicated that the FPB had more than 4 million members, which was almost half of the population of the country and could not be compared to very small unions. While in 2002, neither social dialogue nor collective agreements had existed, more than 550 wage agreements and more than 18,000 collective agreements were now in force in the country. However, despite invitations from the FPB, other trade unions participated very little in collective bargaining. In order to defend the interests of workers and the population, the FPB was working with the Government to further its claims, particularly in terms of employment creation and social protection. He drew attention to the similarities between several elements of the ILO Director-General's Report and the action of the FPB, and expressed surprise at the criticisms that had been levelled at his Federation by the smaller unions in the country on the pretext that it had achieved wage increases in some sectors only. The Worker member spoke out against the sanctions the EU had imposed on several bodies in Belarus. Those measures were harmful, particularly for the well-being of the population. He highlighted the fact that the ILO and the EU were radically different institutions and any confusion in that regard should be avoided. He then stated that ten of the 12 recommendations of the Commission of Inquiry had already been implemented and that the Government was currently working on the 10 per cent membership threshold required to form a union in an enterprise. Turning to the general issue of the registration of unions, he noted that the issue had been discussed for ten years and was no longer on the agenda. As illustrated by the fact that there were 45,000 private enterprises solely in Minsk which did not require a legal address to create a trade union organization, although small trade unions not affiliated to FPB did not use this opportunity, though they had such right. He also asked the Conference Committee to support the efforts being made by the Government, and supported the proposal of the Government to organize a meeting in Minsk,

which would provide the opportunity to address the issues that still had to be discussed.

A **representative of the European Union**, speaking on behalf of the European Union (EU) and its Member States, as well as Croatia, Iceland, Montenegro, Serbia and The former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina and Norway, indicated that they remained gravely concerned about the lack of respect for human rights, democracy and rule of law in Belarus. Democracy could not exist without freedom of expression, opinion, assembly and association. They called on the Government to cooperate fully with the ILO to provide information on the follow-up given to the recommendations of the Commission of Inquiry and to eliminate obstacles to trade union registration, in particular the requirements imposed by Decree No. 2. Necessary measures had to be taken in consultation with the social partners, so as to ensure that the right to organize was effectively guaranteed. Presidential Decree No. 9, signed on 7 December 2012, which prevented the employees in the wood-processing sector from resigning unilaterally until the end of the modernization of their companies, was concerning. Also the legislation that further restricted the Belarusian citizens' freedom of assembly gave raise to great concern and any penalization or discrimination against those exercising their right to freedom of expression and freedom of assembly had to be ended. They requested the authorities to amend or repeal legislation not in conformity with the right of workers to organize, in line with the recommendations of the Commission of Inquiry made in 2004. The speaker expressed the commitment of the countries on behalf of which he spoke to a policy of critical engagement, including through dialogue and participation in the Eastern Partnership, and recalled that the development of bilateral relations under the Eastern Partnership was conditional on progress towards respect by Belarus for the principles of democracy, the rule of law and human rights. They were willing to assist the Government to meet its obligations in this regard and would continue to monitor closely the situation in the country.

The **Employer member of Uzbekistan** considered that significant progress had been made with the strengthening of social dialogue in accordance with ILO standards, for instance through the conclusion of collective agreements in all sectors and the registration of the CDTU. The technical assistance provided by the ILO had proved beneficial in this regard. He insisted that sanctions undermined social partnerships and were unacceptable, not suitable to solve the problems, and only exacerbated the situation for workers and enterprises. Constructive dialogue should be continued.

An **observer representing the International Trade Union Confederation (ITUC)** emphasized that in Belarus state control over the trade union movement was total and it was impossible to establish independent trade unions. He cited several examples of mass dismissals of workers who had taken part in the formation of trade unions, and those practices had subsequently been endorsed by the courts. Administrative sanctions were also used as a means of pressure without provoking any response from the public prosecutor. Moreover, work meetings aimed at expressing solidarity during the 1 May celebrations had been banned. In more general terms, the mechanisms for implementing the recommendations of the Commission of Inquiry had been used in a manipulative way and the real issues had not been tackled at all. The observer hoped that the ILO would persist in its efforts to ensure that freedom of association would finally be respected in Belarus. The defenders of freedom had to pay a very high price in Belarus but no price could be put on democracy.

The **Government member of the Russian Federation** stated that the report submitted and the statements made by the Government were comprehensive and showed its commitment to cooperate and maintain a dialogue with the ILO. He understood that the Council of Ministers of Belarus was currently considering proposals for the amendment of Presidential Decree No. 2, particularly with a view to abolishing the 10 per cent minimum membership requirement for the registration of trade unions. The allegations of numerous violations, harassment, denial of registration and arrest were not supported by facts. He was also surprised by the fact that the Committee of Experts had not taken into account the explanations of the Government with regard to the situation in the two enterprises mentioned in the Committee of Experts' report. His Government called on this Committee to strive for an objective and unbiased assessment of the situation with regard to the implementation of ILO Conventions.

The **Government member of Cuba** stated that ILO technical cooperation had played a key role, making a tangible contribution to the implementation of the Convention. There had been progress in social dialogue, as illustrated by the increase over the previous ten years in the number of collective agreements and the fact that in 2012, no cases had been submitted concerning the denial of trade union registration. The Government, together with the social partners, attributed great importance to improving the legislation, in accordance with the recommendations of the Commission of Inquiry. Recently, there had been specific proposals and measures in that regard, particularly on registering trade unions. Her Government welcomed the Government's willingness and its efforts to maintain constructive relations, social dialogue and to work in close cooperation with the ILO, and called for the continuation of technical assistance in order to achieve the objectives established by the Convention.

The **Government member of Canada** indicated that his Government was gravely concerned by the overall situation of human rights, including labour rights, in Belarus. His Government was disturbed by continued reports of numerous violations of the Convention, including interference by the authorities in the activities of trade unions, arrests and detention of members of independent trade unions, anti-union dismissals, threats and harassment. His Government urged the Government to take the necessary measures to address these serious allegations and to make a real effort to eliminate violations of trade union rights, including the right of workers to participate in peaceful protests to defend their occupational interests, in their country. His Government was also gravely concerned by the very minimal degree of cooperation exhibited by the Government with the supervisory bodies of the ILO. The Government was failing to provide follow-up information to the 2004 recommendations of the Commission of Inquiry. The observations of the Committee of Experts also detailed numerous other instances where the Government had failed to provide responses or had failed to cooperate in other ways. Cooperation with the ILO supervisory mechanisms was a critical component of good faith membership in the Organization. His Government urged the Government to respect its obligations and to cooperate fully with the ILO.

The **Worker member of the Russian Federation** stated that freedom of association could not be freely exercised in Belarus. The close ties between the two countries allowed Russian trade unions access to reliable information sources revealing police pressure, mass dismissal of union leaders and an absence of social dialogue. Furthermore, there had been reports of some instances of forced labour. He regretted that a kind of feudal system still existed in the heart of Europe and that the Commission of Inquiry's recommendations remained empty words. He said that a

proper system to monitor the situation should be put in place and requested the Government to present concrete evidence which might refute the ongoing allegations of violations of the Convention.

**The Government member of China** indicated that the issue of trade union registration improved every year and that no complaint in this regard had been presented in 2012; Decree No. 2 should be applied. She stressed the important role of the Council and requested that the Government's efforts to implement fully the Convention be supported in the context of technical assistance.

**The Worker member of Poland** considered that no progress had been made towards implementing the recommendations of the Commission of Inquiry and improving the application of the Convention. She regretted to inform the Committee of new cases of violations of trade unions rights which had occurred in several companies. The violations of trade union rights included the denial to register the independent unions, harassment and dismissal of new union leaders and activists, interference in the union activities, excluding the independent trade unions from collective bargaining, the denial of the right to run meetings and manifestations, and prosecuting trade union leaders under criminal pretexts. In addition, the existing legislation was also being used against workers and members of the independent trade unions, as illustrated by the difficulties encountered by the newly established independent union at the Granit Company in Mikashevichi to register and pursue claims of reinstatement of their leaders who had been dismissed on the basis of the provisions of the Labour Code. The requirement of a legal address and the 10 per cent threshold for trade union registration were some of the main obstacles for the independent trade unions to act freely. From the reports of the Committee of Experts and the statements made by the Government, it could be concluded that no concrete, effective measures had been taken to implement the recommendations of the Commission of Inquiry. The Government's declarations on social dialogue were empty and improved in no way the situation of workers and independent trade unions. The Government's declarations should be reflected in concrete actions. She recalled that freedom of association could not be fully exercised in a context in which civil liberties were not respected. She was therefore convinced that the Government should first introduce a system which guaranteed and would respect such civil liberties for all. As long as the Government failed to comply with its international obligations, the international pressure would continue.

**The Worker member of Egypt** endorsed the position of the Worker member of Belarus with respect to the positive steps taken by the Government on the Convention. He underlined that tripartite social dialogue was an important tool to ensure the progress of any country and the observance of ILO Conventions and workers' rights. Referring to the social dialogue system, he described it as efficient through the National Council of Labour and Social Issues which included an equal number of representatives from trade unions, employers and the Government. Most trade unions participated in the negotiation of collective agreements and in the elaboration of legislation which was the basis of social dialogue. In this respect, 18,000 collective agreements had been adopted by workers' and employers' organizations in the country. The speaker concluded by expressing his conviction that the continued dialogue between the ILO and Belarus had guaranteed the right to join trade unions in recent years, and that there was progress in implementing Convention No. 87.

**The Government member of the Bolivarian Republic of Venezuela** stated that his Government welcomed the strengthening of social dialogue in the country, which had

resulted in the full recognition of trade union rights, and an increase in the number of collective agreements and councils for labour and social issues. His Government was confident that the Government would continue adopting measures that would benefit the stability of the country in terms of freedom of association and protection of the right to organize. The Government was committed to that endeavour, as illustrated by the ILO proposal to organize a seminar with the social partners on the work of the Council, with the participation of the FPB and the CDTU. His Government called for the Committee to highlight the Government's progress in terms of implementing the recommendations the Commission of Inquiry had made concerning the Convention.

**The Worker member of Sudan** supported the position of the Worker member of Belarus and other members of the Committee about some positive changes that could be noted with regard to the application of the Convention. He was encouraged by the participation of all social partners in a broad dialogue with the ILO, and noted the participation of the trade unions of Belarus in the process of implementing ILO recommendations. Noting with interest the absence of problems with registration of unions since 2012, the positive steps in improving the legislation, and the broad social dialogue, he concluded that compliance with the Convention had improved through the efforts of the ILO.

**The Government member of Uzbekistan** stated that the written and oral information provided by the Government showed that the situation regarding freedom of association in the country had stabilized and that the Government had been able to collaborate with all trade unions (including the FPB and the CDTU). The Council was working to improve the situation and resolve contentious issues. There had been no issues relating to the registration of trade unions in 2012, which showed that progress had been made. The discussion on the removal of the 10 per cent threshold for trade union registration was also one of the positive steps taken, and all these initiatives should be duly reflected in the Committee's discussions.

**An observer representing the World Federation of Trade Unions (WFTU)** fully endorsed the stance of the FPB, which represented 4 million workers throughout the country. She was familiar with the labour and economic situation of Belarus and expressed satisfaction at the significant progress that had been made in the country. Belarus currently had an unemployment rate of just 1.6 per cent, it occupied ninth place in the world in terms of the level of employment and was 13th in the league table of illiteracy-free countries. It was the richest State in the Eurasian Economic Community and one of the most industrialized countries in the region. In her visit to the country in 2012 she had been able to verify the high level of participation in enterprises enjoyed by workers and the guarantees they had with regard to respect for freedom of association and workers' rights. Moreover, she had been able to confirm the conditions in which more than 30 national trade unions were able to fight for and defend the social and economic rights of workers without any discrimination on the part of the authorities. She emphasized that all the social partners were working to implement the recommendations of the Committee of Experts and the Commission of Inquiry.

**The Government member of the United States** expressed her Government's regret regarding the serious lack of progress made by the Government in implementing the 2004 recommendations of the Commission of Inquiry in view of the time that had passed. This was especially troubling given the detail with which this situation had been examined throughout the ILO's supervisory system, and the extent to which the ILO Office had provided its technical advice and assistance. Hence, her Government

urged the Government once again to take all necessary measures without further delay to ensure that freedom of association was effectively guaranteed, and again strongly encouraged the Government to work closely with the social partners and to hold regular consultations with the ILO, so that the ILO supervisory bodies would soon be in a position to confirm substantive, concrete and sustainable progress. Recalling the joint statement on democracy and human rights made by the Governments of the United States and Belarus in 2010, she noted that free and vibrant trade unions were vital to democracy. Her Government was looking forward to the day when the ILO supervisory bodies could confirm this statement.

**The Government member of Switzerland** stated that her Government shared the concern expressed by the European Union regarding the democratic situation in Belarus in general and freedom of association in particular. It was, therefore, vital to ensure that the Commission of Inquiry's recommendations were followed up. The Government, in collaboration with the social partners, should do all it could to ensure the effective application of the Convention.

**The Government member of India** expressed his Government's satisfaction at the steps taken by the Government to implement the recommendations of the Commission of Inquiry. The role of the Council was particularly noteworthy and the fact that both the FPB and the CDTU were represented in the Council was to be welcomed. All of this showed the positive intentions of the Government to implement the said recommendations and his Government commended the ILO for the technical cooperation and assistance to Belarus in implementing the Commission of Inquiry's recommendations and hoped that this constructive engagement could continue in the future.

**The Government representative** stated that there were a range of questions that still needed to be resolved and that her Government would continue to take steps to develop pluralism. International labour standards were given a prominent place in national legislation and observance of ratified Conventions was a priority. Her Government fully observed its commitments towards the ILO supervisory bodies and had submitted two reports to the Committee on Freedom of Association as well as the report on the application of the Convention under article 22 of the ILO Constitution. The situation in the "Granit" enterprise had been reviewed and the results had been communicated to the Office. With respect to Presidential Decree No. 2, the proposal from the Council in June of this year related not to the interpretation of the Decree's standards but amendments to the Decree that would remove the 10 per cent minimum membership requirement. This amendment had been designed to meet the recommendations of the Commission of Inquiry. Industrial relations gave rise to conflicts all around the world, particularly concerning the relationship between employers and trade union organizations in the workplace, and there were different causes for these conflicts independent from national legislation or policy. Recalling a case in which the former vice-president of a trade union had been dismissed from the trade union congress, which was thereafter sanctioned for not respecting the time frame for such dismissal, the speaker stated that when employers clearly violated workers' rights, even if they were trade unions, the Government was obliged to respond in accordance with the provisions of existing legislation. While speakers had given different assessments of the level of progress achieved in Belarus in implementing the recommendations of the Commission of Inquiry, there were objective facts that could not be denied, including the opportunity for all trade unions to represent workers regardless of the number of workers they represented. All social partners could engage in social dialogue. The Council was in op-

eration and was taking a special decision on the effectiveness of the amendments to the legislation on trade unions. The speaker proposed that a tripartite seminar be held with the participation of the ILO. She assured the Committee that her Government would continue to be a firm advocate of the principles of the ILO in the areas of freedom of association and tripartism.

**The Worker members** said that the picture painted by the Government representative did not match the reality experienced by the independent trade unions. The situation, far from improving, was getting worse. The tripartite body was no longer meeting and there had been no significant follow-up to the recommendations made by the Commission of Inquiry. Perhaps a decisive point had been reached, but nobody knew in which direction. The only direction that could be taken was towards implementing the Commission's recommendations. The Council had examined the question of founding trade unions, but there was nothing to indicate that its examination would be followed up, and the independent trade unions doubted the Council's credibility. With regard to the seminar proposed by the Government, the Worker members expected nothing to come of it. The legislation restricting trade union rights should be revised, taking into account the comments of the supervisory bodies. Given how old the case was, and in view of the Government's inertia, sending a direct contacts mission was entirely justified in order to obtain a legal and institutional response to the acts suffered by the independent trade unions. The Government should be invited to provide information on progress made in that regard. The Worker members also asked for the conclusions on the case to be included in a special paragraph in the Committee's report.

**The Employer members** concluded that this was a serious case in relation to the exercise of trade union rights and issues with respect to the freedom of association but remained optimistic in view of the developments that had taken place since 2007. There had been progress although it was slow. Currently, the situation was at crossroads: the Government could choose to either continue to progress at a gradual rate, or commit to accelerating its efforts in order to achieve compliance with the provisions of the Convention. The social dialogue process that had begun was essential and should continue. The full application of the Convention could only be secured through the adoption and strict implementation of necessary legislation and compliance could only be achieved by beginning to change the situation both in law and in practice. The Employer members requested the Government to intensify its cooperation with the social partners and to avail itself of the expert advice and assistance of the ILO. In this regard, the Employer members supported the request of the Worker members that the Government should accept a direct contacts mission.

### **Conclusions**

**The Committee took note of the written and oral information provided by the Government representative and the discussion that ensued.**

**The Committee recalled that the outstanding issues in this case concerned the need to ensure the right of workers to establish organizations of their own choosing and organize their activities and programmes free from interference by the public authorities in law and in practice. The Committee further highlighted the long outstanding recommendations from the Commission of Inquiry for amendments to be made to Presidential Decree No. 2 dealing with trade union registration, Decree No. 24 concerning the use of foreign gratuitous aid and the Law on Mass Activities.**

**The Committee noted the information provided by the Government on the work of the tripartite Council for the Improvement of Legislation on the Social and Labour**

Sphere and, in particular, its decision to support the amendment of Decree No. 2 by repealing the 10 per cent minimum membership requirement for the establishment of trade unions at the enterprise level. The Committee further noted the Government's stated commitment to social dialogue and cooperation with the ILO.

The Committee noted with regret new allegations of violations of freedom of association in the country, including allegations of interference in trade union activities, pressure and harassment. In particular, while observing that the Government stated that there were no registration refusals in 2012, the Committee took note of the allegations of the refusal to register the BITU primary organization at "Granit" enterprise and the subsequent indication by the Government that this matter was addressed by the tripartite Council.

The Committee observed with deep regret that no new information was provided by the Government nor had any tangible result been achieved in implementing the recommendations made by the Commission of Inquiry of 2004.

Recalling the intrinsic link between freedom of association, democracy, the respect for basic civil liberties and human rights, the Committee urged the Government to intensify its efforts to bring the law and practice into full conformity with the Convention, in close cooperation with all the social partners and with the assistance of the ILO. The Committee urged the Government to take immediately all measures necessary to ensure that all workers and employers in the country may fully exercise their rights to freedom of expression and of assembly. The Committee invited the Government to accept a direct contacts mission with a view to obtaining a full picture of the trade union rights situation in the country and assisting the Government in the rapid and effective implementation of all outstanding recommendations of the Commission of Inquiry. It expected that the Government would submit detailed information on proposed amendments to the abovementioned laws and decrees to the Committee of Experts at its meeting this year and trusted that it would be in a position to note significant progress with respect to all remaining matters at its next session.

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

The Government representative indicated that her Government had taken note of the conclusions but would give its final decision on whether they were acceptable and well-founded only after examining very carefully the discussions that had taken place in this Committee.

#### CAMBODIA (ratification: 1999)

A Government representative, referring to the case of Chea Vichea, Hy Vuthy and Ros Sovannareth (Committee on Freedom of Association, Case No. 2318), indicated that the Prime Minister had recently issued an order (letter No. 397 of 6 March 2013) to establish a Coordinating Committee with the exclusive mandate to coordinate the ministries involved to respond to the questions relating to Case No. 2318. In addition, the Prime Minister had issued a second order (letter No. 1080 of 6 June 2013) to establish a permanent committee which would include all social partners and 20 different ministries and which was mandated to develop the national employment policy and to respond to all questions raised by the ILO. The two orders would be translated and submitted to the Committee of Experts in due course. Concerning the freedom of association issues, his Government respected the principles underlying the Convention and the Cambodian labour legislation gave full effect to its provisions. Professional organizations of employers and workers could freely organize and exercise their rights. To date, there were 12 union chambers, 76 union federations and 2,765 trade unions at the enterprise level, mostly in the garment and shoe sector comprising around 460 enterprises. Moreover, workers' organizations were playing a crucial

role in drafting national legislation and were actively participating in discussions on labour issues. In its effort to address a variety of industrial relations challenges and strengthen social dialogue, the Government had established a tripartite committee to monitor strike actions, another tripartite committee on labour contracts and yet another tripartite committee on minimum wages. These three committees were composed of representatives of employers and workers who were freely elected by their respective organizations.

Moreover, the speaker recalled that a new draft Trade Union Law had been drawn up with the active involvement of social partners and technical assistance from the Office. The new draft legislation was now being considered by the Council of Lawyers of the Council of Ministers. Upon receiving the finalized draft, the Ministry of Labour and Vocational Training would forward it to the Committee of Experts. Furthermore, the Ministry of Justice was instructed to draft the labour court law in consultation with all social partners, as per established practice. In relation with the independence of the judiciary and the Government's reporting obligations regarding recently developed laws, such as the Anti-Corruption Law, the speaker indicated that one of the newly established committees referred to above would take responsibility for responding to the Committee of Experts' requests, probably after the general elections of July 2013 and as soon as it had been familiarized with the ILO procedures, in particular the work of the supervisory bodies, and he requested the Office to provide assistance and training in this regard. In addition, the Government had appointed a labour attaché to Cambodia's diplomatic mission in Geneva who would facilitate communication and dialogue between the Office and concerned bodies in Cambodia. Finally, the Government representative stated that significant progress had been made over the years but as the labour market changed and industrial relations diversified, there was need to continue to respond to the needs of employers and workers through appropriate legislation and social dialogue.

The Worker members recalled that, in its 2007 and 2011 conclusions, the Committee had already referred to the murder of trade unionists, to harassment, to the arrest and disappearance of union leaders, to the inefficiency and lack of independence of the justice system and to the climate of impunity. The Committee of Experts had used the very same words in its comments to the Government ever since 2003. In its latest observation, it noted that the murder of trade unionists Chea Vichea, Ros Sovannareth and Hy Vuthy, had still not been elucidated and once again raised the question of the efficient and independent functioning of the system of justice and of the climate of impunity. Although the Government had been requested to take concrete measures and, specifically, to adopt the draft laws on the status of judges and attorneys and on the functioning of tribunals without delay and to send copies to the Committee, there had been no progress at all. As to the harassment encountered by the members of the Cambodian Independent Teachers Association (CITA), that was a reflection of the more general problem that civil service unions were not covered by the draft Trade Union Law and were treated as ordinary associations. Moreover, as in many countries, the use of temporary contracts and proliferation of short-term contracts in Cambodia directly or indirectly undermined the possibility for workers to join trade unions. All workers without distinction had to be allowed to join the trade union of their choice. The Worker members stressed that the problems referred to were particularly serious in the textile sector, which was an essential part of the Cambodian economy as it accounted for 80 per cent of the country's exports. Although it employed skilled manpower, the workers' conditions of

pay and employment were bad and workers were under tremendous pressure. The enterprises that imposed the conditions under which they worked were subcontractors to world-famous trade names that were not bothered by such practices. Yet, there was an obvious link between decent working conditions and freedom of association in an enterprise. The climate of violence and corruption that prevailed rendered the trade unions' task difficult and it was the workers who suffered. A free trade union movement that was not exposed to violence, pressure and threats was essential if the social partners were to conduct an effective dialogue and thus guarantee conditions of employment that were in line with ILO standards. The detention of trade unionists for reasons connected with their activities in defence of the interests of workers constituted a serious interference with civil liberties in general and with trade union rights in particular. The major economic interests of the textile sector would be much better protected if freedom of association was guaranteed.

**The Employer members** noted that this case constituted a challenge for the Committee because, despite seven observations addressed by the Committee of Experts since 2007, a direct contacts mission in 2008, a double footnote in 2010 and a Conference discussion in 2011, little progress had been made. A law on peaceful demonstrations had been adopted in 2009 but appeared to be at variance with the provisions of the Convention. Issues such as a climate of impunity, a context of violence directed at union leaders and lack of independence of the judiciary remained unresolved. Workers continued to denounce acts of violence and harassment, labour courts still did not exist, and the United Nations (UN) Special Rapporteur on the situation of human rights in Cambodia had recommended that measures should be taken to enhance the independence of the judiciary. The Employer members welcomed the Government's indication that it had adopted anti-corruption legislation and put in place an anti-corruption unit, and requested it to provide information on the composition and mandate of that unit, together with a copy of the law, to enable the Committee of Experts to better understand the new measures. In addition, the Employer members urged the Government to provide in its next report information on any progress made with regard to the creation of labour courts. They also urged the Government to take steps to provide for an independent and efficient judicial system as a matter of urgency, and adopt without delay the proposed law on the status of judges and prosecutors and the law on the organization and functioning of the courts. The Employer members regretted that the Government was silent with respect to observations about violations of trade union rights, including allegations of serious acts of violence and harassment of trade union members, and requested the Government to provide its views on this matter. They also urged the Government to intensify its efforts, in full consultation with the social partners and with ILO assistance, to ensure that the final draft legislation on freedom of association and trade unions would be in full conformity with the Convention. The Employer members insisted that the Government had to move forward and build on the measures it had taken in order to ensure progress both in law and in practice.

**The Worker member of Cambodia** referred, first, to the use of short-term or fixed-duration contracts (FDCs), and stated that almost 60 per cent of employers used subcontractors and short-term contracts to avoid the establishment of trade unions in their enterprises, thereby undermining the workers' rights to freedom of association and collective bargaining. Moreover, short-term contract workers often enjoyed less favourable working conditions, such as lower wages and limited social security benefits. With respect to the assassination of union lead-

ers, the speaker recalled that the actual perpetrators of the murder of Chea Vichea, Ros Sovanareth and Hy Vuthy in 2004 had still not been identified. In another incident, Governor Chhouk Bandith, who shot and seriously injured three striking women workers in February 2012, had not been prosecuted due to the reluctance of the judicial authorities to properly investigate the case. Effective measures were therefore needed to investigate the murders, prosecute the perpetrators to the fullest extent of the law and ensure that justice was done. The speaker referred also to the violence and threats against union leaders and activists, as it happened regularly that persons were hired to attack leaders and members of independent unions. In 2013, there was such a criminal attack on leaders of the Coalition of Cambodian Apparel Workers' Democratic Union (CCAWDU). In a related development, the number of dismissed union leaders had increased from 40 in 2010 to 45 in 2011 and 116 in 2012. Another matter of concern was the registration of trade unions as all unions wishing to register with the Ministry of Labour had to first give notice to the company while the Ministry of Labour often delayed the provision of the registration certificate, thus preventing the union from functioning properly. On the other hand, political parties and employers occasionally sought to establish unions that could not be regarded as independent, and thereby violating Article 3 of the Convention. As regards the draft Trade Union Law, improvements were necessary as the draft legislation did not cover workers from the public sector (civil servants, teachers, police, air and maritime transportation workers, judges) and domestic workers. The speaker also raised the issue of poor occupational safety and health standards, including insufficient ventilation and unsafe working conditions often resulting in tragic accidents and loss of life.

**The Employer member of Cambodia** stated that the freedom of association and right to organize was extremely well practised in Cambodia and refuted the reference in the Committee of Experts' report to a "persistent climate of violence and intimidation towards union members" as being entirely false. Freedom of association was enshrined in article 36 of the Constitution and sections 266–278 of Chapter 11 of the Labour Law. Furthermore, the Labour Law did not require a minimum number of members for one union to be established, therefore one enterprise might have more than one union, sometimes as many as ten unions. Recalling the Committee's discussion in 2011, she noted that despite the challenging economic environment, progress continued and multiple priorities were being addressed from labour law review to dealing with the increasing number of strikes, establishing commercial arbitration centres, extending social security programmes, diversifying economic strategy, focusing on employment policy and promoting the operation of the new anti-corruption unit. In the speaker's view, trade unions were not only free but flourishing in Cambodia with 2,765 unions and 76 trade union federations registered in 2012, or a 60 and 90 per cent increase respectively compared to 2011 figures. With regard to strike statistics in the garment sector, the speaker indicated that, in 2012, strikes increased by 255 per cent compared to 2011, while in the period from January to March 2013, there was a 25 per cent increase in strikes compared to the same period in 2012. From an employer's point of view, the real challenge was the multiplicity of unions and the violent character of demonstrations, signs of a young industrial relations environment and a young union movement that needed maturity, consolidation and more cohesiveness. In relation to the Government's reporting obligations, the speaker welcomed the establishment of the new inter-ministerial working group bringing together relevant ministries involved in reporting, which would greatly assist in collecting and transmitting information in a timely man-

ner. ILO assistance with building the capacity of the abovementioned group would help the bodies represented in that group to better discharge their responsibilities. With respect to the allegations concerning FDCs, the speaker expressed the view that issues around employment contracts were being taken out of context to push a freedom of association agenda. Both employers and unions agreed that it was necessary to look at the changing economic environment and the challenges of FDCs without blowing this question out of proportion and creating a bad profile for Cambodia's investment environment. Concerning the forthcoming adoption of the draft Trade Union Law, the speaker stated that the new legislation was initiated and drafted through a truly tripartite process and therefore was not a matter of serious violation of the Convention to be deliberated in this Committee. Using the draft Trade Union Law as a tool for suggesting that there was no freedom of association in Cambodia risked undermining this genuinely tripartite and ground-breaking legislative development. With respect to the deaths of union members, she recognized the seriousness of the matter but hoped that due process would be followed in investigating and delivering justice. Recognizing the challenges that lay ahead, the speaker expressed the hope that the ILO would continue to support the social partners in Cambodia in their endeavours for further strengthening industrial relations systems and mechanisms.

**An observer representing Education International (EI)** agreed with the Committee of Experts' previous comments that the draft Trade Union Law did not comply with Convention No. 87 or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Recalling this Committee's conclusion in 2011 that the Government should intensify its efforts, in full consultation with the social partners and with the assistance of the ILO, the speaker regretted that the final draft Trade Union Law was moving nowhere fast. Although the draft law, which was communicated in 2011, had addressed some of the Committee of Experts' observations, it was unclear how it might have been modified since then. A critical issue remained the continued exclusion of civil servants, including teachers, from the scope of the draft union law. The Government had again refused to register the Cambodian Confederation of Unions (CCU) as a union confederation because most of their members were teachers, and this illustrated the Government's failure to abide by the Convention. Unions in the public sector were still denied union rights and had to operate under the Law on Associations and Non-Governmental Organizations, which was also problematic. ILO technical assistance had been provided, yet the Government did not have the will to move forward. The speaker called upon the Government to again take up the draft Trade Union Law, ensure that it complied with international labour standards, including coverage of civil servants, and adopt it immediately.

**The Worker member of Indonesia** referred to the dramatic rise in the use of FDCs, particularly in the garment industry, which had created substantial employment insecurity, damaged industrial relations, contributed to the increase in plant-level strikes since 2005, and undermined the power of existing trade unions. In most cases, the duration of FDCs was less than three months, and workers feared that their contracts might not be renewed if they participated in union activities or became union members. The Government's strategy to compete in global markets by using FDC workers and excessive types of precarious work would only result in economic and political vulnerability. Many garment factories were now entirely composed of a workforce with repeatedly renewed short-term FDCs, which, according to the speaker, violated labour law, in particular section 67 of the Labour Law, 1997, limiting the maximum period for an individual labour

contract to two years. The Arbitration Council had ruled that this provision imposed a two-year cap on FDC renewals, but the garment manufacturers ignored the ruling. In practice, the shift from undetermined-duration contracts (UDCs) to FDCs undermined freedom of association and collective bargaining. Short-term contracts also provided insufficient time to organize a union or to identify and develop trade union leaders, and this had a serious impact on the efficacy of leadership and the ability of the union to effect change in the workplace. Further, the labour law required union leaders to have one year's work experience in the factory, which was hard to accrue under FDCs. Many garment factories had converted most, if not all, of their UDCs to FDCs through a variety of tactics including fake factory shutdowns whereby the factory would reopen immediately under a different name and would "rehire" the workforce under FDCs.

**The Worker member of Sweden**, speaking on behalf of the Worker members of other Nordic trade unions, stated that anti-union discrimination in Cambodia continued to be a serious problem and workers who were fired for their union activity rarely had access to effective remedies. To date, the Arbitration Council remained the only mechanism for the resolution of labour disputes in the absence of a labour court. The Council addressed disputes in a transparent and balanced manner but its decisions were not binding while its continued existence was compromised due to limited funding. There were many examples where employers engaged in anti-union discrimination and simply disregarded the Council's decisions with impunity. Hence, the Cambodian unions and workers needed an effective remedy against anti-union discrimination. For all its merit, the Arbitration Council was routinely ignored, leaving workers to have to suffer lengthy and expensive legal proceedings or to take to the streets with the hope of defending their rights.

**The Worker member of the Philippines** stated that freedom of association could only be effectively exercised in a climate free from violence, pressure or threats of any kind against trade union members and leaders, which was not the case in Cambodia. The speaker gave a detailed account of two cases that highlighted the conditions of intimidation, harassment and violence that workers were facing in Cambodia. In the first case, on 20 February 2012, Governor Chhouk Bandith shot and seriously wounded a group of striking workers. He was charged in April 2012 with "unintentional injury" despite overwhelming evidence from over two dozen witness testimonies clearly pointing to an intentional act. The case had been reopened but the victims, unions and human rights organizations were deeply sceptical about the prospects for a fair investigation. The second case involved two individuals, Born Samnang and Sok Sam Oeun, who were convicted in 2005 for the murder of trade union leader Chea Vichea, then president of Cambodia's Free Trade Union (FTU). Despite concerns about lack of due process and lack of evidence and an order for a retrial by the Supreme Court, the Appeals Court had upheld the original verdict. The Cambodian authorities needed to initiate a thorough, independent and impartial investigation into those cases. Since Chea Vichea's death, another two FTU activists had been murdered in Phnom Penh, adding to the long series of unjustifiable acts against civil liberties and trade union rights.

**The Government representative** expressed gratitude for the comments made by the Employer and Worker members reflecting the efforts made by the Government in the implementation of the provisions of Cambodian legislation in line with the Convention. In order to encourage freedom of association, the Government provided all workers with the opportunity to freely organize and exercise their rights. To date, there were 12 union chambers,

76 union federations and 2,765 trade unions at the enterprise level in Cambodia. In 2012 alone, 74 collective bargaining agreements had been registered with the Ministry of Labour and Vocational Training. He further indicated that trade unions had played a crucial role in the drafting of national legislation and in various discussions on labour issues. Trade union representatives had been included in a committee established on 6 June 2013, which was entrusted with the mandate of conducting the coordination and drafting of Cambodia's Employment Policy and responding to questions raised by the ILO. The Government representative expressed regret about some of the comments made, which did not reflect the real situation in Cambodia and did not recognize the efforts undertaken to pursue the effective implementation of the provisions of Cambodian labour law in compliance with the Convention. He stressed that the Government had continued to respond to the needs of employers and workers and to the changing industrial environment. Lastly, despite having made significant progress over the years, the Government was aware of the need to continue to develop national laws and regulations and to build on an already solid foundation of social dialogue.

**The Worker members** stated that, in order to redress the deficiencies that had been highlighted in terms of freedom of association and protection of trade union rights, the Government should, without delay: (i) adopt, before the end of 2013, a law on trade unions that was in accordance with the Convention and that covered all private and public sector workers, regardless of their contract type (permanent, temporary, part-time or full-time), in consultation with the representative organizations of workers and employers and with technical assistance from the ILO; (ii) ensure that the perpetrators of acts of violence against trade unionists and workers were prosecuted and punished by the courts promptly and transparently; (iii) convene a tripartite committee to reach agreement on temporary contracts within six months; and (iv) ensure ongoing funding for the Arbitration Council and authorize it to take binding decisions.

**The Employer members** expressed their wish to see the comments they had made at the opening of this case with regard to the deficiencies in government action, reflected in the Committee's conclusions. They believed that the case could be summarized in four broad areas that required the Government's immediate action: the silence of the Government in respect of the situation of freedom of association; the independence and effectiveness of the judicial system; the adoption of the Anti-Corruption Law together with its five-year strategic plan as well as the establishment of an anti-corruption unit; and the engagement of the social partners. The Employer members encouraged the Government to adopt a law dealing with the issue of freedom of association of trade unions and to ensure that violence against workers was not permitted. They urged the Government to guarantee the independence and effectiveness of the judicial system, including by focusing on capacity-building measures and the institution of safeguards against corruption. In that regard, the Employer members also urged the Government to adopt without delay the proposed law on the status of judges and prosecutors and the law on the organization and functioning of the courts; and to take measures in order to ensure their full implementation. They requested the Government to provide information on the progress made in this respect and in particular with regard to any measures taken to establish labour courts. Furthermore, they encouraged the Government to provide information on the mandate of the anti-corruption institution and its activities together with a copy of the law, the strategic plan and any other relevant document. The Employer members indicated that they were encouraged by some of the measures

taken, for example the Government's consultation of the social partners with respect to the draft Trade Union Law; however, they noted that it was important that the Government continue to engage the social partners in its efforts to achieve compliance both in law and practice with the Convention. The Employer members expressed the hope that they would be able to note progress in each of the aforementioned four categories.

### **Conclusions**

**The Committee** took note of the statement made by the Government representative, as well as the discussion that followed.

**The Committee** noted that the grave issues in this case concerned a climate of impunity in the country and seriously flawed judicial processes with respect to the trials of the presumed authors of the assassinations of three trade union leaders, as well as the need to ensure an independent and effective functioning of the judiciary. Other matters concerned long-standing discrepancies between the legislation and the practice, and the Convention.

**The Committee** took note of the information provided by the Government representative concerning the establishment of a coordinating committee to coordinate all relevant ministries to respond to the questions relating to the assassinations of trade union members, as well as a permanent committee on employment policy, also charged with responding to questions raised by the ILO. The Government representative also referred to the elaboration of a draft trade union law with the technical assistance provided by the ILO, as well as to the intention of drafting a labour court law.

**The Committee** deplored the fact that, despite the remand of the Chea Vichea case to the trial court, full, independent and impartial investigations had not been carried out into his assassination and the previously convicted persons had been returned to prison without any new evidence being produced. The Committee further noted with concern the allegations of continuing violence, threats and intimidation suffered by trade union leaders and members. Recalling that the freedom of association rights of workers and employers could only be exercised in a climate free from violence, pressure and threats of any kind, it urged the Government to take the necessary measures to bring an end to impunity in relation to violent acts against trade unionists and requested it once again to institute independent investigations so as to ensure that the perpetrators and the instigators of these heinous crimes are brought to justice.

**The Committee** noted the concerns raised with respect to the judicial system by the Committee of Experts. It recalled its previous recommendation urging the Government to adopt without delay the proposed law on the status of judges and prosecutors and the law on the organization and functioning of the courts and ensure their full implementation, and expected that the Government would be in a position to report on the progress made in this regard without delay.

**The Committee** further observed that the legislative reform process was still under way and once again called on the Government to intensify its efforts, in full consultation with the social partners and with the assistance of the ILO, to ensure the rapid adoption of the draft Trade Union Law by the end of 2013 so as to more fully guarantee the rights under the Convention. It also requested the Government to take further measures to ensure freedom of association rights to public service workers and all types of contract workers. It specifically requested the Government to provide the Committee of Experts with the texts of the Anti-Corruption Law and its strategic plan, and expected that the necessary resources would be provided for their effective implementation. Adequate resources should also be allocated for the proper functioning of an independent judiciary. It also requested the Government to transmit to the Committee



of Experts all other draft texts referred to so that it would be in a position to comment as to their conformity with the Convention and expected that it would be in a position to observe concrete progress in this regard in the near future.

CANADA (ratification: 1972)

A Government representative recalled that, in 2010, her Government had addressed this Committee explaining in detail the nature of the Canadian Constitution, under which the federal Government and each of the ten provincial and three territorial governments had exclusive authority to legislate with respect to labour matters within their respective jurisdictions. Considerable emphasis had been placed at that time by the Committee on the challenges of such division of legislative authority under the Constitution. She highlighted a number of initiatives and mechanisms designed to address this issue. For instance, the Government engaged with the provincial and territorial governments with a view to promoting implementation of Canada's international labour obligations. The main forum for these discussions was the Canadian Association of Administrators of Labour Legislation. Also, an annual workshop brought together officials from the federal, provincial and territorial governments to discuss ILO issues, including reports to the ILO on ratified Conventions, comments by ILO supervisory bodies and the review of ILO Conventions for possible ratification, and the social partners were regularly invited. In addition, tripartite round tables on international labour issues were held annually, with the participation of ILO officials. In November 2010, the federal Minister of Labour had established the Advisory Council on Workplace and Labour Affairs, consisting of employer and worker representatives, which served as a forum for discussion and advice to the Minister on workplace and labour issues of federal, national and international importance.

Concerning the observations of the Committee of Experts, the Government representative indicated, with reference to the detailed 2011 and 2012 Government reports, that she would focus primarily on developments and information since the last report. As regards the allegations submitted by the International Trade Union Confederation (ITUC), the Canadian Labour Congress (CLC) and the Confederation of National Trade Unions (CNTU) in July and August 2012, some addressed cases before the Committee on Freedom of Association (CFA) that were closed, some did not relate to the application of the Convention and others would be addressed in the Government's next reports on the Forced Labour Convention, 1930 (No. 29), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). As to the allegation of increasing violations of the Convention by the federal Government, there had been no recent amendments to industrial relations legislation. However, since 2011, there had been three instances where the federal Government had introduced legislation to prevent or end work stoppages that threatened the public interest and the Canadian economy. Two of these cases were currently before the CFA. Following a recommendation of an independent study on the causes and impacts of work stoppages in the federal private sector, and the consensus of union and employer stakeholders on the need to work on their relationships, the Government had increased in 2011 resources for its Preventive Mediation Program, which provided services including training sessions on how to move from confrontation to more collaborative labour-management relations, approaches to problem solving and improving collective bargaining skills, as well as facilitating the resolution of workplace grievances. With respect to the 2007 Supreme

Court Decision *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 (hereinafter: B.C. Health Services) referred to by the unions, in which the Court had found that the protection of freedom of association enshrined in the Canadian Charter of Rights and Freedoms extended to collective bargaining, the Government representative underlined that, in 2011, in its ruling *Ontario (Attorney-General) v. Fraser*, 2011 SCC 20 (hereinafter: Fraser), the Supreme Court had revisited its decision and had narrowed the protection afforded to collective bargaining under the Charter. As a result, there was continuing litigation regarding the scope of Charter protections.

Concerning the follow-up by provincial governments, she indicated that a recent case before the CFA concerned Ontario legislation of 2012 (Bill 115) that imposed contracts on Ontario teachers. In January 2013, that Bill had been rejected by the Government of Ontario and the imposed contracts had since been amended through further collective bargaining. With regard to the right to organize of part-time employees of public colleges, the Government of Ontario wished to inform the Committee that the certification applications filed by the Ontario Public Sector Employees Union were being dealt with by the Ontario Labour Relations Board, an independent quasi-judicial body. There had been significant delays in the resolution of this application due to numerous procedural issues raised by both the applicant union and the employer, but the counting of the ballots was now expected to proceed. As to the exclusion, in some jurisdictions, of groups such as members of the medical, dental, architectural, legal and engineering professions, principals and vice-principals from industrial relations legislation, the speaker stressed that these groups were entitled to join associations of their own choosing for the defence of their professional interests. In relation to domestic workers, the New Brunswick Government wished to inform the Committee that it continued discussions regarding potential amendments to the Industrial Relations Act to remove or modify the exclusion of domestic workers. Further information would be provided to the Committee of Experts in the next report. The Government of Saskatchewan indicated that, in the context of its review of labour legislation, the definition of "employee" had been clarified and a new definition of "supervisory employee" had been added confirming their right to organize for collective bargaining, in bargaining units separate from the employees they supervised. Furthermore, in relation to Saskatchewan Bills 5 and 6, the Public Service Essential Service Act and amendments to the Trade Union Act, the speaker informed that the Saskatchewan Court of Appeal had found, in a decision dated 26 April 2013, that both acts were constitutionally valid. A copy of the decision would be provided with the Government's next report. The Committee of Experts had also identified a number of legislative provisions which it considered to be inconsistent with the Convention. However, the social partners at the national level had not raised concerns about these long-standing provisions. The Government representative cited the following examples: (i) the legislation in Nova Scotia, Ontario and Prince Edward Island which designated individual trade unions as bargaining agents; (ii) the current system of binding arbitration under the Manitoba Public Schools Act; and (iii) section 87.1 of Manitoba's Labour Relations Act which permitted the imposition of binding arbitration by the Labour Board at the request of one party after 60 days of a work stoppage (it should be noted that section 87.4 of the Act required that the Labour Management Review Committee review the operation of this section every two years and provide a report to the minister on its findings; the next review would be conducted in 2013). The Government recognized that the Canadian

labour relations system was not perfect, and that work remained to be done to address a number of inconsistencies with respect to the Convention, as evidenced by legislation in all Canadian jurisdictions that recognized freedom of association and included measures to protect the exercise of the right to organize. However, her Government wished to remind the Committee of the overall commitment of Canada with respect to the application of the Convention. The Government would continue to work towards addressing the Committee of Experts' comments, in collaboration with the provincial and territorial governments, and would provide additional information in its next report. The speaker assured the Committee of her Government's continuing support for, and cooperation with, the ILO supervisory bodies.

**The Employer members** stated that the Committee of Experts' observation also related to other ILO Conventions, such as the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Domestic Workers Convention, 2011 (No. 189); however they would limit their remarks to Convention No. 87. The Employer members referred to Canada's unique system of federalism which appeared to be underpinning the present case, as it dealt with a wide variety of issues all of which involved the provinces rather than the federal Government. They pointed out that federal laws regulated less than 5 per cent of the employers, whereas the provinces regulated the remaining 95 per cent. Most of the Committee of Experts' comments had thus been directed at the provincial legislation. Since 1982, the Canadian Constitution contained an express right of freedom of association, and for over 30 years, the Canadian Supreme Court and the highest-level provincial courts had created an extensive body of jurisprudence on freedom of association by interpreting the Canadian Constitution. The Employer members stressed that, in several of its observations, the Committee of Experts was requesting the Government to take action with regard to legislation that the highest courts in Canada had not considered to violate the constitutional right to freedom of association. For example, the Committee of Experts had requested the Government to ensure that the Government of Ontario would take measures to amend the Agricultural Employees Protection Act (AEPA), considering that it violated the Convention. However, in 2011, the Supreme Court had found the AEPA to be constitutional. Another example involved the right to strike. The Committee of Experts had considered that the recent amendments to the Saskatchewan Trade Union Act violated the right to freedom of association and had cited a case that had been examined by the CFA in 2010. The Employer members raised a number of issues in this regard. Firstly, the CFA's mandate was not to assess compliance with ILO Conventions, and both the Committee of Experts and the Conference Committee should exercise caution when considering the CFA's conclusions and recommendations. Secondly, the Employer members did not agree with the Committee of Experts' views on the right to strike and believed that the right to strike was a matter for national law. Thirdly, in keeping with the above, they underlined that Saskatchewan's highest court, the Saskatchewan Court of Appeal, had recently held that the relevant portions of the Trade Union Act did not violate the right to freedom of association as enshrined in the Canadian Constitution.

**The Worker members** had taken note of the comments that the International Organisation of Employers (IOE) had formulated in 2012 and of the discussion on the mandate of the Committee of Experts and the link between freedom of association and the right to strike. Recalling the provisions of the Convention, they stressed that freedom of association was a human right and a precondition

for healthy collective bargaining and social dialogue that benefited employers, workers and social peace. The Conference Committee and the CFA contributed to resolving difficulties in applying this fundamental right in countries all over the world, including Canada. The Worker members highlighted the complexity of Canada's legislation on trade union rights and referred to the Committee of Experts' in-depth analysis in its comment. In many provinces, the right to organize was still hampered as regards many groups of workers, especially agricultural workers in Ontario and Alberta, and domestic workers who were denied any legal trade union protection in Ontario, Nova Scotia, Alberta and Saskatchewan. Depending on the province, liberal professions might or might not be allowed to organize. There were also obstacles to freedom of association in the teaching profession in several provinces. In Ontario and Nova Scotia and in Prince Edward Island (as far as the civil service was concerned), only one union was recognized as being entitled to engage in collective bargaining. In Saskatchewan, the membership threshold for accreditation as a trade union was 45 per cent of the workforce. As to the right of trade unions to organize their activities, the Worker members cited the restrictions that several provinces placed on the education sector (British Columbia, Manitoba and soon Ontario) and on the health sector (a ban on collective action in Alberta). Moreover, in Manitoba, arbitration could be imposed unilaterally by one of the parties to the negotiations, while in Quebec the application of collective agreements could be imposed, thereby putting an end to the negotiations. The Worker members emphasized that trade union rights were more and more frequently being violated in Canada and that the provincial authorities appeared to be in no hurry to apply the Convention.

**The Worker member of Canada** observed that many of the Committee of Experts' comments were a near repetition from previous reports, thus indicating that little progress had been achieved in improving legislation or practice. This year, the Committee of Experts had requested the Government to respond to allegations that violations of freedom of association had become the norm in Canada. In this regard, the speaker denounced the slowness of provincial authorities in giving effect to the Committee of Experts' recommendations, which was illustrated by the long-standing comments relating to the exclusion in law and practice from the right to organize of domestic workers, architects, dentists, land surveyors, lawyers, engineers and doctors. While some provincial governments had corrected this shortcoming, huge gaps still remained. She highlighted the slow pace of progress for domestic workers not only in Alberta and Ontario but in all provinces, as well as the situation of agriculture and horticulture workers in Alberta and Ontario, despite the decision of an Ontario court ruling that the AEPA recognized the right of agricultural employees to form or join employees' associations. Nurse practitioners in Alberta still did not have the right to establish and join organizations of their own choosing. She also denounced slowness to act with regard to education workers in Alberta and teachers in Prince Edward Island, Nova Scotia and Ontario. The speaker further expressed concern about a questionable strategy by the Ontario Government in relation to the certification of part-time academic and support staff and the false argument made by the provincial Government that its decision not to interfere in the resolution of the case was shared by the National Union of Public and General Employees. She also expressed concern about the deteriorating circumstances in terms of negotiation process and abuses in defining the term "essential services" in the public sector, including in the education and health sectors of Alberta, British Columbia, Saskatchewan, Manitoba and Quebec. The speaker further denounced the fact

that the federal Government had spearheaded attacks on collective bargaining by threatening or legislating workers back to work from a strike, although the Government had recognized the right to strike in other forums, such as in its trade agreement with Costa Rica, where this right was explicitly referred to. She expressed concerns about Bill C-377, which imposed financially onerous reporting requirements, gave employers access to detailed information on unions' collective bargaining and organizing activities and violated privacy protection guarantees. Moreover, provincial governments were taking on "case-by-case" battles to narrow down the scope of a Supreme Court ruling of 2003, which had embraced collective bargaining as part of the right to association enshrined in the Constitution. The speaker also denounced several measures that the federal Government planned to introduce, such as Bill C-60 bringing in the Treasury Board as a third party to collective bargaining of crown corporations, Bill C-525 amending the certification and decertification processes of a bargaining agent in the federally regulated jurisdiction by making it harder to win representation and easier to decertify bargaining agents, and a proposal to eliminate the dues check-off system in Canada, known as the Rand Formula, which was a fundamental component of the Canadian labour relations system.

**The Employer member of Canada** agreed substantially with the observations of the Government representative. Labour legislation in all ten Canadian provinces and the federal jurisdiction were highly detailed and directed towards ensuring an equality of bargaining power between employers and unions, and the promotion of voluntary negotiations and freely negotiated collective agreements. This legislation provided both parties with certain rights and obligations in the collective bargaining process, government support for collective bargaining including comprehensive conciliation, mediation and facilitation services, and strong protection against unfair practices. Notably, an important feature of this system was a prohibition on strike and lockout activity during the term of a collective agreement, and until certain stages of the collective bargaining process had been reached. The Canadian labour relations system also provided for extremely comprehensive quasi-judicial dispute resolution processes including compulsory arbitration of grievances regarding the interpretation of collective agreements, tripartite labour relations boards to interpret and adjudicate disputes under the labour relations acts and, if necessary, access to the judicial system. The Canadian Charter of Rights and Freedoms that was an essential component of the Canadian Constitution provided, under section 2(d), that everyone had the fundamental right to freedom of association. As regards the comments made by the Committee of Experts respecting Canada's compliance with Article 3 of the Convention, and specifically with respect to the "right to strike", the speaker highlighted that Canadian courts had concluded that there was no constitutional right to strike. Since 2007, the Supreme Court had issued two major decisions regarding the scope of the constitutional protection for freedom of association established in section 2(d) of the Charter. In the 2007 decision *B.C. Health Services*, the Supreme Court had held that the constitutional protection for freedom of association in the Charter included the right to a process of collective bargaining. However, the Supreme Court had been careful to emphasize that the constitutional protection for collective bargaining was limited as follows: (i) it only extended to instances of state action in relation to collective bargaining; (ii) it only guaranteed a general process of collective bargaining; and (iii) it only protected against state interferences in collective bargaining that were so substantial that they discouraged workers from negotiating terms and conditions of employment; if state interference was sig-

nificant but occurred alongside a process of good faith consultation that reflected the principles of voluntary collective bargaining, it was unlikely that the protection for freedom of association would be violated. In its 2011 *Fraser* decision, the Supreme Court had clarified the scope of the constitutional protection for freedom of association in the labour relations context. In particular, the Court had determined that section 2(d) of the Charter of Rights and Freedoms required that employee associations (including unions) be able to participate in a meaningful workplace dialogue with their employer, which included the right to make collective representations to the employer and to have those representations considered by the employer in good faith. The Supreme Court had further stated that only legislation that made good faith resolution of workplace issues between employees and their employer effectively impossible would be found to violate freedom of association. Moreover, the Supreme Court had rejected the argument that freedom of association guaranteed employees access to a particular model of labour relations, or access to specific dispute resolution mechanisms of their choice. Rather, freedom of association guaranteed employees a process of meaningful consultation and negotiation with their employer. The Supreme Court had considered and relied on international labour law principles in the *Fraser* decision and had reaffirmed its earlier conclusion in the *B.C. Health Services* decision that international labour principles informed the meaning of the Charter's protection for freedom of association. In both decisions, the Supreme Court had specifically stated that prior jurisprudence holding that the protection for freedom of association in the Charter did not include a right to strike, was still valid. The speaker underlined that the Supreme Court had considered the application of freedom of association principles in light of Canada's mature, stable and well-balanced labour relations system, which had been carefully designed, operated quite seamlessly and efficiently in practice and was respected by both employers and unions. In the Canadian employers' view, the Committee of Experts' position on the right to strike attempted to impose a "one-size-fits-all" vision of freedom of association without regard to the unique and established features of the Canadian labour relations system. In light of the above, as well as the fact that the right to strike was nowhere established in the Convention (or any other ILO Convention), the Canadian employers considered that it would be entirely inappropriate to conclude that the carefully tailored restrictions on the strike activity, as adopted by democratically elected legislatures and consistently reaffirmed by independent courts, violated a "right to strike".

**The Worker member of Germany** stated that consideration should also be given by the Committee to the following developments and circumstances prevailing both in Germany and Canada since several years, which impacted negatively on the exercise of freedom of association and the right to strike: high levels of unemployment, increase in precarious employment and low-paid jobs, growing number of fixed-term contracts, increase in temporary agency work, privatization of the health sector, etc. These factors had resulted in a considerable and ever increasing number of employees who were no longer able to survive on their wages and thus depended on social security benefits ("working poor"). This bitter reality substantially hampered the ability of trade unions to fight for freedom of association and the right to strike.

**The Worker member of Nigeria** declared that he was concerned by the situation in the public sector of Canada and the larger implications for effective public service delivery. Canada was once a model country in advancing trade union and workers' rights but this was no longer the case. There had been legislation passed suspending the

collective bargaining rights of public sector workers. Collective bargaining was deteriorating as the Government was attacking the negotiation process directly, restricting the terms for organizing workers, or changing the use of the term “essential services” to restrict workers or unions from striking. It was troubling to find so many examples where the right to strike had been restricted in the public sector, especially at the federal level. It was also worrisome that some countries, such as Canada, where Nigeria’s public service had drawn inspiration to improve the lives of its citizens and communities through promotional service delivery, were considerably demoting these gains, in spite of the economic difficulties faced by their citizens.

**The Worker member of the United States** declared that her union, United Steelworkers, represented workers in the United States and Canada. She was troubled to learn that some legislators in Canada wanted to abolish the “Rand formula”, or the dues check-off system. Legislative changes would seek to weaken unions by making it harder for them to sustain themselves financially. Politicians trying to eliminate the right to bargain a dues check-off provision claimed that doing so would create jobs and help the economy. However, she underlined that politicians in the United States were pushing similar laws prohibiting union security clauses in some states. Studies had concluded that these laws had no significant impact on job creation whatsoever. States with these laws, such as North Carolina, Mississippi, South Carolina and Nevada, had some of the highest unemployment rates in the country, as well as the lowest rates of unionization. However, states like Vermont and Hawaii, permitting workers to negotiate union security clauses, had some of the lowest unemployment rates in the United States. She also underlined that American workers in states without union security clauses made less money than those living in states that permit these clauses. She expressed the hope that the Government would comply fully with the Convention and preserve the dues check-off system.

**The Worker member of the Netherlands** underlined that violations of trade union rights were widespread in the country and affected a diverse group of workers, in both the private and public sector, including domestic workers, architects, lawyers, doctors, agricultural workers and educational workers. Despite the specific federal governance structure of the country, it appeared that federal and provincial authorities were blaming each other, while justifying and continuing serious violations of trade union rights. The provincial governments had been slow to implement the Convention, and the federal Government had not been proactive in ensuring that these provincial governments fully guaranteed the rights of workers to organize freely and to benefit from the necessary protection of their rights. Respect for fundamental labour standards, including the Convention, at all levels of government was particularly important in light of ongoing negotiations between the Government and the European Union (EU) on economic and trade cooperation. All parties to any agreement in this regard should commit to the full and effective implementation of the core labour standards of the ILO, including those related to freedom of association and the right to collective bargaining.

**The Government member of the Islamic Republic of Iran** recalled that freedom of association and the right to collective bargaining were human rights and were principles at the core of the ILO mandate. He stated that an increasing number of violations of freedom of association took place in Canada and had become the norm for the federal Government. He called on the Government to uphold its international obligations, including those related to freedom of association. He mentioned other issues which were considered not relevant as regards the application of

the Convention in Canada by the Chairperson of the Conference Committee, following a point of order raised by the Employer and Worker members.

**The Worker member of Colombia** considered it unacceptable that the Government of a developed country was preventing the free exercise of freedom of association on the basis of arguments that appeared absurd to the world’s working class, and especially to the working class in the developing world. Freedom of association must be ensured by all countries, even those that took refuge in not having ratified the Convention. Attempting to justify failure to comply fully with the Convention on the grounds of the type of activities that workers carried out was unacceptable. The ILO itself recognized, in a number of instruments, that workers in rural areas were an integral part of the working class, and this applied equally to health, education and other workers. He emphasized that it did not make sense for the Government to invoke a voluntary agreement of 1956 to maintain that workers had renounced the exercise of the right to strike, as that would invalidate 57 years of concessions. As the economy had become globalized, so had rights, and he therefore demanded equal rights for all.

**The Government representative** indicated that the report and the conclusions of the Conference Committee would be brought to the attention of the federal, provincial and territorial governments. The Government remained committed to full cooperation with the ILO and the supervisory system, and would continue to welcome technical assistance and advice from the International Labour Standards Department on the application of Convention No. 87 and other Conventions. Acknowledging that the Committee of Experts had identified a number of areas that were not, in its view, in strict conformity with the Convention, the speaker highlighted that these anomalies existed in a broad labour relations and human rights system that supported the right to organize, and supported independent workers’ and employers’ organizations. Turning to the legislation in Manitoba, which permitted the imposition of binding arbitration by the Labour Board at the request of one party after 60 days of work stoppage, the speaker underlined that the only requests made in this regard had been from trade unions. In addition, no government in Canada had adopted any legislation which sought to revoke the “Rand formula”. When a proposition in this respect had been made by an opposition party in one province, it had been rejected by the provincial government. The Government would provide further information in response to the Committee of Experts’ observation in its report due in September 2013.

**The Employer members** acknowledged that, due to the unique federal system in the country, it would be difficult for the federal Government to make demands on the provincial governments regarding compliance with the Convention. It appeared that the Government was doing what was necessary with regard to the application of the Convention. The conclusions of the Conference Committee should focus only on issues raised by the Committee of Experts relating to Canada’s application of the Convention, and not to issues raised by the Committee on Freedom of Association or relating to other Conventions. The Employer members welcomed the Government’s indication that it was interested in ILO technical assistance.

**The Worker members** indicated that the situation of trade union rights in Canada had further deteriorated. They called on the Government to do everything it could to persuade the provincial authorities to bring their legislation into line with the Convention. They also requested that a list be made of the laws and regulations that needed to be reviewed in light of the Convention.

## Conclusions

The Committee noted the information provided by the Government representative and the discussion that followed.

It noted that the comments concerned a number of discrepancies between the law and practice in various provinces, on the one hand, and the Convention, on the other. The Committee noted that the issues that were pending related in particular to the exclusion of a variety of workers from the coverage of the labour relations legislation in a number of provinces.

The Committee took note of the information provided by the Government representative that, while it was true that not all workers in Canadian jurisdictions were covered by industrial relations legislation, they were entitled to join associations of their own choosing. In addition, the Government once again stressed that some inconsistencies raised by the Committee of Experts had not given rise to concerns at the national level. The Government representative referred to initiatives and mechanisms designed to bring the provincial and territorial governments and the social partners together to address ILO and international labour issues and promote implementation of its international obligations. The Committee further noted the Government's indication that resources for its Preventive Mediation Program were increased in 2011. As for the provinces, the Committee noted with interest: the rejection of the Ontario Bill 115, which imposed contract settlements; the Government of New Brunswick's indication that it is discussing potential amendments to remove or modify the exclusion of domestic workers from the coverage of the Industrial Relations Act; and the clarification in Saskatchewan labour legislation of the definition of "employee" and the addition of "supervisory employee".

The Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in Convention No. 87.

The Committee recalled that certain legislative texts needed to be amended in some provinces with a view to guaranteeing the full application of the Convention. In particular, it stressed the importance of ensuring to all workers, without distinction whatsoever, the right to form and join the organization of their own choosing. It asked the Government to pursue its efforts to bring these matters to the attention of the provincial authorities and expressed the firm expectation that appropriate solutions in conformity with the Convention would be found in the near future in full consultation with the social partners concerned. The Committee requested the Government to provide detailed information in its next report to the Committee of Experts on the measures adopted in this connection.

### EGYPT (ratification: 1957)

The Government provided the following written information.

With reference to the issuance of the Declaration on Freedom of Association following the 25 January Revolution in 2011, the Government states that it is committed to ensuring conformity with international labour standards relating to freedom of association. To this end, efforts have been made and numerous measures have been taken to deal with the issues raised in the area of freedom of association. In particular, the Government wishes to highlight the following. Egypt hosted in Cairo, in collaboration with the ILO, the workshop on the "Perspectives of Freedom of Association" on 9 April 2013 and numerous societal dialogue sessions, which resulted in a broad agreement to establish a national committee entrusted with the comprehensive review of all relevant labour legislation. The Ministry of Manpower and Immigration extended an invitation to all relevant stakeholders to be part of this national committee, including representatives of

workers, independent unions, the Egyptian Trade Union Federation (ETUF), employers, relevant government entities, the Ministry of Justice, the Shura Council and civil society organizations. The national committee held ten sessions and issued a final recommendation to repeal Trade Union Act No. 35 of 1976 and replace it with the draft law that had previously been prepared and discussed during the last session of the dissolved Parliament, as amended, to take into consideration the comments of the ILO Committee of Experts as well as other relevant international labour Conventions ratified by Egypt. After the national committee discussed and reviewed each section of the new draft law, the latter was submitted to the Council of Ministers, which approved it on 29 May 2013. The draft law was then submitted to the Shura Council, currently in charge of legislation, for discussion and approval. The current trade union session that was supposed to end by 27 May 2013 was extended for one year or until the promulgation of the new law by the Shura Council, whichever is earlier. This action was taken to avoid having a gap and allow for a comprehensive discussion of the new law on freedom of association. The representatives of the newly formed independent unions have been able to freely participate in various international activities, meetings and conferences, including in the International Labour Conference in 2011, 2012 and in the current 102nd Session of the ILC.

In addition, before the committee a Government representative expressed his Government's astonishment at the Committee of Experts' observation on the absence of legislation on trade unions ensuring their independence and freedom in Egypt while the new Constitution provided for such guarantees in its article 53. Furthermore, the authorities could not dissolve unions, federations and cooperatives, or dissolve their executive boards unless it was by virtue of a court order.

Turning to the challenges in implementing the Convention, he emphasized the need to have a clear understanding of the general social and political context in Egypt if comprehensive and balanced conclusions were to be reached. Egypt had witnessed a revolution on 25 January 2011 against a regime which for many years had flouted the rights of Egyptians, including workers. While the phase of political transition provided a valuable opportunity for society, it also posed important challenges. The most important was the absence of elected legislative institutions for consecutive periods in addition to their dissolution by virtue of judicial decisions issued by the Constitutional Court. Consequently Egypt had been delayed in completing the comprehensive review of all its legislation in order to bring it into conformity with the new Constitution.

In addition to the written information by the Government on some of the measures taken to ensure the observance of the Convention, including the new draft law on freedom of association, he indicated that the Government had regularly informed the ILO of the developments in the process so as to benefit from its technical expertise. Although the Manpower and Migration Committee at Parliament, had finished the discussion of the draft law, a court order had dissolved Parliament, which had delayed promulgation of the law. However, the delay did not mean that there was no freedom of association and trade union pluralism in Egypt. By virtue of the Declaration on Freedom of Association issued in March 2011, there were 13 independent general federations and 1,228 branch trade union committees which worked in all freedom and independence without any interference from the State. The Committee of Experts had also expressed its satisfaction with respect to some measures taken by Egypt on Convention No. 87, and had emphasized the role of technical assistance in that regard.

With respect to the impact of the delay in the promulgation of the draft law on freedom of association, he drew the attention of the Committee to the fact that the Egyptian delegation participating in the present Conference was composed of six independent general federations, which was a new development in the history of Egyptian trade union participation in international conferences. Reflecting on the aim of freedom of association, he considered that if the aim was to guarantee such freedom, Egypt's new Constitution provided more guarantees than any other law. If the aim was to regulate trade union work, this had already been discussed with the participation of all parties, as well as the ILO. It had also been approved by the Council of Ministers, and was currently before the Shura Council. If the aim was to verify practice, the speaker invited the Conference Committee to address the six federations present at the Conference. Egypt had exerted unrelenting efforts to meet its legal obligations under international labour Conventions including Convention No. 87. His country had therefore expected a vote of confidence and encouragement from the ILO so as to continue on the right track and he expressed his Government's deep disappointment at the inclusion of Egypt in the list of individual cases. This could only be due to a lack of accurate information and an erroneous appreciation in the examination of the case of Egypt, and he referred the Conference Committee members to the written information provided by his Government which included information that was absent in the Committee of Experts' report.

He reiterated his Government's request to reform the work of the Conference Committee to guarantee transparency, objectivity, a geographical balance on the annual list of cases, and to avoid it being turned into a means of retribution against countries which had a sincere will to move ahead on the path of reform for the sake of protecting and promoting workers' rights. In light of the above, he called upon the Conference Committee to consider removing Egypt from the list of individual cases and to consider it in future as a case of progress.

**The Employer members** noted that this case had last been discussed in 2010 and it was necessary to take into account the context of the country. The new Parliament was yet to be elected and the election was scheduled for later in 2013. He recalled that this case was initiated by observations of the International Trade Union Confederation (ITUC), rather than a national trade union, and related to: (i) the predominance of the Egyptian Trade Union Federation (ETUF); (ii) the imprisonment of Kamal Abbas, a representative of the Centre for Trade Union and Worker Services; and (iii) provisions of Trade Union Act No. 35 of 1976 and the Labour Code concerning the single integrated trade union system, controls over subsidiary unions, and restrictions to the exercise of the right to strike and recourse to compulsory arbitration.

The Employer members noted that the Government had taken several steps including the drafting of a new comprehensive Labour Code for consideration by Parliament to be elected, and that this law addressed the issues raised by the ITUC. Even without the passage of the draft Code, unions, including unions not affiliated to the ETUF, had begun to proliferate in the country and the Employer members therefore tend to agree that the Government was not exercising control over unions. With respect to restrictions on trade union rights in the existing legislation, which was the subject of this case, the Employer members considered that these did not appear to be operating in practice. The recent proliferation of unions had generated considerable confusion and many unions, especially the new ones, did not understand their obligations; strikes, which were unlawful in many jurisdictions, were apparently common practice. This did not enhance harmonious

workplaces and undermined the stability of a properly functioning labour relations environment. The interim Government should ensure that such activities were addressed quickly, effectively and specifically by national laws and regulations. The Employer members reiterated the view that guidance on the right to strike could not be drawn from Convention No. 87. With respect to the alleged unjustified treatment of union officials, they noted that the case of Mr Abbas had been taken by the ETUF itself, and considered that his release by the court showed that justice prevailed. With respect to the delays in the enactment of the draft Code, the Employer members considered that the argument that it had to wait for the election of the new Parliament might be seen as excuses for inaction. They therefore urged the interim Government to at least examine the draft Code on its full compliance with international treaty obligations. The interim Government should also strengthen its efforts towards early implementation of laws which complied with and gave practical effect to the Convention.

Lastly, the Employer members reiterated the view that this case seemed to have been taken out of context. The current practice of unions demonstrated little or no restrictions on freedom of association and might affect overall law and order, which was not what the freedom of association was about. Therefore the draft Code should be processed without delay and the Employer members agreed with the Committee of Experts that draft laws should be submitted to the social partners for a better evaluation of the situation. If the new legislation reflected the text and spirit of the Convention, the Employer members would indeed be able to regard it as a case of progress.

**The Worker members**, taking account of the comments of the International Organisation of Employers (IOE) of 29 August 2012, the discussions of the previous week on the mandate of the Committee of Experts and the link between freedom of association and the right to strike, wished to recall that Convention No. 87 enshrined the right of workers and employers to establish and to join organizations of their own choosing without previous authorization. Workers' and employers' organizations organized freely and could not be dissolved or suspended by an administrative authority. Freedom of association was a human right and was the prerequisite for sound collective bargaining and social dialogue for the benefit of employers, workers and social peace. Together, the Conference Committee and the Committee on Freedom of Association contributed to resolving difficulties in the application of that fundamental right worldwide. The Worker members also wished to emphasize that they wholeheartedly supported the Committee of Experts and the legal significance of their observations. The Worker members maintained that the existence of the right to strike derived from reading Article 3 in conjunction with Article 10 of the Convention.

The Worker members recalled that, time and again, most recently in 2010, the Conference Committee had called into question Trade Union Act No. 35 of 1976 for the following reasons: the institutionalization of a single trade union system; the control over trade union organizations and over the nomination and election procedures to their executive committees; the control over their financial management; the requirement of the prior approval for the organization of any strike action; and lastly, the possibility of dismissing, without justification, workers who acted outside the existing union structure. They emphasized the extent to which the Egyptian trade union landscape had developed. While the ETUF continued to be the dominant trade union, other federations had emerged and, between 2004 and 2011, had mobilized some 1.7 million workers in collective action.

The Worker members stressed, however, that the country's legislation had not kept pace with developments in trade unions and in society, and the ETUF seemed to have retained the benefit of the State monopoly. That was, in any case, what could be inferred from the new Constitution that had been adopted at the end of the previous year. Article 53 of the Constitution provided for the recognition of a single trade union by sector or profession. Moreover, in general, the new Constitution protected employers' rights better than those of workers, given that the provisions concerning workers were not binding on either employers or the State. Those developments were at odds with the Government's stated intentions, contained in its "Freedom of Association Declaration" of March 2011, to observe all ratified Conventions. Moreover, there had been a delay in adopting the new freedom of association law owing to successive political hitches. Recently, however, the process had resumed with the organization of a workshop on freedom of association in collaboration with the ILO, followed by the setting up of a national committee to review all the relevant legislation. According to the Government's statements, the committee had already begun its work with an agreement to replace Trade Union Act No. 35 with a new legal instrument. A draft law had been prepared and amended to take account of the observations of the Committee of Experts and, once it had been approved by the Council of Ministers, it would be submitted to the Shura Council, which was in charge of legislative issues. The Worker members looked forward to a successful conclusion to that matter.

A **Worker member of Egypt** informed the Conference Committee that the ETUF had suffered, since the election of its new executive committee in November 2011, several instances of interference from the public authorities based on the Trade Union Act. The Government had withheld the elections of the executive committees of more than 500 trade union organizations established by the ETUF at undertakings in the past two years. Recalling that the Trade Union Act also imposed a restriction on the right of trade union organizations to formulate their basic statutes and financial regulations, the speaker further expressed his refusal of any form of Government interference and any administrative oversight over trade union organizations or the monopoly by any political party or religious faction of the trade union movement.

At present, the ETUF was exerting pressure on the Government so as to finalize the new draft law on freedom of association before sending it to the ILO in order to ensure its conformity with the Convention. Referring to Egypt's ratification of the International Covenant on Economic, Social and Cultural Rights that recognized the right to strike, he stressed the importance of guaranteeing that right without any conditions as it was also a guarantee of the right to organize. It was not a favour bestowed by governments or employers, nor was it a crime which required punishment. Recently, Egyptian workers had proven that the right to strike was a spontaneous means of human resistance against attacks on their rights and injustice levelled against them. He called upon the social partners in Egypt to work together in order to amend the Labour Code and other relevant regulations to guarantee the right to strike and its practice without any threat as well as the right to peaceful assembly and demonstration. Recalling the Committee of Experts' satisfaction with some of the measures taken by the Government, he requested ILO's technical assistance with respect to promoting the capacities of trade union organizations.

The **Employer member of Egypt** considered that some of the criticisms directed at the Government were not fair. The Government had drawn up a new bill which had been adopted by the Council of Ministers and was in conformity with the Convention. It should be recalled that the

country had been undergoing a process of transition since February 2011 and in the absence of Parliament it was not possible to proceed with legislative reforms. Even if the bill had not been promulgated, it was already being applied in spirit by the Government, as borne out by the setting up of a tripartite council and the presence of six trade union organizations in the Egyptian delegation to the present session of the Conference, which was an unprecedented situation. He added that freedoms, especially those of expression and association, naturally had to be respected, but that did not rule out the possibility of all stakeholders endeavouring to support the economy. Laws had to be observed and laws in turn needed to respect the rights of citizens.

The **Employer member** declared that it would have been judicious to show more patience towards Egypt, not only for the reasons set out above but also because of the difficult economic circumstances experienced by the country. Some parts of the Committee of Experts' comments were concerned with minor issues which might be better resolved at local level. Finally, he asked that Egypt should be able to avail itself of more extensive technical cooperation programmes for the benefit of all parties.

The **Government member of India** expressed his Government's appreciation at the steps taken by the Government to ensure better compliance with the Convention, despite the challenges encountered in the context of the transformation. He noted with satisfaction the ongoing deliberations on the new draft law on freedom of association, which was an outcome of a tripartite social dialogue led by the Ministry of Manpower and Migration. The conference organized by the Government in partnership with the ILO definitely indicated the positive intent of the Government to comply with the Convention. In particular, the annulment of the provisional law on protests and strikes on worksites deserved a special mention and applause. He stressed the importance of technical assistance by the International Labour Office, as well as the support and cooperation by member States to assist the country in implementing the Convention.

The **Government member of Algeria** noted that the Government had reaffirmed in writing its readiness to respect international labour standards as they related to freedom of association. Better still, Egypt had already taken steps so that all the parties concerned could, as members of a national committee, conduct a general review of the country's entire labour legislation. The Government of Algeria congratulated Egypt on its inclusive approach, which would enhance the culture of collective bargaining and social dialogue. The institutional, political and social developments in the country in recent months and the changes currently under way would undoubtedly have a positive impact on freedom of association and on the protection of trade union rights. The speaker invited the Government of Egypt to take advantage of the experience of other countries throughout the world so as to be able to meet the social partners' expectations in terms of international labour standards.

Another **Worker member of Egypt** said that Egyptian workers had a long tradition of humanism and that social dialogue had suffered extensively under the previous regime. They wanted to do away with the last vestiges of that regime and to recover the use of social dialogue and freedom of association. Since the revolution they had contributed to social dialogue with a view to adopting a Labour Code that protected trade union rights. The speaker was troubled by the absence of a functioning legislative body and the obstacles to the Labour Code's adoption by Parliament. The Egyptian workers were tired of so many failed and useless attempts at social dialogue. If an effective means of resolving labour disputes had existed, the current situation characterized by constant demonstrations

and strikes would never have arisen. The speaker despaired at the thought that the next legislative assembly might produce no results and that the adoption of the Code might be further postponed. He said that he had been imprisoned for three years because of his trade union activities. Trade unionism in the country operated in a climate of violence, brutality and arrests, against which the Labour Code would provide protection.

**Another Worker member of Egypt** stated that his Federation represented more than 3 million Egyptian agricultural workers and asked the ILO to be more accurate in recording the number of members belonging to the country's various trade unions. He asked for a clear strategy to be adopted leading to the rapid adoption of a new Labour Code and urged all the tripartite partners to cooperate fully to that end.

**The Government member of Uzbekistan** commended the Government on the many measures taken to implement the Convention. Many trade unions had been set up to protect different types of workers and the presence of six trade unions in this Conference Committee showed that the Government was committed to the application of the Convention. Many bills had been drafted concerning freedom of association, and there were tripartite consultations in the process. The Government was trying to eliminate obstacles to the activities of the independent trade unions and was taking targeted measures to implement the Convention.

**An observer representing the International Trade Union Confederation (ITUC)**, considered that the practice of social dialogue by the Government was merely a tactic, as demonstrated by the lack of consultation concerning the draft Labour Code. He referred to cases of abuse committed against trade union leaders and indicated that during the course of the year, workers demonstrating peacefully had been the subject of violent attacks, in some cases by the police, and in others, by employers; 15 workers had been arrested at Petrojet and 11 had been suspended. He said that the Trade Union Act No. 35 should be brought into line with the Convention, that the Labour Code should be adopted and that the Government should stop interfering in trade union affairs.

**The Government member of Libya** considered that the high number of ratifications of ILO Conventions by Egypt and the reports submitted on their application, clearly attested to its goodwill in observing these instruments, and to its efforts in reflecting the provisions of the Convention in its national legislation. Recalling that Egypt had undergone a period of change in its political system, he requested that the International Labour Office provide its technical assistance to assist the country in the preparation of the required replies to the Committee of Experts' comments on some of the ratified Conventions.

**The Worker member of Tunisia** regretted that the new regime in Egypt had only changed in appearance but, in reality, continued to use the same methods of repression and harassment against the trade union movement. Faced with an unprecedented 3,817 protest actions in 2012, the Government resorted to the same abusive practices, such as dismissals, arrests, physical violence, threats and salary deductions instead of changing the economic and social policies that were at the origin of the unrest. The speaker noted that ever since the Convention had been ratified in 1957, successive labour laws failed to give full effect to the principle of freedom of association and recognized instead the Government's prerogative to interfere in union activities and control union funding. The Trade Union Act No. 35 of 1976 was still in force while the right to strike, which was expressly recognized in the Labour Code of 2003, was rendered ineffective, especially after the adoption of Act No. 96 of 2012 on the protection of the revolution. The speaker welcomed the workshop organized on 9

April 2013 on freedom of association issues and the approval of the draft freedom of association law by the Council of Ministers on 29 May 2013, and expressed the hope that the Government would put an end to all forms of abuse against trade unions and their members.

**The Worker member of Libya** stated that union elections could not take place under the Trade Union Act No. 35, which allowed for Government interference in union activities and was therefore contrary to the provisions of the Convention. He questioned the Government's goodwill and declared readiness to ensure trade union rights and observed that the situation was, in fact, worsening. There were four times more strikes and protest actions than at the time of the Mubarak regime. He asked why it had so far not been possible for unions to hold elections or adopt their own by-laws if there was a free and independent trade union movement, as the Government claimed. Moreover, it was difficult to understand the reason for extending the mandate of the Shura Council, which should have normally ended in 2010. He wondered how was it possible for the Government to organize presidential and parliamentary elections and then claim that it was not possible to organize union elections. The Government should stop patronizing trade unions and should establish the appropriate framework in order to ensure compliance with the Convention.

**The Government member of Turkey** welcomed the Government's efforts to adopt a new draft law on freedom of association and stated that the process of adoption was based on social dialogue which demonstrated the Government's commitment to tripartism. The speaker appreciated the establishment of hundreds of new independent trade unions and committees, and the participation of trade unions and confederations at regional and international levels, which was a clear sign of the exercise of freedom of association rights. He had no doubt that the Government had brought a new era of democracy to the country and that it would intensify its efforts to reach full compliance with international labour standards.

**The Worker member of Italy**, speaking also on behalf of the Worker members of Belgium, France, Germany, Greece, the Netherlands, Poland, Romania, Slovakia, Spain and the Nordic countries, expressed deep concern about the violations of the Convention in Egypt. She indicated that, despite promises that the Trade Union Act and the Labour Code would be aligned with the requirements of the Convention and that the right to establish trade union organizations would be recognized and protected, the Government had made no progress in addressing the repeated observations of the Committee of Experts. Serious efforts were needed to guarantee freedom of association and the establishment of independent trade unions as essential elements of a democratic society, but the Government had approved instead, in August 2012, a new emergency law which restricted civil liberties and reintroduced military courts under the pretext of combating violence. The speaker drew attention to article 52 of the new Constitution, which destroyed trade union rights, allowed only one union per sector and gave sweeping powers to the Government to control union activity and even the right to dissolve trade unions. In addition, provisions which would have supported women's rights had been struck out of the Constitution. None of the 234 articles of the Constitution clearly guaranteed women's rights and gender equality while provisions against child labour and forced labour were so vague that they were virtually meaningless. Moreover, judicial decisions, such as the Cairo Criminal Court decision of 4 June 2013, by which 43 workers had been convicted, further attested to a system where the freedom of association was denied and repressed. The Government needed to move quickly to ad-



dress these basic concerns of the Egyptian workers and the international community.

**The Government member of Sri Lanka** echoed statements of previous speakers that Egypt was in a transition period and faced a number of challenges. It was important to understand the nature and depth of the political and socio-economic transformation that Egypt was witnessing. The Government had taken a number of measures to improve compliance with its obligations under the Convention, including the new draft freedom of association law that had been formulated through lengthy tripartite social dialogue, with ILO support, and had been submitted for parliamentary approval. This was a good example of the commitment and willingness to implement freedom of association in law and in practice. The ILO should continue to provide technical assistance and capacity building by addressing the real needs of Egypt and should allow more time for the problem to be addressed effectively.

**The Worker member of Belarus** expressed support for the Egyptian workers and noted that the Government had called upon all trade unions and employers' organizations to be involved in the discussions on the draft freedom of association law. This legislative development constituted a positive step for promoting the principles of freedom and justice. The Committee of Experts should be satisfied with the measures taken by the Government regarding the application of the Convention and ILO technical assistance would be helpful to this effect.

**The Government member of Bahrain** stated that he was conscious that the Government was facing huge challenges, which was common in countries going through historical changes. Nevertheless, the Government had carried out all of the steps in its power to fully implement the provisions of the Convention. Egypt had an ancient history in trade union freedoms and stood out as a model for other countries in the region. His Government called upon the Committee to take into consideration all of the positive efforts made so far and the challenges that Egypt was currently facing and hoped that the conclusions would objectively reflect the situation.

**The Worker member of Benin** expressed his support for the Egyptian workers, who were fighting to improve their working and living conditions and to uphold their trade union rights. The Government was in control of the police force and was preventing the workers from exercising their rights, particularly the right to strike, which was, however, inalienable. Likewise, it was unacceptable that the Government was interfering in the internal affairs of trade unions. The Committee had to remain attentive and ensure that the Government honoured its commitments, applied the Convention fully and handled complaints submitted by trade unions with due diligence.

**Another observer representing the International Trade Union Confederation (ITUC)** said that trade unions which had fought the old regime were facing repression and some of their members had been imprisoned. The Government did not seem to have drawn lessons from the past or understood that economic development was not possible without freedom. Egypt had to develop and set an example of a democratic society. The speaker requested an end to the repression of the union movement and employer interference in union affairs. Trade unions should be able to work with elected representatives of the employers, collective agreements should be respected and the single trade union system provided for in the Constitution should be discontinued.

**The Government member of Senegal** welcomed the steps taken by the Government during a period of transition marked by profound political, economic and social changes in the country. Certain achievements already stood out: the pursuit of social dialogue, to which the broader tripartite consultation attested; the inclusive nego-

tiations underlying the new legislation, which the Government stated would comply with ILO standards; and the progress noted by the Committee of Experts, such as the repeal of the provisional law on protests and striking on worksites. The social partners should be encouraged to pursue untiringly their efforts to ensure that social standards were respected and the Government should be urged to pursue its efforts to comply fully with the Convention.

**A Worker member of Bahrain** stated on behalf of the Bahrain Free Labour Unions Federation (BFLUF) that it was not fair to have included Egypt on the list of cases. The Government had returned authority to the hands of the people and the elected officials needed more time to achieve results. Social dialogue led by the Government had resulted in new draft legislation which had been referred to the Council of Ministers for adoption. As for the union movement, it had proved its maturity in adopting, in April 2013, a declaration by which the Egyptian Trade Union Federation (ETUF) reached out to international trade union confederations for enhanced cooperation and confirmed that all restrictions on each organization had been lifted. Concerning the allegations of Government-controlled unions, simply because they were not affiliated with the ITUC, the Government should not be criticized on that basis. The Committee should stand clear of this controversy and should not use the discussion of the case to exert pressure on non-affiliated unions.

**The Government member of South Sudan** stated that it was important for workers to better understand the current situation, which required working collectively for the adoption of the new legislation on freedom of association rather than disregarding all efforts that were being made. For its part, the Government should remain open to peaceful dialogue and consider the comments of the Committee of Experts to ensure compliance with the provisions of the Convention. The ILO should continue to provide technical assistance and capacity building since Egypt was going through difficult times.

**The Worker member of Sudan** said that free trade unions had become a reality since the revolution of 25 January 2011. However, time was needed to permit consolidation and maturity of the new experiences while laws pertaining to union rights should be applied in accordance with social dialogue and the participation of all the parties concerned.

**The Government member of Iraq** recalled that the situation in Egypt was evolving fast and was very sensitive. The Government should be praised for its determination to meet all the challenges. There were objective indications that the Government was acting in full conformity with its constitutional obligations, including respect for the principle of freedom of association. Many meetings had been held culminating in the adoption of the "Freedom of Association Declaration" of March 2011, which recognized the freedom of establishing trade union organizations, and led to the setting up of numerous trade union organizations, committees and federations.

**The Government representative** thanked those who had participated in the discussion and noted that 13 of the 21 speakers were appreciative of the Government's efforts and expressed their encouragement. In response to the statement of the Worker members, he clarified that article 53 of the Constitution, which they had relied on, dealt with occupational unions and the right to practise a profession, whereas freedom of association was addressed only in article 52. Concerning some statements that alluded to emergency laws and military rule, the Government representative clarified that such misconceptions had nothing to do with present realities. His country had, for the first time, an elected civilian President. He emphasized the importance of having updated and correct in-

formation and noted that although there might have been sufficient reasons in the past for the Committee to discuss the case, the situation was now completely different. His country had over 3,000 trade union committees, and more than 835 strikes had been organized, yet no worker involved in the strikes had been physically harmed.

The Employer members noted that the present case was difficult as it involved matters of the past. The Government had drafted a new freedom of association law that apparently addressed long-standing issues. The Employer members recalled that freedom of association in the context of Convention No. 87 was a labour standard pertaining to conditions of work and not a basic freedom of every citizen. It was therefore important to put the situation in context and ask whether each and every demonstration of a group of so-called unions related to labour matters and workplace conditions. Egypt was emerging from a period of great difficulties and patience was required on several fronts. The employers were frustrated with the rampant freedom of unions, and the unions, for their part, needed time to gain maturity. The Government needed room to manoeuvre and yet also needed to be held responsible to some extent; merely not having laws in place could not absolve the Government from its obligations. The Employer members urged the Government to move forward with union elections.

The Worker members emphasized that there were significant discrepancies between the Convention and Egyptian labour legislation, particularly as the latter enshrined a single trade union system. Since 2008, the Government had taken steps to bring its legislation into line with the Convention. Since 2011, progress had been faster: independent trade union federations had been recognized and a new draft freedom of association law had been proposed within the framework of tripartite social dialogue. The Worker members stressed that the draft law should be examined by the Office before its final adoption by the Shura Council.

### **Conclusions**

The Committee took note of the statement made by the Government representative and of the discussion that followed.

The Committee observed that the comments of the Committee of Experts concerned a number of long-standing discrepancies between the labour legislation and the provisions of the Convention, in particular as regards Trade Union Act No. 35 of 1976, which was based on a single trade union system.

The Committee noted the Government's commitment to ensuring freedom of association rights in the country. The Government representative referred to a freedom of association workshop held in April 2013, in collaboration with the ILO, resulting in a broad agreement to establish a national committee to review all labour legislation. The national committee issued a final recommendation to repeal Trade Union Act No. 35 and replace it with the draft freedom of association law that it had discussed and reviewed and which was submitted to the Council of Ministers. This draft was approved by the Council of Ministers on 29 May 2013 and submitted to the Shura Council, currently in charge of legislation, for discussion and approval. In addition, the elections for the current trade union executive councils under Act No. 35 were once again extended for one year or until the promulgation of the new law by the Shura Council, whichever is earlier. Finally, the Government representative stated that the representatives of the newly formed independent unions have been able to freely participate in various national and international activities, meetings and conferences, including in the ILC since 2011.

The Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in Convention No. 87.

While regretting that many years have passed since the Government was asked to bring its law and practice into conformity with the Convention without any concrete results having been achieved, the Committee noted with interest the recent and positive steps taken by the Government in this regard. The Committee therefore expressed the firm expectation that a law ensuring full respect for the freedom of association rights of workers and of employers would be adopted in the very near future. It requested the Government to provide a copy of the draft that was before the Shura Council to the ILO and to ensure appropriate consultations with the social partners. The Committee expressed its firm expectation that, in the meantime and as the Government had committed, all trade unions in Egypt would be able to exercise their activities and elect their officers in full freedom in accordance with the Convention pending the adoption of the freedom of association law. It encouraged the Government to continue to have recourse to ILO technical assistance and capacity building for all the social partners. The Committee requested the Government to provide a detailed report to the Committee of Experts at its meeting this year and expected that it would be in a position to observe significant and concrete progress in the country to ensure respect for trade union rights both in law and in practice.

The Government representative stated that he had listened closely to the conclusions, but that his Government would communicate its comments in writing to the Chairperson of the Conference Committee and the Office, after giving them a careful reading.

### **FIJI (ratification: 2002)**

The Government provided the following written information.

As regards transparent rules of governance, in March this year, the draft Constitution was released which guarantees universally accepted principles and values of equality and justice to all Fijians. Consultations were held and numerous submissions were received on the draft Constitution. After consideration of all the submissions and after making such improvements as necessary, the draft Constitution will be promulgated by August 2013. It contains an extensive chapter on fundamental human rights, which guarantees the promotion and protection of rights and freedoms of all Fijians including workers, and, for the first time in Fiji, there are provisions guaranteeing socio-economic rights. Under the draft Constitution elections must be held no later than 30 September 2014. The voting system adopted in the draft Constitution is the open-list system of proportional representation which will ensure that a truly free and fair parliamentary election is held in 2014. On 10 June 2013, an international coordinating committee comprising ambassadors and representatives from Australia, France, India, Indonesia, Japan, Republic of Korea, New Zealand, United Kingdom, and United States as well as representatives from the European Union, United Nations Development Programme and the Commonwealth Secretariat, has been convened in Fiji to discuss assistance for the elections. The coordinating committee will be responsible for organizing and coordinating member countries' assistance for the 2014 elections. This partnership with the international community through the Coordinating Committee will help Fiji achieve an election that is conducted in a smooth, transparent and apolitical manner, using best international practices, unlike elections in the past.

With respect to labour reforms, notable reforms have been undertaken by the Government to preserve and create jobs, sustain industries essential to the economy, and

improve the living standards of all Fijians. These include substantial reduction in income and corporate taxes for over 99 per cent of all Fijian workers and employer organizations. Labour laws are currently being reviewed by the tripartite partners to ensure conformity with ILO instruments ratified. A report of the tripartite body will be presented to the Minister of Labour later this year. The workers' compensation scheme is also being reviewed with a view to implementing a no-fault compensation system. The Government has also established a national employment centre to generate employment.

The Government affirms that, concerning legal and institutional processes, in the area of trade union rights and civil liberties, there are adequate and effective investigation and judicial processes in place to ensure the protection of the fundamental rights of all Fijians. All cases of breaches of criminal law will be investigated and will be independently prosecuted by the independent Office of the Director of Public Prosecutions.

As to freedom of association and movement, the Public Emergency Regulations were revoked in January 2012. All persons including trade unions, workers, political parties and civil society groups can meet in any public place without the need to obtain a permit.

In relation to fundamental principles and rights at work of government employees, the law guarantees the right to join trade unions and to judicially challenge any decision which adversely affects the employee, including termination of employment. Collective agreements have recently been concluded between the Government and public service unions with respect to government wage earners.

With regard to the essential National Industries Decree, this Decree upholds the principles on freedom of association and collective bargaining. Workers in essential industries have the right to organize and form bargaining units of their choice, the right to independently elect their representatives, the right to collectively bargain, the right to strike and to devise their own dispute resolution processes. The Decree only applies to certain industries essential to the Fijian economy and does not cover the majority of the workers in Fiji that are not part of these industries. The Decree has been successfully implemented without any government interference. In one essential industry, workers have been able to negotiate salary increases of up to 25 per cent, guaranteed pay increases and also a share of the profits. In any event, the incoming Parliament in 2014 is empowered by the Draft Constitution to amend or repeal any existing laws, including the ones mentioned in the Committee of Experts' report.

In addition, before the Committee, a **Government representative** highlighted the substantial reforms that the Government was undertaking to create transparent rules of governance and a legal system that was based on substantive equality and justice. The speaker stated that the hallmark of these reforms was the publication of the draft Constitution which guaranteed universally accepted principles, including common and equal citizenry, prohibition of all forms of discrimination, a secular State, eradication of systemic corruption, protection and promotion of human rights, an independent judiciary, and a voting system based on one person, one vote, one value. Following the release of the draft Constitution in March 2013, all Fijians had been provided with the opportunity to make submissions in April and May. During this period, over 1,000 written submissions had been received and numerous public consultation forums had been held throughout Fiji. Following a thorough consideration of all submissions and after making such improvements as might be necessary, the draft Constitution would be promulgated by August 2013. It contained an extensive chapter on human rights, including provisions guaranteeing freedom from slavery, servitude, forced labour and human trafficking;

freedom from cruel and degrading treatment; the right to executive and administrative justice; freedom of expression; freedom of assembly; freedom of association; the right to fair employment practices; the right to humane and proper working conditions; and the right of all workers to economic participation and to a just minimum wage. For the first time, discrimination on the grounds of pregnancy and marital status, among many other grounds, was prohibited, and all Fijian workers enjoyed socio-economic rights under the draft Constitution, including the rights to food and water, housing and sanitation, health, and social security schemes. The speaker added that Fiji was making substantial progress towards holding truly democratic and transparent parliamentary elections, which under the draft Constitution must be held before 30 September 2014. In July 2012, Fiji had commenced its electronic voter registration programme. Out of a total population of 900,000, more than 500,000 voters over the age of 18 years had been registered. In addition, the speaker referred to a number of significant labour reforms. For instance, the Government was working towards introducing a national minimum wage. The Government had also activated a tripartite process under the Employment Relations Advisory Board (ERAB) to review the existing labour laws. A report would be submitted by the ERAB later in 2013 to the Minister of Labour for consideration. The Government also considered making the necessary amendments to the labour law to ensure compliance with a large number of ILO instruments which Fiji had recently ratified.

The Government representative stated that, in light of the above constitutional and labour reforms, many of the issues raised in the Committee of Experts' report did not reflect the correct legal and factual situation in Fiji. With respect to trade union rights and civil liberties, the Government had the necessary processes in place to ensure that the fundamental rights of all Fijians were adequately protected and enforced. All breaches of criminal law and public order were investigated and prosecuted in accordance with established legal procedures. All incidents of criminal offences were independently and thoroughly investigated upon the lodgement of a complaint with the police department. All criminal prosecutions were conducted by the Office of the Director of Public Prosecutions without any interference. Ultimately, any criminal proceeding would be adjudicated upon by an independent judiciary. The speaker recalled that the Public Emergency Regulations (PER) had been revoked in January 2012. The Public Order Act had been improved to include internationally accepted and modern provisions to combat terrorism and other serious public order offences. All persons and entities were now able to associate, organize and meet in any public place without the need for a permit. Indeed, trade unions, political parties and civil society groups had been regularly holding public meetings, and freely expressing their views in the media. All forms of media censorship had now been removed. As regards public servants, the Public Service (Amendment) Decree of July 2011 expressly guaranteed the fundamental principles and rights at work of all Government employees, including their right to join trade unions. Public servants also had access to courts for judicial review of decisions against them, as recently decided by the High Court of Fiji. Concerning the Essential National Industries Decree (ENID), the speaker indicated that the Decree aimed to create growth and ensure the long-term viability of essential industries, protect jobs, and at the same time safeguard the fundamental rights of workers. The Decree upheld the right of workers to form and join bargaining units of their choice, which could also be registered as a trade union, and the right to elect their own representatives who were empowered to bargain collectively. The employer

was obligated to recognize and bargain with these representatives. The Decree was comparable to similar laws in other countries. The Government was pleased to report that workers in essential industries had been able to freely organize, form bargaining units and elect representatives. They had reached collective agreements with employers and had devised their own dispute resolution processes. All this had been done without any Government or third party intervention.

The Government representative reaffirmed his Government's strong commitment to not only promoting and safeguarding the rights of workers and employers in Fiji, but also to sustaining and creating employment and economic growth. Considering that it was important for the ILO to be fully aware of the actual facts and circumstances in Fiji, he was pleased to announce that the Prime Minister of Fiji had conveyed in May to the ILO Director-General that Fiji welcomed a visit of the ILO direct contacts mission. In light of the anticipated promulgation of the new Constitution, the need for further harmonization of national laws and the preparations of the 2014 parliamentary elections, the Government looked forward to receiving the mission in December 2013 upon the finalization of the terms of reference. The Government was currently liaising with the Office to finalize the terms of reference, so as to ensure that they were acceptable to all parties.

The Worker members noted the comments which had been made by the International Organisation of Employers (IOE) in 2012 and the discussions on the mandate of the Committee of Experts and the link between freedom of association and the right to strike which had taken place during the general discussion. After recalling the provisions of Convention No. 87, they emphasized that freedom of association was a human right and constituted a precondition for healthy collective bargaining and social dialogue for the benefit of employers, workers and social peace. This Committee and the Committee on Freedom of Association (CFA) contributed to resolving the difficulties surrounding the application of that fundamental right throughout the world. The Worker members also emphasized that they fully supported the Committee of Experts and the legal implications of its comments and also the existence of the right to strike as resulting from a combined reading of Articles 3 and 10 of Convention No. 87.

Since two years, the message from the ILO and its constituents could not have been clearer: The Government was going in the wrong direction and must immediately get back on course. On each occasion, however, the Government had tightened the screws on the trade union movement, had adopted new provisions that were even more repressive, had banned meetings and had prosecuted trade unionists engaging in legitimate trade union activities. The Worker members had drawn up a detailed list of the numerous past criticisms formulated by the ILO supervisory bodies, the ILO Governing Body and the ILO Director-General over the previous two years. They recalled that in June 2011, the present Committee had called on the Government to establish, with ILO assistance, the necessary conditions for genuine tripartite dialogue. The same year, the Credentials Committee had considered that the Government had deliberately failed to appoint the workers' delegate, Mr Anthony, who, moreover, had been attacked by members of the armed forces upon his return to the country. In August 2011, the ILO Director-General had publicly expressed his deep concern regarding the arrest and prosecution of two trade union leaders, and a high-level mission had visited the country. In September 2011, the Director-General had expressed regret at the publication by the Government of the implementing regulations for the ENID and had asked it to restore the dialogue with the workers' and employers' organizations. In

December 2011, the 15th Asia and the Pacific Regional Meeting had strongly condemned the acts of the Government and had urged it to accept a direct contacts mission. The Committee of Experts, in the observation due to have been examined by the present Committee in 2012, had expressed deep concern at the numerous allegations of assault, harassment and intimidation and the restrictions on freedom of association resulting from the ENID. In September 2012, the direct contacts mission which had visited the country had been expelled. Subsequently, the Governing Body had asked the Government at its November 2012 session to accept a new direct contacts mission with the mandate that had been previously agreed on the basis of the conclusions and recommendations of the CFA (Case No. 2723), and to find, with the social partners, appropriate solutions that complied, in law and in practice, with the principles of freedom of association. The CFA had emphasized that the case of Fiji was one of the five most serious and urgent cases of violations concerning the right to organize, collective bargaining and social dialogue. Having noted the lack of cooperation by the Government, the Governing Body, in March 2013, had repeated its request to find appropriate solutions and to accept a direct contacts mission. The Government had not accepted that the mission should go to the country in time for a report to be submitted to the Governing Body in March 2013, and was now stating that it could receive the mission in December. All of that was unacceptable, since the Government was merely seeking to delay the discussion within the Governing Body and would certainly find other excuses later, for example the 2014 elections. Not only had no progress been achieved to bring law and practice into line with the Convention but the situation had also grown even worse, especially because of the changes to the Constitution which were likely to undermine the fundamental rights of workers, including that of freedom of association.

With regard to the acts of violence against trade unionists, the Committee of Experts had asked the Government to expedite without delay an independent investigation into the alleged acts of violence, harassment and intimidation against Mr Felix Anthony, Mr Mohammed Khalil, Mr Attar Singh, Mr Taniela Tabu and Mr Anand Singh. No measures had been taken by the Government, even though, contrary to what it had stated in its report, complaints had been filed in July 2012. Regarding the arrest and detention of trade unionists (Mr Felix Anthony, Mr Daniel Urai and Mr Nitendra Goundar), their cases were still pending. Regarding the legislation, the Worker members emphasized that many of the powers granted in the repealed PER had been reproduced and expanded in the Public Order (Amendment) Decree of 2012 (POAD) and, contrary to what had been requested by the Committee of Experts, the Government had not repealed the POAD. While noting that section 8 of the POAD had been suspended during the process of revising the Constitution, the Worker members had expressed concern at the fact that it would soon be reactivated and that other repressive provisions remained in force. Not only had the ENID not been repealed or amended but it also appeared that the Government was on the point of extending its scope. Regarding the provisions of the Employment Relations Promulgation of 2007 (ERP), amendments to which had been called for by the Committee of Experts for several years in order to bring them into line with the Convention, the Worker members stated that the Government had not adopted any measures in that regard and that the meeting of the tripartite ERAB subcommittee which had been held in August 2012 for that purpose had not yielded any results.

The Worker members also expressed concern with regard to the Political Parties Decree and the draft new

Constitution, which represented a threat to the exercise of freedom of association. It was clear that the Fijian dictatorship was treating the ILO with contempt. The authoritarianism against which the Organization had warned as of 2011 had done nothing but increase and none of the information supplied to the Committee by the Government suggested that the situation would really change.

**The Employer members** stated that the Committee of Experts had undertaken a solid analysis of this case, identified in 2012 as a “double footnote case” on the basis of numerous troubling facts. They agreed with the Worker members that the Government was not on the right path. With reference to the ILO direct contacts mission of September 2012, the Employer members considered that it was absolutely unacceptable for the Government to undermine the mandate bestowed upon the mission by the international community. While being encouraged by the Government’s willingness to accept another direct contacts mission, they were concerned about its timing and the fact that the Government still wished to negotiate its mandate, which was generally unacceptable to the Employer members. They further indicated that they shared the Committee of Experts’ concerns about the acts of assault, harassment, intimidation and arrest of trade union leaders for the legitimate exercise of freedom of association, as well as about the POAD, which placed restrictions on freedom of assembly and expression, with prison sentences of up to five years for meeting without permit. They also expressed concern about some provisions of the ERP, especially those restricting internal trade union governance, for example the requirement for trade union officers to have worked in the relevant trade for a certain period of time. Further to the Committee of Experts’ comments concerning certain ERP provisions relating to industrial action, they recalled their position on the right to strike. Lastly, the Employer members stated that they were encouraged by the fact that the new Constitution would reflect the fundamental Conventions and hoped that the tripartite ERAB would be able to continue its work.

**The Worker member of Fiji** indicated that since 2009 the Government had been constantly reaffirming to the international community its commitment to workers’ rights and core labour standards. In parallel, the Government had issued decree after decree curtailing or denying workers their fundamental rights both in government-owned enterprises and in private entities. These decrees had denied civil service workers the right to collective bargaining and redress of grievances and disputes, had cancelled all existing collective agreements and had prohibited the deduction of union dues. Moreover, the direct contacts mission had been expelled as soon as it had convened its work in Fiji. Numerous attempts, including two resolutions of the Governing Body calling on the Government to accept the Mission back, had gone unheeded. The Government was attempting to dictate to the ILO the terms on which it would allow a direct contacts mission, as evidenced by the Prime Minister’s most recent communication to the ILO. The constitutional review process previously announced by the Government had been abandoned. The Government had now taken upon itself to rewrite the Fiji Constitution disregarding the 7,000 submissions which the public had made to the Constitution Review Commission. Media freedom remained curtailed, and the international community, while encouraging free and fair elections, remained seriously concerned about the process. Intimidation and assault of trade unionists and other citizens including deaths and other violations of human rights had still not been investigated despite the fact that the perpetrators had been identified. The Government had granted itself absolute immunity from any prosecution for actions or crimes that might

have been committed or would be committed until the first sitting of the new Parliament. The Government’s rhetoric on accountability, transparency and fight against corruption was not implemented in practice.

The tripartite ERAB had met and agreed unanimously to recommend to the Government to revoke the decrees that violated the core ILO Conventions. These included the Administration of Justice Decree and its amendment, the ENID, the Civil Service Decree, the POAD and the Media Decree. The ERAB meetings had been abruptly stopped without explanation, and the agreement to recommend revocation of the decrees had since been ignored. Just prior to this Conference, the Government had recommenced discussions on the review of the labour legislation, but had refused to deal with the Decrees. A meaningful review of the labour law could not be envisaged without the revocation of these decrees. While the PER had been revoked in January 2012, the POAD had been issued one week later. This even more draconian Decree seriously curtailed rights and freedoms and expanded the definition of treason and sedition to almost any activity or pronouncement in opposition to the regime. The provision on the requirement for permits for meetings had been temporarily suspended but the police and the military continued to monitor any gathering. As regards the public sector, the Government had claimed that public sector employees enjoyed the same guarantees for redress of their grievances as other employees covered by the ERP. This was factually incorrect. Civil servants did not enjoy the right of access to an independent labour court or arbitration tribunal. Moreover, the speaker informed the Committee that, on 6 May 2013, one month before the Conference, the Government had issued a circular creating a task force with the mandate to report on the possibility of extending the coverage of the ENID to local government workers which included staff, gardeners, cleaners and those doing the most menial work. The sugar industry had been put on notice that it could also be included under the ENID. To further suppress unions and workers, the Government had issued decrees in January 2013 defining any trade union official, employee or consultant as “public officers” similar to civil servants, thus prohibiting them from taking part in any political activity.

The speaker stated that most unions were barely surviving, and some had actually had to close their offices and operate from homes due to the impact of the aforementioned Decrees. Many unions were not able to operate fully and meet the expectations of their members owing to the many restrictions imposed as well as financial constraints due to the removal of the deduction of union dues. Union officials were barred from entering workplaces. Collective bargaining in Fiji was now a luxury for just a few unions. The majority of workers in Fiji did no longer have the right to collective bargaining and for the first time in Fiji’s history, an estimated 60 per cent of unionized workers were living below the poverty line. Since the last Conference, the situation had actually worsened rather than improved, and the Government remained determined to destroy the trade union movement in Fiji.

**The Employer member of Fiji** expressed appreciation to the ILO Country Office in Suva for its tireless efforts in trying to bring the social partners together to address issues concerning the world of work during these difficult times. On 23 May 2012, the Prime Minister had written to the ILO Director-General to explain Fiji’s position and reasons for adopting the policies that had raised concerns, and to map out the way forward, including the Government’s aspirations to a non-ethnic based Constitution, free and fair elections and modernization of labour laws. In this regard, the speaker indicated that the ERAB had first met on 11 April 2012 to initiate steps to reform and modernize Fiji’s labour laws. A subcommittee of the ERAB

had been appointed, and ILO technical and financial assistance had been provided to the tripartite partners to ensure quality deliberations. Tripartite partners had met on eight occasions beginning 16 May 2012 and concluding on 13 August 2012. Meetings had recommenced one year later from 15 to 17 May 2013 and 27 to 28 May 2013. The speaker indicated that the subcommittee had been set up for the specific purpose of assisting the ERAB in initiating steps to reform and modernize the current labour laws relative to the eight ILO core Conventions and other relevant Conventions ratified by Fiji, and to amend the ERP, so as to domesticate four newly ratified ILO Conventions, namely the Human Resources Development Convention, 1975 (No. 142), the Private Employment Agencies Convention, 1997 (No. 181), the Maternity Protection Convention, 2000 (No. 183) and the Maritime Labour Convention, 2006 (MLC, 2006). The speaker underlined that the ERAB subcommittee had reviewed the ENID and the Employment Relations (Amendment) Decree of 2011. The ENID was commonly viewed as favouring the employers, and the Fiji Commerce and Employers Federation freely admitted that some of its members supported this Decree. The Employment Relations (Amendment) Decree had excluded all civil servants from the ERP, and thus from provisions guaranteeing collective bargaining and dispute resolution mechanisms. The ERAB subcommittee had resolved that some provisions of these two Decrees were inconsistent with ILO Conventions Nos 87 and 98 and had agreed to recommend the repeal of both Decrees, while capturing into the existing ERP some of the pertinent concerns of the Government that had been accommodated in the ENID. The speaker highlighted that a tripartite forum was currently receiving the Government's submission on the proposed changes, and meetings had last been adjourned on 28 May 2013 with a view to reconvene in July. The speaker believed that tripartite dialogue could work to the benefit of the social partners, and assured that the employers of Fiji would continue to use this process to address labour concerns. He appealed to the ILO constituents for their understanding and empathy in relation to Fiji. It would not be in the best interest of the global community to isolate Fiji any further. He also considered that the Government should be commended for bringing about many positive reforms.

**The Worker member of Indonesia** expressed concern that civil liberties in Fiji were increasingly threatened. She recalled the issues raised in the observation formulated by the Committee of Experts, such as the numerous acts of assault, harassment, intimidation and arrest of trade union leaders and members for their exercise of the right to freedom of association. Moreover, stressing that the PER were certain to give the authorities any excuses to prevent a trade union from ever holding a public meeting, the speaker called on the international community to act.

**The Government member of Papua New Guinea** recalled that the Government had engaged the tripartite ERAB and its subcommittee to review current labour laws to ensure compliance with all ratified ILO Conventions, including Convention No. 87. The Government had made significant progress to address the issues raised by the Committee of Experts concerning the application of this Convention, as evidenced by the progress of the ERAB and its subcommittee, which had met a total of 16 times within the last year. The speaker expressed the hope that the Government would give due consideration to the comments of the Committee of Experts, as well as the amendments recommended by the tripartite ERAB, to resolve issues relating to compliance with the Convention. The Government had engaged in an inclusive and open process in the development of the new Constitution, which was due for completion by August 2013. This Con-

stitution would restore civil liberties for workers as well as the general public and pave the way for a democratic election by September 2014. The speaker encouraged the ILO to elaborate terms of reference acceptable to all parties for its direct contacts mission to Fiji, so as to help resolve the issues raised in an objective and transparent manner.

**The Employer member of Australia** expressed concern regarding the observations of the Committee of Experts, and indicated that the Australian employers supported the private sector in Fiji (whether employers, employees or their representatives) in its efforts to operate in an environment where full freedom was exercised. Australian employers had joined with ILO constituents on multiple occasions in recent years to signify their support for measures to remedy the breaches of freedom of association in Fiji. Regrettably, despite collective action by the Governing Body, the CFA, the Asia and the Pacific Regional Meeting in 2011, the breaches reported by the Committee of Experts had not been rectified. Violations were serious and included interference with trade union rights and civil liberties; acts of assault; arrest and detention; restrictions to freedom of assembly and expression; and a variety of legislative issues. He declared that, while the Employer members had their disagreement concerning this Convention, there was no grey area in this case. The breaches had been found to exist, they were not a matter of nuance, they were serious, and they continued. He urged the ILO direct contacts mission to return to Fiji in the near future, within the framework of the mandate bestowed upon it by the international community.

**The Worker member of Japan** recalled that the ENID had designated 11 corporations in the finance, telecommunications, aviation, and public utilities sectors as essential industries. Under the ENID, collective bargaining agreements had been abrogated and some bargaining units had been eliminated for not meeting new minimum membership requirements. The ENID also prevented pre-existing unions from representing their members in collective bargaining, and new units could only be registered with the personal approval of the Prime Minister. In addition, the leaders of re-registered unions were required to be employed by the designated corporations they represented, a practice which conflicted with the principle concerning workers' right to elect representatives of their choice. These measures, as well as the elimination of the deduction of union dues in the essential industries, were a significant setback for workers' rights, and had had an extremely negative impact on the functioning of the Fiji Bank and Finance Sector Employees Union. With reference to the earlier draft of the Constitution which had been withdrawn, the speaker noted that this draft had contained provisions for workers' rights, including the repeal of the ENID.

**The Worker member of Australia** indicated that Australian workers and unions had watched with deep concern and dismay the continuing deterioration of the worker and human rights situation in Fiji. Union members from Australia and New Zealand had tried to visit Fiji in December 2011 to speak with unions, community groups and others to try to find out more about what had happened but they had not been permitted to set foot in the country. She declared that it was hard to believe that the Government had any intention of restoring rights to Fijian workers and unions, or democracy to Fiji. The Political Parties Decree excluded any elected or appointed trade union officer, or officer of any federation, congress, council or affiliation of trade unions from applying for, being a member of, or holding office in a political party. The Decree also prohibited trade union officers from expressing support for a political party. The Government had discarded the draft Constitution prepared by the Independent Constitution

Review Commission, which had specifically called for the repeal of the ENID. The speaker called on the Government to immediately repeal the Political Parties Decree and other decrees which had the effect of stripping citizens of their basic rights.

**The Government member of the United States** expressed deep concern regarding the situation of democracy as well as human and labour rights in the country, particularly with respect to Government measures to restrict the rights of trade unions to meet, organize and exercise fundamental rights; reported acts of harassment and discrimination; restrictions to freedom of assembly and expression; and shortcomings in the legislation that gave rise to serious violations of the principles of freedom of association, the right to organize and collective bargaining. She expressed disappointment that the ILO direct contacts mission of September 2012 had not been allowed to complete its work. The terms of reference developed for this mission had been formulated on the basis of well-established procedures for ILO direct contacts, and included full guarantees that all relevant parties and points of view would be heard objectively and impartially. An important opportunity had been squandered to clarify the facts on the ground and to assist the Government, together with the social partners, in finding appropriate solutions. Considering that the Government was in the process of promulgating a new Constitution, and was undertaking a review of labour legislation, the advice and assistance of the ILO would be especially valuable. It was therefore regrettable that the Government had again proposed that the ILO direct contacts mission be delayed until December 2013. The speaker therefore urged the Government to cooperate constructively with the ILO in order to dispatch an ILO direct contacts mission to the country as soon as possible, under terms of reference that would enable the mission to adequately assist the Government.

**The Worker member of France** declared that the public service in Fiji was under serious threat. Under the pretext of reducing expenditure, the Government had unilaterally eliminated over 2,000 jobs in the public service by reducing the retirement age from 60 to 55 years, without consulting or negotiating with the trade unions. Public employees were recruited under individual contracts that were not negotiated collectively and therefore offered fewer guarantees. Public service trade unions were denied the possibility of representing or defending their members, as the latter were now excluded from the scope of the ERP. The Public Service (Amendment) Decree, to which the Government had referred, dealt in fact only with the issue of equal treatment and offered no guarantee of collective bargaining or compensatory mechanisms. The circular published by the Government which provided for the introduction of mediation and conciliation procedures in the public service was completely ineffective, since no independent commission had been established to deal with complaints regarding transfers, appointments, promotion and disciplinary measures. There was no mention of any participation in the process by the trade unions. Moreover, and contrary to the Government's claims with regard to the Public Service (Amendment) Decree, the possibility of lodging an appeal did not exist in practice for public service employees.

**The Government member of New Zealand** indicated that, despite some deviations from the previously announced roadmap, Fiji had made some positive progress towards preparing for elections next year, including the registration of four political parties and the increasing media coverage and public debate on political issues. Continuing with these efforts would contribute to making the election credible and the outcome acceptable to the people of Fiji. This should include ensuring that basic freedoms, including labour rights, were respected in the process and en-

shrined in the Constitution, which was in the process of being finalized. It was regrettable that the ILO direct contacts mission had not yet been able to return to Fiji. He reiterated his Government's support for, and willingness to assist Fiji to return to democracy.

**The Government member of Japan** indicated that his Government had been encouraging the Government to promote democratization in Fiji through steady dialogue. It would be beneficial for the country to receive the ILO direct contacts mission, to be able to present to the international community its democratization process, including recent developments towards the promulgation of a new Constitution. The speaker welcomed the intention of the Government to accept a visit of the ILO direct contacts mission. He expressed the hope that the Government would receive this mission at the earliest possible date, on the previously agreed upon terms of reference and based on the decision of the Governing Body.

**The Worker member of Brazil** recalled that several decrees in Fiji currently prevented workers in the public and private sector from exercising their trade union rights. Legitimate union activities could now be deemed criminal as they were liable to be deemed as terrorist acts. Teachers had been excluded from labour legislation, which meant that they had no recourse when they were victims of injustice, discrimination or unequal treatment. Unionized teachers were subjected to constant monitoring and harassment and their conversations were tapped. Children and young persons were raised in a school atmosphere in which they were aware that their teachers were denied fundamental rights. In 2012, the Government had decided unilaterally to reform the retirement system for teachers, who had been obliged to leave their jobs in schools and teaching institutions. These experienced professionals had, either not been replaced or had been replaced by teachers with no prior training, which compounded the negative impact on the quality of teaching. A quality education system, with well-trained teachers working in decent conditions and entitled to exercise, and benefit from, their trade union rights was a sine qua non for the productive development of all nations. Students needed to evolve in a context in which civil liberties, and therefore trade union rights, were respected.

**The Government member of Australia** declared that his Government, along with its social partners, once again expressed concern at the ongoing violation of human and labour rights in Fiji. Legislation clearly constituted a serious infringement of the principles underpinning the right to freedom of association and collective bargaining as enshrined by Conventions Nos 87 and 98. He reiterated the ILO's and the international community's call for the Government to rescind laws that violated ILO Conventions. Decrees severely restricting workers' rights to freely organize were still in force. In particular, the POAD reproduced key provisions of the PER, which had been lifted on 7 January 2012, thus contravening the recommendations of the high-level mission of August 2011. He acknowledged the decision by the Fiji authorities to grant a permit for the biennial meeting of the Fiji Trades Union Congress in May 2012, though with the condition of police attendance. Fiji workers were among the most affected by the decrees imposed by the Government. Cases of harassment, arrest and intimidation of trade union representatives were an affront to the fundamental principle of freedom of association. He indicated that his Government, along with the social partners, strongly urged the Government of Fiji to respond in full to the Committee of Experts' observations, as well as to implement its recommendations and those of the CFA, to ensure conformity with the obligations under ratified ILO Conventions. The speaker also urged the Government to work with the ILO to arrange for a direct contacts mission

as soon as possible, reflecting the mandate of the Organization.

The Government member of Canada noted with great concern the degree to which freedom of association and protection of the right to organize had been repressed in Fiji in law and practice. Allegations of assault, harassment, intimidation and arrest of trade unionists were alarming, as was the environment of impunity resulting from a lack of investigations or penalties against the perpetrators. He further noted with concern that the 2012 ILO direct contacts mission had not been able to continue its work. In addition, the reported assault against a trade union leader in retaliation for statements made by a colleague at the 2011 session of the Conference was a serious threat to the freedom of speech of all delegates, and threatened the functioning of the Conference. The speaker urged the Government to take concrete and decisive actions to provide and protect freedom of speech, freedom of association and the right to organize. He also urged the Government to cooperate with the ILO to identify and implement the necessary measures to fulfil its obligations under the Convention, including relevant legislative amendments.

The Government representative, referring to the ILO direct contacts mission of 2012, indicated that the terms of reference of this mission had been too vague, open-ended and had not been outcome-oriented. The Government was committed to accepting a direct contacts mission that would be able to speak to all parties, and that would provide solutions based on the correct legal and factual situation. The fact that the terms of reference of the mission in 2012 had not been acceptable should not prevent a mission from taking place in 2013. In this regard, the Government reiterated its commitment to welcoming an ILO direct contacts mission in December 2013, based on terms of reference that were acceptable to all. Concerning restrictions on public meetings, the speaker underlined that all persons and entities were now able to associate, organize and meet in any public place without the need for a permit. Trade unions, political parties, and civil society groups had been regularly holding public meetings, and freely expressing their views in the media. Allegations that minutes had to be kept of meetings and speeches were not true. Turning to issues raised concerning several pieces of legislation, the speaker underlined that the serious offence provisions contained in the Public Order Act only applied to offences such as treason, sedition and religious and racial vilification. Moreover, the definition of the term "terrorism" in the Public Order Act was very similar to legislation in many other countries. Furthermore, the Political Parties Decree did not take away any rights from workers. This Decree sought to maintain political neutrality of public officials, but did not prevent workers who were not trade union officials from becoming members of a political party. The Decree also introduced greater transparency and accountability with respect to political parties. In addition, the draft Constitution, which provided for fundamental civil and political rights as well as socio-economic rights, would also provide the right of any person affected by an executive and administrative decision to seek the review of this decision in a court of law or before an independent tribunal. The draft Constitution also contained provisions that would contribute to the creation of transparent rules of governance. With regard to civil liberties, the Government representative indicated that once a complaint or allegation of a criminal offence was made, this complaint was thoroughly investigated, evidence was collected and an assessment was made whether prosecution would be pursued. He reiterated that such cases had to be proved beyond a reasonable doubt, and reaffirmed that breaches of

law would be investigated in accordance with established legal procedures, based on evidence in a court of law.

The Worker members indicated that they were extremely concerned about the trade union situation in Fiji. There had been no concrete response by the Government with regard to the matters outlined in the observations of the Committee of Experts. The Government continued to find new ways to repress the rights of workers, through unilateral executive decrees that were unreviewable by any court. Some of these measures might be perpetuated by the draft Constitution proposed by the Government. This case was serious and urgent as freedom of association was under attack and would be more so when the suspended portions of the POAD would come back into force, thus requiring prior Government authorization to hold union meetings, authorization which had rarely been granted in the past. The Worker members therefore urged the Government to: (i) accept the ILO direct contacts mission as set out in the resolution adopted by the Governing Body in 2012 so that it might take place in time for its report to be discussed at the October 2013 session of the Governing Body; (ii) take the necessary measures to ensure that all charges against Mr Daniel Urai and Mr Nitendra Goundar were dropped without delay; (iii) undertake an ex officio and independent investigation without delay into the alleged acts of assault, harassment and intimidation of Mr Felix Anthony, Mr Mohammed Khalil, Mr Attar Singh, Mr Taniela Tabu and Mr Anand Singh, and initiate an investigation into the complaint lodged by Mr Felix Anthony in 2012; (iv) abrogate or amend the Public Order Act so as to ensure that the right to assembly might be freely exercised; and (v) convene the ERAB subcommittee to establish a tripartite process in order to amend, within six months, the laws and decrees to ensure conformity with the obligations under Conventions Nos 87 and 98. The Worker members requested the ILO Suva Office to make the necessary efforts to facilitate dialogue among employers, workers, and the Government to restore industrial relations practices, particularly in the sugar industry. They also requested that the conclusions in this case be reflected in a special paragraph of the Committee's report.

The Employer members observed that the facts and elements of this case appeared not to have changed since their examination by the Committee of Experts. They recalled that the conclusions of the Committee should only address the Government's compliance with the Convention, and not the political situation in the country or the application of other Conventions. An ILO direct contacts mission was important in order to assess the facts on the ground, due to the disparity between the information provided by the Government and the information contained in the report of the Committee of Experts. It was intolerable that a member State could essentially eject an invited direct contacts mission due to a disagreement with its terms of reference, particularly as those corresponded to the standard terms of reference established by the Governing Body. The Employer members therefore urged the Government to accept the ILO direct contacts mission, with the mandate that was originally provided, and not a mandate set or negotiated by the Government. The Employer members agreed that the conclusions in this case should be reflected in a special paragraph of the Committee's report.

### **Conclusions**

**The Committee took note of the statement made by the Government representative and of the discussion that followed.**

**The Committee observed that the outstanding issues in this case concerned numerous and grave allegations of the violations of the basic civil liberties of trade unionists, in-**



cluding arrest, detention and assaults and restrictions of freedom of expression and of assembly. The Committee further observed the issues relating to a number of discrepancies between the labour legislation, in particular the Public Order (Amendment) Decree (POAD), the Employment Relations Promulgation and the Essential National Industries Decree, and the provisions of the Convention. The Committee further recalled the resolution adopted by the ILO Governing Body in November 2012 calling on the Government to accept a direct contacts mission under previously agreed terms of reference based on conclusions and recommendations of the ILO Committee on Freedom of Association in Case No. 2723.

The Committee noted the Government's statement that the draft Constitution ensured protections for human and socio-economic rights and the independence of the judiciary, and the Government was intensively preparing for democratic elections in September 2014. It further noted the Government's commitment to: finalize the review of the labour legislation with the social partners within the framework of the Employment Relations Advisory Board (ERAB) so as to bring it into conformity with ratified international labour Conventions; and ensure that all cases of breaches of Fijians' fundamental rights would be investigated and independently prosecuted by the independent Office of the Director of Public Prosecutions. The Government representative indicated that they would welcome the visit of the ILO direct contacts mission on mutually acceptable terms of reference in December 2013.

The Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in Convention No. 87.

The Committee noted with concern the recently adopted Political Parties Decree and certain provisions of the draft Constitution that were alleged to pose risks to the exercise of freedom of association and the basic civil liberties of trade unionists and the officers of employers' organizations. Recalling the intrinsic link between freedom of association, expression and assembly, on the one hand, and democracy and human rights on the other, the Committee urged the Government to undertake an *ex officio* independent investigation without further delay into the alleged acts of assault, harassment and intimidation against Felix Anthony, Mohammed Khalil, Attar Singh, Taniela Tabu and Anand Singh and to drop the charges against Daniel Urai and Nitendra Goundar. The Committee urged the Government to amend the POAD so as to ensure that the right to assembly may be freely exercised and expected that the ERAB would complete its review of the laws and decrees so that the necessary amendments would be made by the end of the year in order to put them into full conformity with the Convention.

The Committee recalled with regret that the direct contacts mission was not able to take place as scheduled in September 2012. Encouraged by the Government's latest indication that it would welcome the return of the direct contacts mission, the Committee expressed the firm hope that the mission, as mandated by the ILO Governing Body, would take place as soon as possible so that it could report back to the Governing Body in October 2013.

The Committee persevered in the hope that the mission would be able to assist the Government and the social partners in finding solutions to all the outstanding matters raised by the Committee of Experts. It requested the Government to provide a detailed report for the Committee of Experts' examination this year and expressed the firm expectation that next year it would be in a position to observe the substantial and concrete progress made.

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

The Government representative indicated that her Government had taken due note of the conclusions, and

would, upon consideration of all written and oral statements, examine them in detail, prior to giving its comments in writing.

#### GUATEMALA (ratification: 1952)

The Government provided the following written information.

The concerns which had been expressed by the Committee of Experts for a number of years were shared by the Government which had taken office in January 2012. In order to address such issues, specific actions had been implemented with a view to producing changes in the management of labour matters. In its 2013 report, the Committee of Experts had noted that the Government had reported progress in the following areas: the implementation of the new national policy on secure, decent, high-quality employment and of the ongoing policy on social dialogue; the strengthening of the Ministry of Labour and Social Security in budgetary, regulatory and institutional terms, including increasing the coverage of the general labour inspectorate; the signature of an agreement between the Public Prosecutor's Office and the International Labour Standards Department of the ILO concerning subjects of relevance to the supervisory bodies; the strengthening of national tripartite dialogue, the first result of which had been the signature of the Memorandum of Understanding relating to the implementation of the ILO Technical Cooperation Framework: Decent Work Programme for Guatemala; the coordination among State institutions to give priority to dealing with complaints concerning acts of violence against trade unionists and impunity, which regrettably also affected the whole population; the application of the protection mechanism to trade unionists who request it; the participation of the Public Prosecutor's Office in the Inter-Institutional Labour Commission and the Tripartite Committee for International Labour Affairs; and the reinforcement of the investigation capacity of the Public Prosecutor's Office by increasing staff numbers and establishing working methods for resolving cases involving acts of violence against trade unionists. The Committee of Experts had also welcomed in its report the following information supplied by the Government: the re-establishment of the special prosecution service for investigating offences against trade unionists; the conclusion of a cooperation agreement between the Public Prosecutor's Office and the ILO, with initial action already taken to train prosecutors with regard to typical scenarios of anti-trade union violence and the factors behind such violence; and the inclusion in the National Tripartite Commission of trade union federations and confederations which had been excluded in the recent past.

Further to the report of the Committee of Experts submitted to this session of the Conference, the Government had taken steps to resolve the majority of the issues raised by the Committee of Experts, including the following: the streamlining of the procedure for the registration of trade unions, reducing the time taken for such registration from 226 to 20 working days; the establishment of a monthly working group with the participation of the Prosecutor General and trade union representatives, to keep them informed of the progress made in cases involving acts of violence which were under investigation and to record all important information which came to the attention of the Prosecutor General; the discussion of a draft cooperation agreement between the Public Prosecutor's Office and the International Commission against Impunity in Guatemala (CICIG); the issue by the Public Prosecutor's Office of a general instruction to regulate criminal prosecution in the event of non-compliance with rulings handed down by labour and social security courts; ILO technical assistance to the Public Prosecutor's Office relating to the exchange

of positive experiences with countries in the region in order to tackle anti-union violence and amend existing legislation with a view to improving criminal prosecution; meetings with the main trade union leaders of Guatemala, the Ministry of Labour and the Ministry of the Interior in order to reach decisions and take action in the quest for solutions to problems affecting the trade unions; the issue by the Ministry of the Interior of the ministerial agreement concerning the inclusion of the Standing Trade Union Technical Committee on Comprehensive Protection with a view to implementing public policies for the protection of trade unionists, based on processes for prevention and comprehensive protection, with the direct presence of trade union leaders and the Higher Office of the Ministry of the Interior; the presentation of the Labour Sanctions Bill, which amends the Labour Code, for adoption by the National Congress; the issue by the Ministry of Labour of the ministerial agreement containing instructions to deal with cases involving the closure of enterprises without appropriate payments to the workers, which would prevent such situations and strengthen the labour inspectorate; budget increases and reinforcement of the investigation capacity of the Public Prosecutor's Office in order to combat impunity; the full operation of the judiciary's Centre for Labour Justice, bringing together in a single physical space the relevant courts and administrative units; the significant reduction in the average time and duration of judicial proceedings from 19 to six months on average; the full operation of the unit for the implementation and verification of reinstatement orders and special labour procedures, which monitored due compliance with court rulings in order to ensure the restoration of workers' labour rights; the establishment of the Economic and Social Council, which included representatives of Employers, trade unions and cooperatives; and discussion in the Tripartite Commission of the recommendations on judicial reform made by the Committee of Experts to agree on the action to be taken with a view to referral to the National Congress.

The Government would continue to make every effort to resolve the issues that were still pending and to implement the Committee of Experts' recommendations, which were the issues behind the submission by a number of Workers' delegates to the 101st Session of the Conference of a complaint under article 26 of the ILO Constitution, which was before the Governing Body. Accordingly, the Government of Guatemala had reported periodically to the Governing Body on progress made. Furthermore, the Governing Body had been informed of the signature, on 26 March 2013, of a Memorandum of Understanding between the Government and the Workers' group of the Governing Body, on the basis of which tripartite measures would be taken to ensure the full observance by Guatemala of the Convention. Such measures were intended, inter alia, to prevent acts of violence against trade unionists, create conditions to ensure that the latter can work in a favourable environment and also strengthen the justice system, all with ILO assistance. The Government had requested the Office to establish quickly high-level tripartite representation in the country, as stipulated in the above instrument, and it would do its utmost to continue implementing its provisions, on a tripartite basis and with ILO support, in order to achieve the full and effective application of the Convention in the country.

In addition, before the Committee, a **Government representative** stated that since the current President of Guatemala had been elected, the Government had been engaged in a sustained process of ensuring full compliance with national legislation, international Conventions and fundamental labour principles. The many efforts of national tripartite dialogue and international contacts in recent months had resulted in the signing of two particularly

relevant documents: the Memorandum of Understanding concluded in March 2013 between the Government and the Workers' group of the ILO Governing Body; and the good faith agreement between the Government and that of the United States which brought to a close the dispute that the latter had initiated under the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR). The two agreements, which were complementary, constituted a roadmap for an agreed long-term solution to the problems besetting labour relations in Guatemala. The agreements had been endorsed by the social partners in the Tripartite Committee for International Labour Affairs and had opened up a historical process of social dialogue. In practical terms the implications of the agreements were of transcendental importance for the long-term resolution of the conflicts, which had been made possible in Guatemala. Among such consequences, he stressed the creation of a sub-committee within the Tripartite Committee and the fact that the mentioned committee had decided to address the negotiation and follow-up of international agreements with a scheduled working programme. He emphasized that the Government regretted and condemned the crimes that had been committed against union leaders, against their headquarters and against both unionized and non-unionized workers and that it had taken steps through the General Prosecutor's Office to step up its investigation into the identity of the perpetrators and to have them brought to trial. Suspects had been arrested in connection with the recent murder of Ovidio Ortiz and Carlos Hernández. Better and more effective protection had been granted to union leaders who had requested police protection, a strategic alliance had been promoted between the General Prosecutor's Office and CICIG to ensure the independent investigation of crimes, and inter-institutional cooperation machinery had been set up between the Public Prosecutor, the Ministry of Interior and the trade union organizations to shed light on crimes against union leaders.

As to the legislative aspects of the case, a consensus had been sought by the Government within the framework of the National Tripartite Commission to amend the legislation, but without success. In fact, the National Tripartite Commission had refused to inform Congress on the matter. Although the executive had the authority to present proposals for reform to the legislature, it had been deemed more prudent to abide by the recommendations of the National Tripartite Commission on respect for and the strengthening of social dialogue. Regarding the register of trade unions, the procedure that had recently been introduced made it possible for registration to be completed within the 20 working days provided for in the legislation. As to the Committee of Experts' request for detailed statistics on the number of existing trade unions by economic sector, notably in the export processing sector (*maquilas*) and in the public and private sector, and on the number of collective accords that had been concluded, the Government was actively engaged in their compilation, for which it was seeking the ILO's technical assistance. Finally, the Government representative thanked the Office and the Director-General for their contribution to the mission of the Director of the International Labour Standards Department that had taken place in February 2013 upon request of the Government and for the high-level tripartite mission that was shortly to visit Guatemala which would give assistance on mediation and the agreements signed. He was certain that the two missions would contribute to furthering and enhancing the Government's efforts. The Government representative indicated that his presence during the examination of this case was proof of his Government's commitment and political will, although this case was also being examined in the context of a complaint under article 26 of the ILO Constitution, which

meant there was a double procedure in this regard. He expressed the hope that the conclusions of this Committee would contribute to the efforts already undertaken by Guatemala with the support of the international community and the ILO, including through the implementation of the Memorandum of Understanding of 26 March 2013. He requested the ILO's support to ensure a positive outcome to the efforts already undertaken.

**The Worker members** observed that the case appeared in the list of individual cases this year further to the agreement reached between the Worker and Employer members of the Committee to examine all the "double-footnoted" cases from the 2012 report of the Committee of Experts, which it had not been possible to discuss the previous year. Briefly summarizing the background to the case, they recalled that the case had been examined by the Committee on 14 occasions; further to a discussion in the Committee concerning the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the high-level mission which had visited Guatemala in April 2008 had also examined issues relating to the application of the Convention, which had resulted in the National Tripartite Commission adopting an agreement aimed at eliminating anti union violence, improving and modernizing the legislation and ensuring better application of Conventions Nos 87 and 98; in 2009, a mission comprising the Employer and Worker spokespersons had visited the country to assist with efforts to find sustainable solutions to all the issues raised, in accordance with the request made by the Committee in June 2008; a new high-level mission had visited the country in 2011; in 2012, a complaint had been submitted against the Government of Guatemala under article 26 of the ILO Constitution for violation of the Convention; at the request of the highest State authorities, an ILO mission had visited the country from 25 February to 1 March 2013; a Memorandum of Understanding had been signed on 26 March 2013 between the Government and the Workers' group of the ILO Governing Body, in the presence of the ILO Director-General, with a view to deferring the decision of the Governing Body to establish a commission of inquiry. The Memorandum of Understanding was a positive sign and the Committee should encourage what had been set in motion by the Governing Body. It was now important to give the Government a chance to honour its commitments.

**The Employer members** noted the Government's full willingness to submit information on the measures it had adopted, and of the comments of the Worker members. The case under examination was being considered by different monitoring bodies at the same time. While it was a "double-footnoted" case, which is why it had been included in the list of cases before the Committee, the situation had changed drastically since the Committee of Experts had last examined it, as a complaint had been submitted under article 26 of the Constitution. It should be recalled that the situation of Guatemala had been examined at the last meeting of the Committee on Freedom of Association within the framework of five specific cases, three of which had been considered to be serious and urgent. The Governing Body would examine both the report of the Committee on Freedom of Association and the analysis of the complaint under article 26 of the Constitution. The observation of the Committee of Experts made reference to a wide range of issues which could be grouped into four clusters: the complaint under article 26 of the Constitution, the situation of violence, legislative problems and other matters including the *maquilas*, the national tripartite commissions and statistical matters. As for legislative issues related to the right to strike, they referred to the 2012 discussions in which they had indicated that the Committee of Experts was not competent to

interpret Conventions and that Convention No. 87 did not address the right to strike. They recalled that a high-level mission had been conducted in 2011, and they highlighted the written information that the Government had provided on the measures adopted further to the mission's recommendations. They particularly emphasized the measures that had been adopted to expedite the registration of trade unions, to speed up court proceedings and to set up the Economic and Social Council. They also referred to the measures adopted with regard to the Memorandum of Understanding that had been signed in March 2013. They emphasized the measures to strengthen the legal system, and particularly to shed light on acts of violence. Swift and specific judicial investigations were needed to identify and punish the perpetrators and ensure that the same acts were not committed again in the future. They highlighted the importance of continued technical assistance from the Office. They noted with interest the Government's decision to accept a new high-level mission and hoped that it would take place without delay.

**The Worker member of Guatemala** recalled that in 2012 the workers had presented a complaint under article 26 of the Constitution in view of the murders, attacks, harassment and threats involving union leaders, the lack of tolerance by both public and private employers of trade unions and the failure to comply with national and international standards, and particularly the present Convention. The presentation of the complaint had provided the occasion for the Government to take a number of political and diplomatic steps that had resulted in the signing of a Memorandum of Understanding with the Workers' group and the Office. Guatemalan workers endorsed the Memorandum of Understanding, which gave the Government six months, from April to October 2013, to draw up and implement the operational plan that was currently being validated by the Tripartite Committee on International Labour Affairs. However, the Memorandum did not resolve structural problems and the anti-union policy continued to remain in place. For employers and some public officials, the best trade union was no trade union at all. New unions could not be established in the production and public service sectors, at either the national or municipal level. Workers who decided to organize in accordance with national and international legislation were immediately dismissed. Employers disregarded warnings and refused to comply with judicial rulings ordering them to reinstate dismissed workers immediately and to respect the trade union rights were denied. The executive, the judiciary and the legislative authorities were jointly responsible for the situation, as they did not enforce the law or comply with their obligations. At a time when the world was watching the historic trial of Guatemalan generals for genocide and crimes against humanity, trade unionists, indigenous peoples, women and human rights activists were being persecuted in ways that brought back memories of the atrocities perpetrated during the 1980s. And while "development" projects were imposed on the country without consulting or seeking the consent of those concerned, causing the displacement of families, the disruption of public services and the contamination of natural resources, the indigenous peoples and peasant communities were once again fighting economic and social inequality and to demand that their own view of development be respected. As the movements grew, so too did the violence used against them. Trade union and community organizations that rejected development policies found themselves accused of terrorism and treated as a national security threat. Their members were subjected to defamations, threats, kidnapping, attacks and extrajudicial execution, while others were imprisoned under trumped-up criminal charges. The year 2013 had seen the assassination of Joel González Pérez, Juan Martínez Mat-

ute, Carlos Antonio Hernández, Santa Alvarado, Kira Zulueta Enriquez and Mayro Rodolfo Juárez Galdámez, and the murder of Luis Ovidio Ortiz Cajas over a year earlier had still not been elucidated. It was an urgent to implement labour relations policies that contributed to the development while at the same time respecting the right of all workers to organize freely and to bargain collectively. In conclusion, he condemned the violence that union leaders and trade unionists faced, along with their families.

**The Employer member of Guatemala** indicated that he considered it was inadequate that this Committee was dealing with the present case in the current circumstances, in which a whole process was under way to seek solutions to the problems identified by the Committee of Experts, and which was based on the Memorandum of Understanding signed by the Government and the Workers' group at the last meeting of the Governing Body, as a follow-up to the complaint brought under article 26 of the ILO Constitution. He also recalled that the Committee of Experts had taken into account the progress made in recent years and the information submitted by the Government, in particular with regard to the issues of most concern during the present discussions, namely the violence affecting both union leaders and union members. He indicated that the Tripartite Committee for International Labour Affairs had been informed by the responsible persons of the Public Prosecutor's office of cases mentioned in the report of the Committee of Experts. It was positive that there was a high percentage of cases with final sentences and cases in which the investigations had sufficiently advanced to expect results shortly. In this regard, he reminded the discussions in the Committee on other occasions on the violence that had affected the whole population of Guatemala. He expressed concern at the fact that it seemed that it was concluded a priori that in most cases the violence was motivated by trade union activities. He emphasized that the employers were the first to call for the investigation of crimes and for the perpetrators to be severely punished. Another aspect that should be noted positively was the progress that had been made in strengthening the institutions responsible for enforcing respecting trade unions, and particularly the general labour inspection and labour courts. The allocation of specific resources had resulted in capacity building and the recruitment of labour inspectors, who had been accused in the past of inefficiency and corruption. Moreover, the number of labour tribunals and the human resources available had increased. Even more important, judicial procedures had been considerably improved. Emphasis should be placed on the efforts made with regard to social dialogue in the Tripartite Committee for International Labour Affairs and the Economic and Social Council. These national bodies were responsible for following up the issues raised by the Committee of Experts and the Conference Committee. Some of these issues had also been recognized by the Government and the Workers' group in the Memorandum. He emphasized the commitment of the employers to pursue tripartite dialogue and to come up with solutions to the problems raised. He invited all the social partners to participate constructively in the whole process and to give up their sectoral positions, which were not conducive to finding solutions to the problems and obstructed fluid and effective social dialogue. He recognized that of the many problems faced by the people of Guatemala, one was to create decent work and sustainable companies, which was the only way of generating wealth and tackling the problem of informal employment. He emphasized the need to continue the fight against corruption and to guarantee the effective application of the Labour and Penal Codes by the Supreme Court of Justice and the Office of the Public Prosecutor. National authorities were striving to strength-

ening solutions through dialogue with a view to creating jobs under decent conditions. In conclusion, he was aware that solutions needed to be found and hoped that they could be achieved in the medium term. He urged the Committee to contribute to the national efforts that were being made and recalled once again the important progress that had already been made.

**The Government member of Colombia**, speaking on behalf of the Government members of the Committee which were members of the Group of Latin American and Caribbean Countries (GRULAC), acknowledged the Government's efforts to take practical steps on labour matters and particularly the adoption of a Decent Work Programme 2012–15 and its implementation plan, with the objectives of promoting and complying with fundamental labour standards, improving the judicial system, respecting freedom of association and collective bargaining and taking action against impunity. She highlighted the high-level mission that had taken place in February 2013 and the Memorandum of Understanding on the application of the Convention signed in March 2013. In that regard, she drew attention to the measures that the Government had taken since the adoption of the Memorandum, particularly the launching of a tripartite dialogue process with a time-scale and programme for implementation. She also emphasized the progress made by the Office on measures to establish high-level tripartite representation, as agreed in the Memorandum. She expressed the hope that the Government and the social partners would continue taking action to apply the Memorandum, with ILO assistance, with a view to making progress in applying the Convention. In conclusion, she expressed concern at the simultaneous use of multiple mechanisms to deal with the same case, considering that such duplication could weaken the functioning of the ILO supervisory system.

**An observer representing the International Trade Union Confederation (ITUC)**, referring to the murders of 58 trade unionists over the past six years, expressed regret that none of them had been solved and that the Government claimed that only two of them involved anti-union motives, despite the fact that investigations were still continuing. Seven workers had already been murdered in 2013. He referred to the situation of persecution, threats and harassment suffered by trade unionists and the dismantling of trade unions, giving specific examples from the *maquila* and public sectors. Despite the fact that the judicial authorities had ordered protection measures for union leaders and members, they had yet to be taken. He hoped that the Memorandum of Understanding might be the first step towards solving the country's problems, highlighted the commitment of trade union confederations to the Memorandum and expressed regret that it had not been signed by the employers. Guatemala had been declared the most dangerous country in the world for trade unionists. The Government therefore needed to demonstrate that it was taking real action on the issue.

**The Government member of the United States** referred to the enforcement plan agreed with Guatemala to solve the concerns raised in a labour case brought by the United States against the Government under the CAFTA–DR. The enforcement plan consisted of 18 concrete actions to improve enforcement of labour laws to be implemented within specific time frames. She said that, if fully implemented, it would address some of the same issues dealt with by the Committee of Experts, the Committee on Freedom of Association and the Conference Committee. She also referred to the recently signed Memorandum of Understanding and her Government was encouraged that the Guatemalan Government had acknowledged the challenges it faced in effectively enforcing its labour laws and protecting workers' rights, and looked forward to their continued collaboration to address labour right concerns.

However, she expressed deep concern at the continuing violence against trade unionists, the high levels of impunity and the on-going challenges in the criminal justice system. The Government of Guatemala was urged to fulfil its commitments within the established time frames under both the enforcement plan and the Memorandum of Understanding and to ensure as soon as possible the conformity of national law and practice with the Convention. Her Government was prepared to work closely with the Government of Guatemala in taking the concrete and sustainable measures required in this regard and urged the Government to make full use of ILO technical assistance and advice and to actively involve the social partners to ensure full respect for freedom of association for all workers in Guatemala, a right that in too many instances had been denied to Guatemalan workers for a very long time.

**The Employer member of Honduras** stated that, in the light of the developments that had taken place in the country, it was not necessary to examine the case before this Committee. The Government should be given time to implement the measures it had pledged to take. The Governing Body would examine the report of the country mission, which contained information on the Government's achievements that clearly indicated its desire to solve the problems. The violence in the country was general in nature and the Government and the employers recognized the need to take measures in that regard.

**The Employer member of Mexico** stated that the examination of a single case by several bodies went against the principle of judicial safety and proposed that this Committee should not examine the matters covered by the complaint submitted under article 26 of the Constitution. He emphasized that the problems presented were being addressed at the national level within the framework of the Tripartite Commission, which demonstrated the increase in social dialogue. It was also important to highlight the re-establishment of the Office of the Special Prosecutor to investigate crimes against trade unionists. He hoped that the work of the Tripartite Commission would help to determine the real causes of the violence and whether it was directed particularly against unionists.

**An observer representing Public Services International (PSI)** expressed deep concern at the situation of impunity and violence against trade unions in Guatemala. The anti-union culture was frequently demonstrated and had recently become more serious. Trade unionists were threatened, attacked and murdered. She referred to the murders of Ms Kira Henríquez and Ms Santa Alvarado and stressed that women trade unionists were also victims of violence. She called for an end to the rise in violence and for fundamental principles at work and human rights to be observed. Social dialogue had to be re-established in a climate of social justice. Lastly, she referred to the difficult situation of public employees, in particular those performing special or temporary assignments who, even if they were in permanent posts, did not receive equal wages or enjoy the same social security coverage. High-quality public services were essential to the existence of social dialogue in the country.

**The Worker member of the United States** recalled that, under the terms of the CAFTA–DR, Guatemala was required to comply with its obligations as a member of the ILO, including the obligation to recognize and protect the rights set out in Convention No. 87 and other ILO standards. In 2008, unions from Guatemala and the United States had filed a petition calling for the investigation of labour abuses under the labour chapter of the CAFTA–DR. He added that the ILO supervisory bodies played a vital role in the supervision of those standards, which were becoming increasingly important as they were used in the binational and multilateral agreements that were

key to international trade and industrial relations in multinational companies. After reviewing the petition, the United States Government in 2009 had reported finding significant weaknesses in labour law enforcement in Guatemala and, following the holding of consultations, had requested the establishment of an arbitral panel in 2011. However, despite the repeated failure of the Government to take sufficient action to remedy the continuous and systematic failure to protect fundamental workers' rights, it had been granted yet another reprieve in April 2013, when the United States had suspended the arbitral panel and negotiated a comprehensive enforcement plan with the Government. Since the filing of the petition, over 50 trade unionists had been killed in Guatemala and there were many doubts that another action plan would bring about real changes in law and practice, or the allocation of sufficient resources to improve compliance with the Convention. Moreover, although ambitious, there were numerous shortcomings in the plan, which failed to take into account the critical needs expressed by Guatemalan workers. The shortcomings included the failure to address union registration, including the 45-day deadline set out in the Labour Code, the question of impunity for violations of labour law, as well as illegal subcontracting, the non-payment of social security contributions, widespread minimum wage violations, factory closures and the accurate legal registration of factory ownership and assets. Nevertheless, despite the many criticisms, the commitments made would be taken very seriously by the trade union movement, with particular regard to the provisions on transparency and tripartite coordination for enforcement, which explicitly referred to the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). In conclusion, he emphasized that the enforcement component of the plan needed to include the real possibility of returning to the CAFTA–DR labour dispute mechanism for violations of labour rights before the next session of the Conference.

**The Worker member of Spain**, also speaking on behalf of the Worker members of Belgium, France, Greece, Italy, Portugal and Sweden, commended all the workers and members of the general public who risked their lives every day to uphold the rule of law in Guatemala, a country which was incapable of guaranteeing the right to life. Carlos Castresana, the former head of the CICIG, had described the Guatemalan authorities as a patient who was refusing to take the recommended medicine to solve the serious problems of insecurity and injustice that were destroying the country. That diagnosis was particularly apt in labour matters. Guatemala had not respected the principle of good faith in relation to international treaties, as could be seen from its repeated violations of the fundamental Conventions. The following restrictions still applied with regard to Conventions Nos 87 and 98: the restriction on the freedom to form organizations; delays in registration or the refusal of registration; restrictions on the right to elect union leaders in full freedom, including the requirement for them to be of Guatemalan origin; restrictions on the right of trade unions to carry out their activities freely, including the possibility of imposing compulsory arbitration, among other sectors, in public transport, and the imposition of penalties, including criminal sanctions, in the event of a strike by public servants or workers in certain enterprises; the denial of trade unions' rights in practice for numerous public sector workers engaged under contracts under budget item 029; deliberate delays in reinstating dismissed trade unionists; and restrictions on freedom of association and collective bargaining in the *maquila* sector. He regretted that no progress had been made on the repeated and long-standing calls for reform in the country. The significant restrictions outlined above were compounded by the cli-

mate of extreme anti-union violence, the ineffective justice system and the failure to protect trade unionists, which made exercising the right to freedom of association much more dramatic. Although violence was widespread across the country, the denial of the anti-union nature of most murders of trade union leaders was a smokescreen to hide the obvious: the existence of an institutionalized anti-union culture that did not balk at murdering trade unionists to instil terror and fear in those exercising trade union rights. In Guatemala, whatever attempts were made to pass off the murders of trade unionists as ordinary crimes resulting from the situation of general insecurity, the State was still responsible for its own lack of diligence in investigating the facts and for failing to prevent such incidents from occurring. In other words, it was responsible for its failure to fulfil its duty to guarantee trade unionists the right to life.

**The Worker member of Colombia** said that the situation of the violation of human and trade union rights in Guatemala had existed for years and, despite the efforts of the trade union movement to avoid elimination, it had proved impossible to resolve. Indeed, on the contrary, there had been a constant increase in acts of violence in the form of murders, threats and harassment, which meant that the exercise of trade union activities in Guatemala had become the most dangerous of occupations, paid for in life, with such violence becoming more widespread in Latin America. The Committee of Experts had repeatedly asked the Government to take prompt and effective action to ensure the full observance of human and trade union rights, and especially that murder cases should be investigated and the perpetrators prosecuted and punished in accordance with the law. But since no such action had been taken in practice, the number of trade union leaders who had been murdered since 2007 now stood at 58, and those responsible for such appalling crimes had not been identified. Impunity reigned in Guatemala, and the Government showed absolute indifference to the fate of trade unionists. The results spoke for themselves: to date, nobody had been tried or even charged for the crimes, despite grave suspicions against certain persons as the instigators of the murders. The prevailing situation of impunity was very serious, as it paved the way for other murders, with criminals being fully aware that they could go calmly about their business, as there were no authorities or judges ready to prosecute, arrest or convict them. He added that some individuals who had been prosecuted and convicted for such crimes against humanity had subsequently had their convictions overturned and were now at liberty. Responsibility had also been ascribed to others to conceal the identity of the true perpetrators of the crimes. The impunity rate was virtually 100 per cent, with the aggravating circumstance that there was deliberate intent on the part of certain government officials to distort the true motives for the killings, claiming grounds other than trade union activity for the deaths, which was a further violation since, in addition to the loss of their lives, it stripped the victims, and also their families and colleagues, of their honour and dignity. The ILO now had a major responsibility to determine the appropriate measures to help put an end to such a grave situation of violence against the trade union movement, since such deeds were a continuation of what had been happening elsewhere in Latin America, including in his own country, Colombia. Wherever that occurred, there was a lack of democracy and social justice.

**The Worker member of Brazil** said that in Latin America even the most progressive governments were overlooking the fact that the Government of Guatemala was allowing its trade union leaders to be murdered. There was a popular saying that silence implied consent. To bring an end to the killings of trade union leaders, agreement was needed

between governments to establish an observatory and to follow up violations of trade unions rights, and particularly murders. In the midst of this barbarity, the ITUC had promoted an agreement with the Government of Guatemala to bring an end to the murder of trade union leaders once and for all, and also to restore trade union rights and strengthen labour rights. He called on all governments and countries to open their eyes to the murders and to halt the genocide of workers and their organizations. They needed to help the Government of Guatemala to maintain stability and defend the right to life and safety of trade union leaders and their organizations. Everyone should join in that effort.

**An observer representing the International Organisation of Employers (IOE)** emphasized the importance of the Conference Committee taking into account the processes that were under way in Guatemala to improve the situation, as well as the existing cooperation programmes. The Memorandum of Understanding concluded between the Government of Guatemala and the President of the Workers' group, in parallel to a session of the Governing Body, demonstrated a willingness that should be appreciated. Formal issues appeared to be preventing the adhesion of the Employers' group to the agreement, but it was prepared to collaborate actively in its development. That willingness did not deny or mask the gravity of the issues of violence, which required urgent investigation, within a climate of generalized violence in certain areas of the country. The employers were aware of that and wished to show their active commitment to improving the situation in Guatemala. The ILO supervisory system needed to promote effectively the achievement of progress and the active involvement of the Government and the social partners. That was important not only in relation to the examination of the present case, but also its content. That commitment would need to be taken into account in future if significant progress was achieved.

**The Government representative** emphasized the notion of process that pervaded the current debate. His country had for many years been experiencing a situation that could be characterized as a sustained process of omission in the construction of democratic institutions capable of ensuring legality and the rule of law in Guatemala. Over the previous 15 months, under the Government of President Otto Pérez Molina, there had been a sustained and substantive effort to build democratic institutions that guaranteed the full realization of the rights of Guatemalans, the right to life, to physical integrity and to public freedoms, such as the right to freedom of association. Since taking office, the Government of Guatemala had been making substantial budgetary changes to strengthen two institutions and send a clear message of political will: it had increased the budget of the Ministry of Labour by 36 per cent and that of the Office of the Public Prosecutor by over 20 per cent, and was spearheading the process of strengthening institutions and reinforcing labour inspection services. That was of the utmost importance, as labour inspection was one of the democratic institutions that had never been established in Guatemala with the clear intention of ensuring compliance with the rights of all Guatemalans in every corner of the country. By the end of 2012, the Ministry of Labour had executed 98.4 per cent of its budget, having hired 100 new inspectors, which had increased the Ministry's staff by 40 per cent; it had strengthened its coverage to the whole of the country; there had been a paradigm shift in inspection from conciliation to inspection visits and now, from 600 visits a year up to 2011, its capacity had increased to 3,300 company inspections to monitor compliance with fundamental rights.

There had been a strong and clear commitment to social dialogue, to call things by their name and to recognize

leadership by trade unions and employers in both law and practice. All matters of national importance were discussed in the Tripartite Committee for International Labour Affairs, where all the people of Guatemala were represented. There was a compelling need to adopt measures in Guatemala on many issues, but it was important to allow time for social dialogue to run its course in order to fulfil commitments in the long term and in a sustainable manner. There had clearly been a policy of institutional strengthening. The process included reinforcing the national police, improving the professionalism of its officers and ensuring clarity in the dialogue between the security forces and the leaders of the various trade union federations and confederations. The foundations were being laid for the active participation of the trade union movement and employers in the examination and elucidation of cases. The Memorandum of Understanding signed in the ILO between the Government of Guatemala and the Workers' group was an unusual event, unprecedented in the history of the Organization in terms of the resolution of serious conflicts that had occurred in many countries. But the seeds had been sown during the meeting at the Davos Summit between the President of Guatemala, the ILO Director-General and the Secretary-General of the ITUC. He emphasized the personal commitment of the President to seeking clear, alternative, immediate and focused solutions to the problems in Guatemala, as well as his political will and the momentum he had brought to the negotiations to resolve the dispute with the United States in the context of CAFTA-DR. The impetus of the negotiations and the Government's involvement had made it possible for a negative situation to be transformed into a process of dialogue helping to lay the foundations of action for solving the problems of Guatemala. In conclusion, he emphasized that without democratic institutions, it was impossible to secure compliance with standards by States. In so far as they built democratic institutions with the participation of all the social partners, they could guarantee that they were moving in the direction of discharging the responsibilities of the State. Like all Latin American countries, and the employers and workers, his Government totally repudiated the terrible violence that afflicted his country, rejected impunity and wished to work towards its eradication. The Guatemalan delegation to the Conference included judges from the Supreme Court of Justice and the President of the Labour Commission of the National Congress, so that the three branches of government were represented in the room, demonstrating the intention to work intensively to resolve the situation. He was sure that, with the ILO's support and the participation of the social partners, good results would be achieved within the planned time frames.

The Worker members said that all the necessary measures should be taken urgently to guarantee full respect for the right to life, civil liberties and freedom of association and to bring an end to the climate of violence and impunity in the country in view of the difficult situation experienced daily by workers, trade unionists and the people of Guatemala. The Memorandum of Understanding, signed in March 2013, was already a positive step and the Committee should encourage the process launched by the Governing Body. Expressing regret that the employers of Guatemala had not signed the Memorandum, the Worker members urged them to do so as soon as possible, in the firm hope that the Government would honour its commitment to take specific action without delay to apply the Convention in full in both law and practice. In conclusion, the Worker members hoped that the Committee's conclusions would refer to the current process and that the Committee of Experts would be able to note significant progress at its next session.

The Employer members expressed concern at the generalized climate of violence affecting the freedom of workers' and employers' organizations to pursue their activities. They condemned all acts of violence, whatever their origin. They therefore considered it necessary for the independent judicial authorities in Guatemala to identify the real causes behind the violence and its relation to freedom of association. It was urgent for the Government and public institutions to harness their efforts to that end. They said that social dialogue, through the National Tripartite Commission and the Economic and Social Council, would enable solutions to be found to labour issues. They took note with interest of the Memorandum of Understanding signed in March 2013 by the Government of Guatemala and the Workers' group of the Governing Body and hoped that the issues that it covered would be addressed fully, with ILO assistance. They also hoped that the high-level tripartite representation would be established in the country soon and that the Office would be informed of the conclusions reached and the progress made, so that they could be included in the next report of the Committee of Experts. They considered that the coordinated work of the supervisory bodies and the Government would allow light to be shed on the murders and acts of violence referred to in the report. They emphasized that it was for the Governing Body to deal with matters relating to complaints submitted to the Committee on Freedom of Association and the complaint presented the previous year under article 26 of the Constitution. The Conference Committee should therefore await the decisions taken in that regard. On the issue of legislation, they reiterated the position they had stated the previous year concerning the provisions of Convention No. 87. They firmly believed that the right to strike was neither contained in, nor recognized by the Convention, as they had fully explained to the Committee of Experts in a communication dated 29 August 2012. Finally, they emphasized that the current Government of Guatemala had shown its full willingness to find solutions with ILO technical support and that results were starting to be seen in terms of tripartite social dialogue, trade union registration, the involvement of public institutions in the protection of trade unionists, the reduction in the length of legal proceedings, and particularly in solving the crimes committed. They also emphasized the increase in the budget of the Ministry of Labour to strengthen labour inspection, and the personal commitment of the President of Guatemala.

### Conclusions

The Committee took note of the oral and written information provided by the Government and the discussion that took place thereafter.

The Committee observed that the issues in this case concerning this fundamental Convention related to: acts of violence against trade union leaders and members and the situation of impunity in that regard; certain legislative problems, in particular relating to restrictions on the freedom to form organizations and the right to elect trade union leaders in full freedom; limitations in the trade union rights situation in the *maquilas* and in relation to some public sector workers, as well as in relation to the trade union registration process.

The Committee noted that, in June 2012, some Workers' delegates to the 101st Session of the International Labour Conference had presented a complaint under article 26 of the ILO Constitution for violation of the Convention. The Committee noted with interest in that regard that the Government, with the involvement and commitment of the President of the Republic, and the Workers' group of the ILO Governing Body had signed a Memorandum of Understanding (MOU), in the presence of the ILO Director-General, on the basis of which tripartite measures would be

taken to ensure the full application of the Convention. The Committee noted that the Governing Body would examine in the near future up-to-date information on the progress made in this regard. The Committee welcomed the information that an ILO representative would be sent to Guatemala in the coming days to assist in solving the problems faced. The Committee also welcomed the announced tripartite high-level mission.

The Committee took note of the information provided by the Minister of Labour that, in the framework of a policy of strengthening institutions, a number of steps had been taken to resolve the issues raised, particularly with regard to: establishment of a working group with the participation of the Public Prosecutor and trade union representatives to report on progress in investigating cases of violence; ILO technical assistance for the Office of the Public Prosecutor; increasing the Office of the Public Prosecutor's budget to fight impunity; promulgation by the Office of the Public Prosecutor of a general instruction on criminal prosecutions in the event of non-compliance with judicial rulings; presentation of a Labour Sanctions Bill; moving labour courts to a single location and reducing the length of judicial proceedings from 19 to six months on average; accelerating the process of registering trade unions to reduce it from 226 to 20 working days; the important strengthening of the labour inspectorate; the reinforcement of the tripartite national committee; and the establishment and appointment of the Economic and Social Council.

The Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in Convention No. 87.

The Committee took note with concern of the generalized climate of violence in the country and regretted the new allegations of murders and other acts of violence against trade union leaders and members in 2013. While it took note of the important steps taken by the Office of the Public Prosecutor to investigate acts of violence, and of some concrete results with respect to some investigations, the Committee recalled that the freedom of association rights of workers and employers could only be exercised in a climate that was free from violence, pressure or threats of any kind. It urged the Government to continue taking the steps necessary to provide protection for trade union leaders and members under threat with a view to bringing an end to impunity related to acts of violence affecting the trade union movement, and to carry out investigations so that those responsible would be prosecuted and punished.

The Committee emphasized the urgency of fully implementing the Memorandum of Understanding signed between the Government and the Workers' group of the ILO Governing Body. The Committee urged the Government to take the necessary measures, in consultation with all the social partners, to amend legislation with regard to the issues raised with a view to bringing it fully into conformity with the Convention. The Committee took note that the Government counted on the ILO's technical assistance, observed that this assistance, which would include a tripartite element, would be provided in the coming months and expressed the firm hope that it would be able to note tangible progress made on all matters raised. The Committee requested the Government to send a detailed report in that respect to the Committee of Experts for its next meeting in 2013.

#### SWAZILAND (ratification: 1978)

A Government representative, thanked the social partners and the ILO for the support and encouragement the Government had received when dealing with the issues raised by the Committee of Experts. His Government was confident that the progress achieved demonstrated its commitment to complying with international labour standards both in law and practice. Accordingly, it was ap-

propriate that this case be removed from the special paragraph. With regard to the issue of registration of federations, he stated that while the drafting of the Industrial Relations Act (IRA) of 2000 involved tripartite structures, an error of leaving out a provision for the registration of federations was made, resulting in a lacuna in the law. This lacuna was later discovered by the Attorney-General's Office which had advised on an amendment to the Act. The advice of the Attorney-General's Office was subsequently confirmed by the Industrial Court in Case No. 342/12. This lacuna did not only affect workers' federations, but employers' federations as well. Initially, the IRA had no provision for the registration of federations until the social partners, in developing the Act, had decided that in order for federations to be legitimate and operate in the country, they had to be registered. Hence, an unregistered federation would not be legitimate under the IRA. When the registration issue had come before the Industrial Court, the Court confirmed that in the current legislative scheme, there was no provision for the registration of federations. Noting that the Government had already started working on the IRA amendment, the Court encouraged the Attorney-General to prevail upon Parliament "to give the matter the urgency it deserve[d] in light of the country's obligations under the various international Conventions". Following this judgment, the parties had agreed to work together.

The speaker referred to a written response his Government had submitted in Case No. 2949, lodged by the Trade Union Congress of Swaziland (TUCOSWA) with the Committee on Freedom of Association, in which it had explained the reasons for the removal of the workers' federation from the Register of Federations. The Committee on Freedom of Association had considered this case in March 2013 and on that occasion had suggested the amendment of the IRA so as to allow for the registration of federations. The Government, working together with the social partners, had taken concrete steps to comply with the Industrial Court directive and to address the recommendations of the Committee. In this regard, several consultative meetings between the Government, Worker and Employer representatives had been held. Following these consultations, the parties had agreed on the principles that would guide tripartite relations in the country. These principles, which were a product of consultation and consensus, had been published in the Government Gazette as General Notice No. 56 of 2013 (cited as Principles Guiding Tripartite Labour Relations between Swaziland Government, Workers and Employers Notice, 2013). They allowed for the restoration of all tripartite structures, collective bargaining and tripartite consultations. The speaker indicated that the Government had received a letter from TUCOSWA advising of its decision to resume participation in all tripartite structures. This demonstrated unequivocally the full resumption of the good relations between the Government and its social partners. Thus, upon the return of the tripartite delegation to Swaziland, a meeting of the Social Dialogue Committee would be called to develop a plan of action for the next 12 months. The Government had approved and published the amendments to the IRA to provide for the registration of federations, which had been prepared in consultation with the social partners and the ILO (Bill No. 14 of 2013). The Bill was now on its way to Parliament, where further inputs were required from all stakeholders.

In October 2010, the Government, in line with the recommendations of the Committee of Experts, had received a Tripartite High-level Mission, which investigated the country's compliance with the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). A report of the High-level Mission, together with its recommendations, had been received in December 2010. In order to



facilitate the implementation of the recommendations, the ILO had provided technical assistance to, among other things, review the selected legislation. The report from the ILO consultancy had been circulated among the social partners in January 2012 and had formed the agenda for meetings of the Social Dialogue Committee, scheduled for February and March 2012. However, these meetings had been cancelled at the request of workers. Following the High-level Mission, the Government had made some progress, but updates in this respect could not be provided, mainly due to the fact that tripartite consultations and social dialogue in the country had encountered serious challenges throughout 2012 and the first quarter of 2013, which resulted in the tripartite structures not being operational. However, now that the tripartite partners had agreed on working arrangements, the Government was of the view that all of the outstanding issues, as set out in the report of the Committee of Experts, would be attended to as a matter of urgency. Notwithstanding the challenges highlighted above, the Government had made progress on the following issues. The Public Service Bill had been resubmitted to the social partners for review and consideration. The Government stood ready to finalize the Bill in consultation with the social partners and the ILO. With regard to the determination of a minimum service in the sanitary services, the Government was confident that, with the restoration of relations with the social partners, this matter would be finalized before the end of 2013. A proposal to amend sections 40 and 97 of the IRA had been tabled before the Labour Advisory Board for consideration in 2012 and formed part of the agenda for the Social Dialogue Committee. The Government firmly hoped that the amendments would be effected. Moreover, a Bill (Correctional Services Bill) had been drafted and tabled before the National Steering Committee on Social Dialogue for its consideration and input in 2012. However, progress on this issue would be realised once the Committee resumed its business. The plan of action would give priority to all issues relating to freedom of association and collective bargaining. With regard to the King's 1973 Proclamation, in the Government's view, (given to the ILO and acknowledged in the 2013 Report of the Committee of Experts) there was no state of emergency in the country. Extensive information in this regard had been provided to the social partners. As proposed by the Committee of Experts, the Government would nevertheless convene a meeting with the social partners to discuss this issue and was confident that this would put the matter to rest. Furthermore, the Government had made a decision to amend the Public Order Act of 1963 and to adopt the Proposed Code of Good Practice. In this regard, the Attorney-General was making the necessary amendments in consultation with line ministries and other international organizations. The Government thanked the ILO and the social partners for developing a code/guideline to regulate the relationship between parties during protest action, demonstrations and other industrial action, as an interim measure, while the Public Order Act was being amended. It was necessary to finalize and adopt the code, which should continue to be a blueprint guiding relations in industrial action. The Government had also agreed to amend the Suppression of Terrorism Act, especially the definition of "terrorist" and, in this respect, the Attorney-General was working with the line ministries and international agencies concerned. The Government was committed to streamlining social dialogue activities. In 2012-13, two tripartite delegations had visited South Africa and Norway on study tours. These visits had enabled the team to benchmark mandates, governance structures and best practice for meaningful and effective social dialogue in Swaziland. The Government expressed its thanks and gratitude to the Governments and social partners of these

two countries for imparting their experiences, sharing their knowledge and providing advice on good practice.

The speaker noted that May Day was a paid public holiday and that workers celebrated this day. As was the practice, the police meet with organizers of any public gathering in order to discuss, among other issues, logistics and security. The meetings between the organizers of May Day celebrations had been within the normal scope of work of the police. Noting the regrettable misunderstanding between the police and the organizers of the celebrations, the Government requested that it be allowed time to address this matter. The initial investigations indicated, however, that there had been no raids of TUCOSWA offices or house arrests; rather the police had invited TUCOSWA leadership for a brief discussion, which they had duly honoured. The Government nevertheless assured the Committee that such an incident would be avoided in the future once the provisions of the general notice were implemented; the code/guideline were approved to regulate the relationship between the parties during protest action, demonstrations and other industrial action; and the ILO facilitated further training for the Government, including the police and the social partners on various ILO Conventions and human rights instruments. The Government wished to reassure the Committee that the principles of freedom of association, as articulated in the Convention, would be fully adhered to. It hoped that as a member State of the ILO, it could continue relying on ILO technical assistance in this respect. He stressed that the case should be removed from the special paragraph.

**The Worker members** recalled that the Convention guaranteed the right of workers and employers to establish and to join organizations of their own choosing without previous authorization. Thus constituted, those organizations must be able to manage their affairs freely and could not be dissolved or suspended by administrative authority. Freedom of association was a human right and the precondition for healthy social dialogue – and hence for social peace. The Worker members expressed their concern at the trade union situation in Swaziland, where TUCOSWA, a merger of Swaziland's three union federations (the Swaziland Federation of Trade Unions (SFTU), the Swaziland Federation of Labour (SFL) and the Swaziland National Association of Teachers (SNAT)) was no longer recognized by the Government and therefore liable to have its registration revoked, in violation of Article 5 of the Convention. The trade unions were currently up against a climate of extreme violence; trade union leaders were harassed, brutalized and arrested. During the 1 May 2013 celebrations for example, the police occupied TUCOSWA's headquarters and arrested its President, Barnes Dlamini, and its Secretary-General, Mduduzi Gina. At the same time their colleagues Vincent Ncongwane, Secretary-General, Muzi Mhlanga, Second Deputy Secretary-General, and Jabulile Shiba, General Treasurer, were placed under house arrest. As a result, the planned demonstration and festivities had to be cancelled. Previously, on 12 April 2013, Wonder Mkhonza, Deputy Secretary-General of the Swaziland Processing, Refining and Allied Workers Union had been arrested for possession of political tracts. The Worker members recalled that the arrest of union officials and trade unionists, even briefly, because of their union membership or activities was contrary to the principles of freedom of association. Any deprivation of freedom of movement was an obstacle to the exercise of trade union rights and thus a serious violation of civil liberties.

The Worker members observed that the IRA violated the Convention as it did not allow union federations such as TUCOSWA to register. This had been confirmed by the courts in a decision handed down on 26 February

2013 which, in addition, ordered the Government and TUCOSWA to negotiate a solution to the federation's registration. The Worker members stressed the Committee on Freedom of Association's declaration that a ban on the registration of a trade union that had previously been legally recognized could not take effect until before the deadline for appealing against the decision had expired, or if a decision taken by a court of first instance had not yet been confirmed on appeal. Setting conditions for registration that were tantamount to requiring prior authorization from the public authorities to set up a trade union or for it to function was incontrovertibly a violation of the Convention. In practical terms, such a situation was liable to hinder severely the possibility of establishing a trade union and thereby constituted a denial of the right to do so without prior authorization. The administrative authorities should not be able to deny an organization registration simply because they considered that it might engage in activities that went beyond normal trade union matters. Respect for freedom of association was part and parcel of a democracy, and vice versa. The Worker members emphasized that, according to the principles embodied in the Convention, the public authorities must refrain from any form of intervention that might restrict the exercise of the right to establish and join trade unions. Yet several legal texts in force in Swaziland did not respect the principle of non-interference at all. Article 14 of the Constitution stipulated that peaceful assembly and association was inviolable, but, at the same time, article 25 provided that the principle could be restricted in the interest, inter alia, of public morality. Although the Committee on Freedom of Association had declared that the right to hold meetings was an essential component of freedom of association and that public authorities must refrain from any form of intervention that was liable to restrict that right, unless its exercise was such as to endanger public morality, reasons that were vaguely defined as involving public morality could not be deemed to be a threat to public order.

With regard to the public service, the Worker members recalled that a Bill was currently being discussed in the two chambers of Parliament but that it had not been adopted within the deadline and the procedure had had to begin all over again, which showed the advantage of the workers' organizations being freely and broadly consulted during the preparation and implementation of legislation affecting their interests. The Worker members noted for several years that the Committee had been asking the Government to have the 1963 Public Order Act amended, yet the Government had still not supplied any information on steps it might have taken to ensure that the Act was not used to justify interference in union meetings or activities in support of union demands. As to the amendment of the legislation guaranteeing prison staff the right to organize in defence of their economic and social interests, the Minister of Justice and Constitutional Affairs had submitted the Correctional Services (Prison) Bill to the Social Dialogue Committee on 13 July 2011. Not being able to examine the Bill, however, the social Dialogue Committee passed it on to the Cabinet. The Cabinet, in turn, considering that the social partners should have a say in the drafting of the text, had transmitted it to the Labour Advisory Council in September 2012. The Worker members were worried that the Bill appeared to have been set aside.

The Worker members were also concerned about the situation in the education sector, where many teachers were currently employed on fixed-term contracts for several years consecutively. Collective bargaining in the sector was conducted through a joint negotiating forum, but the Government representatives were constantly obliged to refer back to the Minister, which meant that the negotiations never had any real impact. The measures to arrest

and detain trade union leaders constituted a serious violation of the principle of freedom of association. The right to organize public meetings, including rallies, constituted an important aspect of trade union rights. The case had unfortunately been on the Committee's agenda for far too long and there seemed to be no way of pressuring the Government to take appropriate action. The Committee should therefore adopt a firm conclusion.

The Employer members welcomed the information provided by the Government indicating that steps were being taken to deal with the registration of trade unions and to strengthen social dialogue. Although they considered that it was an extremely serious case, they perceived some progress from the information provided by the Government, which would have to be assessed by the Committee of Experts. The Committee of Experts had examined this case on 19 occasions and the Conference Committee had included this case in a special paragraph in 2009 and 2010. This case was also examined in 2011 when this Committee considered the conclusions and recommendations of the Tripartite High-level Mission that had visited the country in October 2010. The following three issues were considered in 2011: the violation of civil liberties; the interference in trade union activities; and the lack of social dialogue. On that occasion, the Employer members had already noted a change in the Government's attitude. However, they considered that this change of attitude had to be confirmed by future actions and thus encouraged the Government to make use of ILO technical assistance. In 2011, the Committee concluded that as long as the legislation restricting freedom of association and basic civil liberties was in force, compliance with the Convention was not ensured. It thus requested the Government to intensify its efforts to institutionalize social dialogue and to provide a roadmap for the implementation of the long called-for measures. This year, the Committee of Experts' observation dealt with the same three issues.

With regard to the Public Service Bill, noting the Government's willingness to work with the social partners in order to enact the law, the Employer members encouraged the Government to provide information on the progress made and expressed the hope that it would be in full compliance with the Convention, and that it would include access to a complaints procedure with the possibility of judicial proceedings with enforcement authority. The Employer members expressed the hope that the Government would resume discussions with the social partners in the framework of the Social Dialogue Committee on the recommendations made by the ILO and that progress could be reported in the near future in this regard. In particular, the Employer members encouraged the Government to provide information on the outcome of the discussions carried out with the social partners on the status of the 1973 Proclamation, as well as on the amendment of the 1963 Public Order Act. They expressed the hope that the progress achieved during the last 12 months would continue and that the Government would pursue its work in cooperation with the ILO.

Regarding the determination of the minimum services in the sanitary services, the Employer members noted that the Committee of Experts had been requesting the Government to amend the IRA in order to recognize the right to strike in the sanitary services. In this respect, the Employer members reiterated their position that the Convention did not contain an explicit reference to the right to strike and recalled that their position had been established in detail during last year's discussion on the General Report and General Survey. They continued to rely on this position. There was no consensus in this Committee concerning the fact that the right to strike was recognized in the Convention. Accordingly, they were of the view that the Committee of Experts should refrain in the future

from requesting the Government to amend the IRA in order to recognize the right to strike in the sanitary services because this fell outside the scope of its mandate. This should not be construed as an indication that this was not an important case. The Government had to reply on many other issues and the Employer members hoped that they would be able to note progress in the next months and that the Government would continue to cooperate with the ILO.

**The Worker member of Swaziland** recalled that the national Constitution, adopted in 2005, contained a Bill of Rights, which guaranteed freedom of association. However, the Government had continued to violate these rights flagrantly. TUCOSWA had been registered on 25 January 2012, following a consultative process with the Government. It was the only national centre, a product of the merging of the SFTU and the SFL, which had been dissolved in accordance with their constitutions and the national laws, paving the way for the establishment of the new entity. The coming into being of TUCOSWA and the unification of the labour movement had been commended by the Government. However, the Government had deregistered TUCOSWA, allegedly because there was no provision in the IRA for the registration and merging of federations. This was despite the fact that sections 32 and 41 of the Act provided for the existence, regulation and merging of federations. Consequently, workers were not represented within the industrial sphere, in particular in the tripartite structures. Social dialogue was virtually dead in the country. This was a clear violation of Conventions Nos 87 and 98. As a result, tripartism and social dialogue were non-functional; all the federation's activities had been banned. Furthermore, on 1 May 2012, the police had brutally confiscated all of the Federation's belongings and arrested and harassed trade union leaders and their members. On 1 May 2013, the police had once again removed and confiscated the Federation's belongings, brutally arrested and confined, detained and kept under house arrest the TUCOSWA leadership and raided its offices. The commemoration of TUCOSWA's anniversary on 9 March 2013, had been brutally stopped by a battalion of military and police. The shop stewards meeting for the Federation had also been brutally stopped on 19 April 2013. In an attempt to legalize the unlawful act of deregistration of TUCOSWA, the Government had approached the Industrial Court for an order declaring that TUCOSWA was not a federation in terms of the IRA. The Court had ruled in total disregard of ILO standards and the spirit of section 4 of the IRA, as well as an earlier judgment of the Industrial Court of Appeal, which held that ILO Conventions were part of the labour laws of Swaziland. The Government's misleading interpretation of the word "organization" in considering that it excluded "federations" was contrary to Article 10 of the Convention. Despite a directive of the Court ordering the parties to agree on a method of operation, the Government had refused to sign the memorandum of agreement which had been agreed to by the parties on 24 May 2013. It was the Union's understanding that this agreement was the *modus operandi* as directed by the Court. However, acting in bad faith, the Government unilaterally produced a general notice. Ever since the Government had discovered the alleged lacuna in the Act in 2011, it had not taken any steps to remedy the defect. Notwithstanding the encouragement by the Court in February 2013 that the Government should facilitate the legislative process as a matter of urgency, it had failed to do so until 23 May 2013 when the purported amendments had been published in the Government Gazette. The mere publication did not mean that the amendment was before Parliament. As of now, there had been no prospects of the Bill, whether agreed by the parties or not, being passed into law, given that Parliament was probably bound to be

dissolved by the end of June, giving way to national parliamentary elections. It was important to stress that the Bill had been unilaterally crafted by the Government and was not a product of consultation. As a result, the Bill contained provisions which were in conflict with the provisions of the Convention.

The King's Proclamation was still part of the laws of Swaziland as it had not been expressly repealed by the King, as required by the same Proclamation. It could therefore not be argued that, by virtue of section 2 of the Constitution, the Proclamation had "died a natural death". He recalled that the Proclamation violated the workers' fundamental rights and civil liberties and that the ILO consultancy had recommended that the Government institute legal proceedings to obtain a definitive ruling from the country's highest court as to the status of provisions of the Proclamation. The Government had so far ignored and rejected this recommendation. The Government had also ignored the recommendation to amend the 1963 Public Order Act so as to ensure that legitimate and peaceful trade union activities could take place without interference. Instead, the Government used the police and the army to prevent workers from engaging in legitimate and peaceful activities. Furthermore, all attempts to finalize the Code of Practice referred to by the Government had failed because it had refused to recognize the workers' representatives in the tripartite structures. In view of the above, it was clear that the situation in Swaziland must be thoroughly investigated.

**The Employer member of Swaziland** referred to the situation faced by workers' and employers' federations in the country, which, though still difficult, had improved. She indicated that the IRA, while defining what a federation was, did not make provisions for their registration. As a consequence, the registration of TUCOSWA, which was the result of a merging of workers' federations, was considered by the Industrial Court as null and void. This was confirmed by subsequent judicial decisions. According to the speaker, the rights of workers, which were guaranteed by the Constitution, could not be restricted to unions, while excluding federations. As a result, none of the following tripartite statutory boards and committees could function: the National Steering Committee on Social Dialogue, the Labour Advisory Board and the Conciliation, Mediation and Arbitration Commission. Several meetings had been carried out and a mission from the Southern Africa Trade Union Co-ordination Council (SATUCC) had taken place in order to overcome the impasse. Finally, the parties had agreed on a *modus operandi* and the Government had issued a general notice where it recognised the workers' and employers' federations to exist "in terms of their own Constitutions". Furthermore, the Government issued the Industrial Relation (Amendment) Bill No. 14 of 2013, which provided for the registration of federations. However, as long as this Bill was not approved, the decision of the Court prevailed.

In respect of the May Day reported house arrests, the speaker indicated that following the Court decision, workers' federations could not participate in the celebrations and that the leaders had been reportedly placed under house arrest. She considered that this was a devastating assault on freedom of association and assembly. Concerning the right to strike, the speaker recalled that the International Organisation of Employers (IOE) had indicated over the years that the right to strike was not mentioned in the Convention. With respect to the Public Service Bill, she indicated that it had been debated by the Labour Advisory Board, that the social partners had had the occasion to point out some provisions as unconstitutional and that ILO assistance was sought in this respect. The Correctional Services (Prison) Bill, which provided organizational rights to prison staff, was on the agenda of

the Labour Advisory Board which had recently finalized the Employment Bill 2012. The Code of Good Practices on Managing Industrial and Protest Action was awaiting adoption by the National Steering Committee on Social Dialogue, after having been discussed with the social partners and the police service in order to define the role of the police in protests and industrial actions. Regarding the report requested to assist the Government in aligning its laws with ILO Conventions, which examined the 1973 Proclamation, the 1963 Public Order Act and the 2011 Suppression of Terrorism Act, the speaker indicated that it was tabled in a meeting of the National Steering Committee on Social Dialogue. She noted that the progress achieved justified that her country be removed from the special paragraph and that all technical assistance be provided to ensure that the respect of fundamental rights was balanced with economic growth.

**The Worker member of the United Kingdom** pointed out that in Swaziland, expressing support for TUCOSWA was proscribed and that being associated with, or mentioning this federation could be the basis for an arrest. She questioned the Government's stated intention to bring the IRA, the 1973 Proclamation, the 1963 Public Order Act and other legislative acts into conformity with the Convention and refuted the Government's suggestion that the social partners were somewhat responsible for the delay of consultations in this regard. The truth was very different: TUCOSWA had been registered for only two months in 2012 before it had announced a boycott of the election; the discussions referred to by the Government had been arranged for a time known to be impossible for the Federation to participate; the deregistration of the Federation in April 2012 had ended any chance of discussion with a view to changing the legislation. The Industrial Court had decided that the Government should change the law so as to allow TUCOSWA to operate. If the Government failed to do this immediately, it would show that the Government was still far from being ready to end its persecution and harassment of trade unionists and that further urgent action must be taken to guarantee fundamental trade union and human rights.

**The Worker member of Norway**, referring also to the trade unions of other Nordic countries, observed that the Committee of Experts had once again noted the continuation of a series of long-standing violations of the Convention in Swaziland, concerning which the Government had already appeared before the Committee on numerous occasions. The Government appeared to be engaged in a campaign against trade unions and had failed to register the new representative trade union, TUCOSWA, which it regarded as illegal, even though it had been entered in the tax register. Examples of the continued repression of activities by trade unions and civil society included the prevention by the police, without a court order, of a prayer session to commemorate the first anniversary of TUCOSWA. A peaceful demonstration and a march had recently been met with police violence, resulting in the shooting of several demonstrators. The 2013 May Day celebrations of TUCOSWA had also been repressed, with the trade union leaders being placed under house arrest. It was clear that systematic violations were continuing of the right to organize, to assembly and to peaceful protest, which were protected by the Convention and the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

**The Government member of the United States** stated that her Government had been following the case closely for several years, particularly in the context of Swaziland's continued eligibility for trade preferences under the African Growth and Opportunity Act. The long-standing case essentially comprised three themes: violation of civil liberties, interference in trade union affairs, and lack of ef-

fective social dialogue. While acknowledging that some steps had been taken, much still remained to be done to give effect to the recommendations of the ILO supervisory bodies which, together with the technical advice and assistance provided, offered a detailed outline for bringing national law and practice into compliance with the Convention. In that regard, she expressed concern at the continued interference in peaceful public gatherings, including the detention of trade union leaders during the 2013 May Day celebration. Moreover, many legislative texts and orders permitted the authorities to repress or penalize legitimate trade union activities, and there was a continued absence of legislation to recognize labour federations, as demonstrated by the deregistration of TUCOSWA in April 2012. She also noted the continued lack of a robust and institutionalized process for genuine and meaningful social dialogue. As the Government had frequently expressed its commitment to ensuring compliance with the Convention, her Government urged it to promote and protect freedom of association and of assembly, as outlined in ILO Conventions and the national Constitution. The Government should continue to work closely with the ILO to carry out all of the legislative reforms recommended by the Committee of Experts, and to implement those measures with a rigorous system of labour inspection, an administrative complaints process and an independent judiciary with enforcement authority. With reference to TUCOSWA, and noting the Government's efforts to engage with the federation temporarily under a general notice, her Government urged it to expedite efforts to adopt legislation recognizing the right of labour federations to exist and operate fully under the Industrial Relations Act. Her Government hoped that it would very soon be possible to record concrete and sustainable progress towards full conformity with the letter and spirit of the Convention.

**The Government member of Norway**, also speaking on behalf of the Government members of Denmark, Finland, Iceland and Sweden, stated that, although action had been taken to give effect to the rights of freedom of expression, organization and association in the Constitution, the social partners had indicated that those rights were not effective in practice. There appeared to be a general lack of progress in giving effect to the constitutional provisions on those matters, despite the present case being examined by the Committee on numerous occasions. They therefore urged the Government to remove all obstacles to the enjoyment in practice of the rights set out in the Convention. The Government should also take action to comply with the request by the Committee of Experts that it take all necessary steps to proceed to the registration of TUCOSWA, including legislative measures if necessary. In that respect, they noted the proposal to amend the IRA and recalled that the Committee of Experts had highlighted several legislative problems, including those relating to the 1963 Public Order Act. They therefore urged the Government to ensure that all its legislation was in conformity with the Convention and to avail itself of ILO technical assistance for that purpose.

**The Worker member of Nigeria** emphasized that the systematic and consistent violations of the rights of workers, which had been examined by the Committee on numerous occasions, were growing worse than ever and had become entrenched in Government action, with administrative and security measures being used to trample upon fundamental and statutory rights. In particular, the Government and the security agencies had aggressively augmented their attacks against the workers, their organizations, leaders and activities. In March 2013, the workers in the country had been forcibly prevented from holding a thanksgiving prayer meeting to commemorate the first anniversary of TUCOSWA. Earlier, in February, the police had used

force to prevent the holding of a prayer session by civil society organizations to address the deterioration in the national socio-economic situation. In so doing, the police had disregarded the national Constitution, which guaranteed the rights of association, assembly and religion. In April, civil society organizations had once again been prevented from holding a session to discuss the state of democracy and human rights in the country following 40 years of the state of emergency. The authorities did not hide their determination to clamp down on the right of workers to assemble freely and independently, and were treating TUCOSWA as an illegitimate organization, in contradiction with the latest judicial ruling on its registration. Examples of anti-trade union repression included the action taken against the May Day celebration, which had led to ten trade union leaders being placed under house arrest and the detention of workers wearing TUCOSWA T-shirts. Wonder Mkhonza, Secretary-General of the Swaziland Processing, Refining and Allied Workers Union (SPRAWU), had recently been granted bail, after over 45 days in jail, as a result of a global campaign launched out of fear for his physical safety. It should be recalled that Sipho Jele, a trade union activist, had died in a police cell in 2010 in similar circumstances. It had also been recently reported by the media that the Prime Minister had instructed the heads of parastatal institutions not to recognize trade unions affiliated to TUCOSWA. The Committee should therefore take due note of the ceaseless attacks by the Government on democratic and civil liberties with a view to defending and protecting the abused and harassed workers.

**The Government member of Zambia** stated that her Government commended the Government on the progress made in redressing the core issues that had led to the stand-off between the Government and the social partners. Her Government encouraged the Government to take decisive steps, through a consultative process, to adapt the legal framework to allow for the registration of trade union federations. It should also follow the principles of the promotion of tripartism, which would be vital for continued progress at the national level. Her Government commended the ILO for the technical and other support that had been provided to Swaziland. Her Government hoped that the Government would make further progress in putting in place the necessary measures to resolve the other outstanding issues and in ensuring the effective implementation of the legal measures that had been adopted.

**The Worker member of Brazil** expressed the solidarity and indignation of Brazilian workers. In practice, implementing a democracy was directly linked to the principle of freedom of association. In Swaziland, there was a climate of police violence and persecution against trade unionists and union leaders that was incompatible with both freedom of association and democracy. In Brazil, workers had experienced persecution, having lived through over 20 years of dictatorship. Possibly the best example of the parallel and interdependent growth of democracy and freedom of association in Brazil had been the election of a trade unionist as President. Today, the workers of Brazil were organizing events in 27 of the federal states against a Bill that would reduce rights through flexibility and increase outsourcing. He referred to his own country in order to provide an historical context to illustrate how violations of the rights enshrined in the Convention ended up creating barriers to the development of society by limiting and criminalizing social movements. The violations of the rights of workers in Swaziland were outrageous and it was imperative that the requisite measures were taken to address them.

**The Government member of Zimbabwe** stated that, having listened carefully to the information provided by all parties, his Government urged the Government and the

social partners to continue their engagement in good faith with a view to dealing with the issues under discussion. The Office was also called on to continue providing support to the Government and the social partners. He added that, within the context of the Southern African Development Community (SADC) Employment and Labour Sector, issues of this nature were under discussion in relation not only to Swaziland, but also other countries in the subregion as they moved towards economic integration as part of the efforts made to improve compliance with international labour standards. The discussions, which included workers and employers, were focussed on the need to harmonize labour laws and practices entailed by the process of economic integration.

**The Worker member of the United States** indicated that Swaziland was part of the Southern African Customs Union and the Common Market for Eastern and Southern Africa, both of which had trade agreements with the United States. It was also eligible for preferential trade benefits under the United States African Growth and Opportunity Act, which established the requirement for the countries concerned not to engage in violations of internationally recognized human rights and to cooperate in international efforts to eliminate violations of those rights, which included the right of association and the right to organize and bargain collectively. It was clear that the Government was utterly failing to protect those rights, and indeed was working to deny them to its citizens. The primary exports from Swaziland to the United States were textiles and apparel. Yet, it was reported that many textile workers were not even paid the national minimum wage, which varied between US\$57 and US\$81 a month. In addition, the right to freedom of association and to organize, through which working conditions could be improved, were severely restricted and workers who attempted to exercise those rights were faced by a harsh legal environment and often by severe and violent repression. National law required police consent and a permit from the municipal council to hold meetings, marches or demonstrations in a public place, but the authorities routinely withheld their consent for such events. The law also required the registration of unions, but granted far-reaching powers to the Government to determine eligibility for registration, and the decisions taken were not subject to judicial scrutiny. Employers were granted discretion under the law on whether or not to recognize labour organizations where fewer than 50 per cent of employees were members of the organization, while workers in many occupations, including the police and security forces, firefighters, health workers and many parts of the civil service, were prohibited from forming unions. The severe and violent repression of trade unionists by the police and the Government sent a clear message that attempts to organize would be met with harsh resistance. The Government therefore needed to cooperate with the ILO and undertake serious reform measures to meet its obligations under the Convention.

**The Government member of Morocco** stated that the measures adopted by the Government fell into two categories: legislative and regulatory; and promotional, through social dialogue. Respect for freedom of association in practice presupposed tripartite collaboration, the promotion of a culture of social dialogue and negotiation. As the Government had expressed its willingness to respect freedom of association, the Office should support it in the practical implementation of the Convention, especially as the Government acknowledged that there were gaps and shortcomings in the legislation. In addition, as the Government had stated its willingness to amend the legislation, to revise the Industrial Relations Act and to opt for tripartism, it was important that it should be given time to overcome the difficulties identified.

**The Worker member of South Africa** observed that the contribution made by South African workers to defeating apartheid and the development of multi-party constitutional democracy was well documented. Their recent wretched experiences had taught them that in the absence of pluralism in a manifestly discriminatory regime, civil liberties could easily be undermined. The people, working families and the Government of South Africa had therefore resolved to be involved and to contribute to the struggle against oppression anywhere. In that connection, he recalled that South Africa accounted for over 80 per cent of Swaziland's trade. South African workers totally rejected a situation in which trade benefits derived from the efforts of workers were used to repress the rights of other workers. And yet, with the persistence of intimidation, harassment and the oppression of trade union rights, the Government remained obstinate and unyielding to offers of assistance to help reform and improve its democratic and human rights processes. The assistance offered by the South African Parliament and of interaction with the National Economic Development and Labour Council (NEDLAC) had been rebuffed and the Swazi Government had never demonstrated any genuine commitment to reform its law and practice with a view to improving respect for civil liberties. The ILO's efforts to develop arrangements to promote the decent work agenda in the country had been frustrated by the Government. The situation with regard to civil liberties in the country was dire and deteriorating. It was clear that the Government wished to wear out progressive forces and voices of reason so that it could continue with business as usual. He therefore urged the Committee to stand up to those repressive practices and to remain firm in the defence and protection of civil liberties and human dignity.

**The Government member of Kenya** affirmed his Government's commitment to freedom of association and noted the progress made in Swaziland, particularly in terms of institutional and legislative change. However, his Government appreciated that there were still some milestones to be covered and that challenges lay ahead. The Government was urged to continue engaging in dialogue with the social partners with a view to further consolidating the foundations for continuous consultation, participation and engagement.

**The Government member of South Sudan** stated the efforts that were being made by the Government to promote the participation of the social partners, the public and the Labour Advisory Board and ensure their input into legislative amendments. However, her Government urged the Government to adhere to its commitment to ensure compliance with the Convention. As reported by the Worker members, there appeared to be restrictions on freedom of association in the country. It was important for the Government to allow workers the opportunity to organize and to encourage social dialogue. Her Government also called on Swazi workers to acknowledge the efforts that were being made by the Government to address all the challenges and to work as a team to achieve compliance with the Convention. The ILO was also encouraged to continue providing technical support to the Government.

**The Government representative** thanked all the speakers, and particularly those who had acknowledged the efforts made by the social partners and the Government. In response to the issues raised, he indicated that the question of house arrests and the invasion of trade union offices was still under investigation. He added that, although Wonder Mkhonza was a trade union member, he had been detained and arrested for matters unrelated to his trade union activities. Siphon Jele had never been a trade union member, and indeed had never worked. Moreover, the reports that the Prime Minister had ordered employers not to deal with TUCOSWA affiliates was merely a media

creation. In fact, the Prime Minister had referred to unions that were not recognized by law. He stated, with regard to the general notice, that a letter had been received from the Secretary-General of the TUCOSWA that it would resume participation in all tripartite structures. The suspension of those structures had been lifted. It should also be noted that Swaziland was engaged in cooperation with South Africa and other countries, including with NEDLAC, which had been contacted by a tripartite delegation to see how the social dialogue system worked in South Africa. It should be noted that no trade union in Swaziland was proscribed. However, his Government recognized that there was a gap in the IRA, and that action to remedy this gap would have to be accelerated. It should be noted that the amendment proposed had been confirmed by the Industrial Court, which included representation of employers and workers. He stated that progress was being made on the issues under discussion. The Public Service Bill, which had lapsed, was again before the social partners. A Correctional Services Bill had also been prepared, and the Government would inform the Committee of the progress made in that regard. The amendments to the Suppression of Terrorism Act would also be communicated to the Office when they had been prepared. His Government should be given the opportunity to continue the efforts that were being made, without being placed in a special paragraph of the Committee's report. A report would be provided to the Committee of Experts on the progress achieved, and the Government undertook to work with the country's employers and workers. His Government hoped that it would be possible to comply fully with the Convention, which would be important in developing the national economy and providing employment for the workers.

**The Worker members** recalled that in 2011 the Committee had urged the Government to intensify its efforts to institutionalize social dialogue in the long term at the various levels of government and to ensure a climate of democracy in which fundamental human rights were fully guaranteed. A schedule for the discussion of the issues raised by the Committee of Experts should also be adopted as soon as possible in consultation with the social partners and with ILO technical assistance, as well as a roadmap for the effective implementation of a series of measures that had long been identified. They included amending the Public Order Act of 1963 so that legitimate and peaceful union activity could be carried out without interference; receiving ILO technical assistance for police training and the drafting of guidelines to ensure observance of the fundamental rights established in the Convention; amending the Suppression of Terrorism Act so that it could not be used to restrict trade union activities; and placing the Public Service Bill on the agenda of the Steering Committee on Social Dialogue to ensure tripartite discussion before it was adopted. No measures had been implemented since the previous examination. The Committee should therefore adopt very firm conclusions and propose that the Government accept a high-level tripartite fact-finding mission to assess the issue of non-compliance with the Convention with the support of government officials and ILO experts, accompanied by representatives from the Bureau for Workers' Activities (ACTRAV) and the Bureau for Employers' Activities (ACT/EMP). The Committee should also ensure that urgent measures were taken to guarantee the establishment of an independent judiciary, without which respect for human rights in general and for freedom of association in particular could not be guaranteed. The Worker members considered that the gravity of the case justified its inclusion in a special paragraph of the Committee's report.

**The Employer members** acknowledged the promising developments made by the Government. However, much

still remained to be done to achieve full compliance with the Convention. The information provided by the Government showed that there was now a basis for expediting the work towards achieving compliance with the Convention in law and practice with ILO assistance. Efforts should be concentrated on helping the Government to focus its attention on addressing the legislative and practical issues identified in a meaningful manner. ILO technical assistance would be essential for progress to be made and the Employer members therefore called on the Government to continue its cooperation with the Office. They also supported the suggestion that a fact-finding mission should visit the country, consisting of ILO officials and representatives of ACT/EMP and ACTRAV. The Employer members hoped that the Committee's conclusions would reflect their longstanding views on the right to strike under the Convention. They hoped that the Government would continue to build on the small steps that had been taken up to now to achieve compliance with the Convention and that social dialogue would be improved as part of its efforts to give full effect to the Convention.

### Conclusions

The Committee took note of the oral information provided by the Government and the discussion that ensued.

The Committee noted the grave issues in this case concerning this fundamental Convention refer, in particular, to the revocation of the registration of the voluntarily unified Trade Union Congress of Swaziland (TUCOSWA) in April 2012 and the determination that the legislation left a lacuna concerning the registration of any federation of workers or employers; and the impact of the various legislative texts, including the 1963 Public Order Act, on the exercise of freedom of association rights.

The Committee welcomed the information provided by the Government on the publication of the Industrial Relations (Amendment) Bill aimed at providing a legislative framework in which federations of trade unions and of employers could be registered, as well as the principles guiding tripartite labour relations between the Swaziland Government, Workers and Employers, to which the Government asserted all social partners had agreed and which would enable the effective functioning of the tripartite structures in the country pending the adoption of the Industrial Relations Amendment Bill. The Committee also noted the Government's statement that all pending legislative issues would be attended to within the framework of the relevant tripartite institutions as a matter of urgency, including the recommendations made by the ILO consultancy in relation to the 1973 King's Proclamation, the 1963 Public Order Act and the Suppression of Terrorism Act. Finally, the Committee noted that the Government reiterated its commitment to observe and implement Convention No. 87 in respect of federations of workers and employers. The Government undertakes to give full updates by the next session of the Committee of Experts in 2013.

The Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in Convention No. 87.

The Committee strongly urged the Government to immediately take the necessary steps to ensure that the social partners' views were duly taken into account in the finalization of the Industrial Relations Amendment Bill and that it would be adopted without delay. It is expected that this action will enable all the social partners in the country to be recognized and registered under the law, in full conformity with the Convention. In the meantime, it also expected that the tripartite structures in the country would effectively function with the full participation of TUCOSWA, the Federation of Swazi Employers and Chamber of Commerce, and the Federation of the Swazi Business Community and that the Government would guarantee that these organiza-

tions could exercise their rights under the Convention and the Industrial Relations Act of 2000. The Committee further urged the Government to ensure that immediate, significant and concrete progress shall be made within the framework of the social dialogue mechanisms in the country in relation to the other pending matters on which it has been commenting for many years. Recalling the importance that it attaches to the basic civil liberties of freedom of expression and assembly for all workers' and employers' organizations, the Committee urged the Government to ensure full respect for these fundamental human rights and to pursue vigorously the training of police forces to this end. The Committee expected that the Government will adopt, in consultation with the social partners, a code of conduct relating to the application of the Public Order Act. The Committee further recalled the intrinsic link between freedom of association and democracy and the importance of an independent judiciary in order to guarantee full respect for these fundamental rights. The Committee called on the Government to accept a high-level ILO fact-finding mission to assess the tangible progress made on all of the abovementioned matters and requested that this information, as well as a detailed report from the Government, be transmitted to the Committee of Experts for examination at its next meeting this year.

The Worker members stated that the Government should immediately proceed to the registration of TUCOSWA and give full effect to all the rights that are recognized to it in the IRA.

### ZIMBABWE (ratification: 2003)

A Government representative indicated that his Government had accepted all seven recommendations of the Commission of Inquiry and the ILO technical assistance package and that it had committed itself to working together with the social partners and the Office for the implementation of those recommendations. In accordance with the Committee's conclusions adopted in 2011, the Government was making progress towards the implementation of the Action Plan which had been endorsed by the social partners as a roadmap for carrying out the recommendations of the Commission of Inquiry in a focused and systematic manner. His Government appreciated the fact that the Committee of Experts had noted the progress made in the area of capacity building involving several state actors who interfaced directly or indirectly with trade unionists. However, capacity-building activities had not been limited to state actors but were extended to non-state actors such as independent arbitrators, designated agents of the employment councils/bargaining councils and lawyers in private practice. Subject to availability of resources, the capacity-building training programmes should be taken regularly to involve new players. Progress had also been noted by the Committee of Experts in the area of strengthening social dialogue, particularly as regards the proposed establishment of a chamber for social dialogue. A zero draft of the Tripartite Negotiating Forum (TNF) Bill was now in place. This draft was drawn up in December 2012 after approval by Cabinet of the principles of the TNF legislation and the Attorney-General's Office was currently working towards the actual draft bill. The speaker went on to say that the Zimbabwe Human Rights Commission Act was passed into law in October 2012 paving the way for the Commission to start its work. However, due to budgetary constraints, the Commission did not have readily available resources to roll out its programmes. Yet, the Government and the social partners held information-sharing sessions with the members of the Commission as well as the Organ on National Healing, Reconciliation and Integration (ONHR). These two structures needed to mainstream human rights in the world of work and to this end, senior officials from the ONHR were part of the state players who received

capacity building in the area of international labour standards. As regards the complaint submitted to the ILO by the International Trade Union Confederation (ITUC) concerning alleged cases of suspension and mass dismissal of workers who had participated in strikes and protests at their respective workplaces, the speaker stated that such cases were the subject to domestic remedies provided for in the Labour Act. The Zimbabwe Congress of Trade Unions (ZCTU) should advise the concerned workers to approach the district labour offices in their respective areas. Otherwise, the Ministry of Labour had no information about the alleged cases of suspension and mass dismissal of workers. Concerning the situation of Ms Hambira, the General Secretary of the General Agricultural and Plantation Workers' Union of Zimbabwe (GAPWUZ) who was allegedly in forced exile, the Government representative reiterated that Ms Hambira had no pending case and that she was never arrested nor was she a wanted person. Just like any other Zimbabwean living abroad, Ms Hambira was free to return when she deemed fit and therefore the recommendation that the Government should take necessary measures to ensure her safety upon her return was unfounded.

Referring to the comments of the Committee of Experts concerning the Public Order and Security Act (POSA) and the alleged difficulties of the ZCTU in organizing public gatherings to commemorate the International Women's Day and Labour Day in 2012, the speaker acknowledged that the ZCTU encountered similar problems in Masvingo, a provincial capital, during preparations for the 2013 Workers Day celebrations. The POSA was never meant to apply to bona fide trade union activities and it had an exclusion provision to that effect. Through information-sharing sessions pertaining to the relationship between international labour standards and national laws and practices, state actors were becoming increasingly aware of the thin dividing line between trade unionism and politics. Only three such information sharing sessions had been conducted since 2011 involving about 90 law enforcement agents and many of the law enforcement agencies in the outer areas still needed to be included. Once those agencies were covered, there would be zero incidents in which POSA would be invoked. Three more workshops were planned with the law enforcement agencies at the national level in July/August 2013, as well as the organization of information-sharing sessions to all of the ten provinces, and of a tripartite workshop before the end of the year with the participation of law enforcement agencies. The planned workshop involving the social partners and law enforcement agencies would help build bridges between trade union representatives and the law enforcement agencies and could be the platform to finalize the draft code of conduct of players in industrial relations. Beyond the code, the focus would be placed on a training handbook on human rights in the world of work. This information would help the law enforcement agencies in particular and other state actors in general to make informed and objective decisions. Levelling the playing field, including ensuring that the POSA could not infringe upon legitimate trade union rights, required a new mind set beyond amending the POSA. The Government had withdrawn all pending cases involving trade unionists who had been arrested under POSA in line with one of the recommendations of the Commission of Inquiry. As for three cases pending before the Supreme Court, the speaker indicated that the ZCTU would need to petition the court in question. Concerning the labour law reform, the speaker made reference to the new Constitution, assented to by the President on 22 May 2013, which addressed the issue of freedom of association and collective bargaining as they related to both the private and public sectors in section 65 on labour rights. This constitutional

provision gave effect to ILO Conventions on freedom of association and collective bargaining. In the area of the public sector, the new provisions meant that full-fledged collective bargaining was replacing consultative arrangements. Sections 58 and 59 of the Declarations of Rights also provided for freedom of association and assembly as well as freedom to demonstrate and to present petitions provided they were exercised peacefully. Those constitutional provisions complied with the principles of the Convention. In addition, the Cabinet was currently discussing the draft principles for the harmonization and review of labour laws and a Cabinet task force had been constituted in October 2012 to examine them. The Government representative concluded by thanking the Office for providing technical and financial support in connection with the implementation of the recommendations of the Commission of Inquiry. His Government would not only ensure that the resources were used well but would also ensure that there was compliance with the provisions of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), both in law and practice.

**The Employer members** recalled the historical developments leading up to the present discussion, including the ILO technical assistance package launched in Harare in August 2010, which involved a high-level information-sharing session with senior ILO officials, an agreed upon roadmap of key activities between September and December 2010 and consultations with the social partners concerning a February 2011 timeline to implement those activities. The Government had, prior to the discussion of the case in 2011, provided information in writing regarding the measures it had purportedly taken to implement the recommendations of the Commission of Inquiry and the Committee of Experts' requests, and had indicated that it would submit a detailed reply concerning those measures in its next report. However, before the 2011 discussion, the Government indicated that progress had not been made owing to administrative obstacles, although work had begun on the basis of the roadmap, and that, if it was listed by the Committee in a future session, it would be able to report on its progress. Although the report submitted in 2011 was constructive, the Government needed to adopt substantive changes in line with the Convention's requirements. The Employer members urged the Government to provide a detailed report outlining the outcome and status of reported initiatives, including the participation of Supreme Court judges in a training course on international labour standards, two training workshops on human rights and trade union rights for the police, security forces and the Attorney-General's Office, the recently approved principles for the TNF legislation and the Human Rights Bill to operationalize the Human Rights Commission that had been passed by Parliament and was before the President. They additionally requested further information without delay concerning initiatives to undertake a full review, in cooperation with the social partners, of the application of the POSA in practice, concrete steps to enable the promulgation of clear lines of conduct for the police and security forces with respect to human and trade union rights, as well as the establishment, in cooperation with the ILO, of a handbook of international labour standards and national legislation for various actors in the labour market. The Employer members urged the Government to provide further information on steps taken to bring the POSA into line with the Convention, in consultation with the social partners, as well as on developments regarding the revision of the Labour Act, the Public Service Act and other relevant laws and regulations, and the December 2012 consensus-building workshop towards drafting a labour law reform bill. The Employer members concluded by stressing the impor-



tance of bringing both national law and practice fully into compliance with the Convention and reporting on progress made in this regard.

**The Worker members** recalled that the question of respecting the principles of freedom of association in Zimbabwe had given rise to the establishment of a Commission of Inquiry in 2009 that had identified a number of violations and had submitted a series of recommendations to the Government. The first recommendation dealt with harmonizing legislation, and it was evident that the Government had shown a certain resistance in that area because the draft principles adopted by the social partners had still not been approved by the Cabinet and the Senate had rejected the amendments to the POSA. Regarding the second recommendation (the cessation with immediate effect of all anti-union practices), certain cases had been withdrawn but anti-union practices still occurred: the dismissal of union delegates in June 2012 during a collective action in a diamond mining enterprise, the exile of the General Secretary of GAPWUZ following threats made against her; and interference by the police and security forces in union affairs. The third recommendation concerned the creation of a Human Rights Commission to receive and deal with complaints, but it had not yet been set up. The fourth recommendation dealt with legal training for the social partners and security forces. Training had been given, with ILO technical assistance, but it was not enough. While progress had been noted in the labour courts, the same could not be said for Supreme Court magistrates or for the police, whose attitudes had not changed. With regard to the fifth recommendation (strengthening the rule of law), seminars had been organized for magistrates but had not yet produced conclusive results. Lastly, in respect of the sixth recommendation (strengthening social dialogue), the bill to establish the TNF, which would signify progress, had yet to be adopted by the Cabinet. Training workshops on freedom of association and collective bargaining had nevertheless been planned for conciliators and arbitrators. In practice, however, difficulties remained: for example, for seven years the public authorities had refused to grant authorization to the metal and energy union, and employers did not negotiate in good faith or respect signed agreements or arbitration decisions, and even withheld union dues. The Worker members considered that while some slight progress was noticeable in the implementation of the Commission of Inquiry's recommendations, the Government seemed unwilling to make the legislative changes requested or to ensure the functioning of the relevant institutions, and, all the while, union rights were being systematically violated.

**The Employer member of Zimbabwe** stated that the Government's attitude had significantly improved since the time the complaint under article 26 of the Constitution was filed. Considerable ground had been covered and the progress now reported by the Government was real. The Government had been fortunate to receive technical assistance from the ILO although more had yet to be done. Concerning the harassment of trade unionists by law enforcement agents, the speaker preferred not to comment on this issue as employers were not directly affected. Referring to the TNF legislation, which was being drafted, he confirmed that employers had agreed on the guiding principles. The speaker concluded by stating that, in view of the marked progress, the examination of this case should be brought to a close.

**The Worker member of Senegal** recalled the seriousness of the case, which had been examined several times by this Committee in view of the harassment and persecution of trade union officials and the existence of a number of acts that were not in line with the Convention and encouraged anti-union practices. The legislative amendments required were taking time to materialize and the police

and security forces were still using the POSA against trade unionists with total impunity. The Government should acknowledge the seriousness of the situation and show evidence of its will to change. It should make the legislative amendments requested and ensure that they were applied through a rigorous labour inspection system and an independent judiciary; ensure that the POSA was not used to penalize trade unionists and issue clear instructions to the police in that regard, and also build police capacity and enhance their knowledge of international human rights instruments; and guarantee sustainable social dialogue mechanisms that would ensure social stability. In so far as the replies given by the Government to the supervisory bodies' questions did not demonstrate any real change, no commitment could be made, and the Committee should make explicit and firm recommendations to the Government.

**The Worker member of Zimbabwe** stated that when workers in Zimbabwe wished to join unions, they were not only likely to face discrimination by their employers but also harassment and attacks by the law enforcement agencies, particularly workers from the diamond mining sector. The Commission of Inquiry, which had found that systematic and systemic violations of Convention Nos 87 and 98 had been perpetrated by the State and its law enforcement agencies, had requested the Government to bring its laws, in particular the Labour Act, the Public Service Act and the POSA, into compliance with international labour standards. The Government had also been requested to end all anti-union practices, to operationalize the Human Rights Commission and to strengthen social dialogue. However, the legislative reform process was stagnant. While tripartite discussions had resulted in a draft labour law amendment in 2012, Cabinet had not yet brought the amendment to Parliament. This led to believe that the Government had never had the intention to amend neither the labour laws nor the POSA, which meant that workers were still governed by laws which made them vulnerable and subject to violations. Another important recommendation of the Commission of Inquiry was to bring all outstanding and pending court cases against trade unionists to an end. However, only seven out of 12 criminal cases had been withdrawn, notably the charges against union leaders remained. Police and state intelligence services were regularly attending the meetings of unions. Police had banned the International Human Rights Day celebrations on 10 December 2012 and had first prohibited the May Day processions in 2013 in one of the commemoration venues and had then permitted them under very strict and harsh regulations. Anti-union discrimination in employment also continued, in particular in state-owned companies. In a company in the diamond mining sector, partly owned by the Government, 1,022 workers had been dismissed for having participated in a strike. The dismissed workers had appealed to the Labour Court for reinstatement but the matter was pending since one year. So far, the Government had only carried out two trainings for police and security forces. Given the systematic nature of attacks against trade unionists conducted by police, the significance of these trainings was only minimal, and no orders to respect and protect trade union rights had been given to guide and inform law enforcement agencies. The speaker expressed concern at the emergence of new cases of violations of trade union and human rights perpetrated against workers and trade unionists exercising their legitimate rights as guaranteed by Convention No. 87. Three years after the adoption of the report of the Commission of Inquiry, as well as technical and financial support offered by the ILO, there were no tangible changes in law or practice. The Government continued to display its lack of political will to comply with

the recommendations of the Commission of Inquiry and respect for the rule of law.

**The Government member of Swaziland** stated that the statement made by the Government representative demonstrated the significant progress made by Zimbabwe in addressing the recommendations of the Commission of Inquiry. For instance, the principles for harmonization of the labour legislation, which had been agreed upon by the Government and the social partners, were being discussed in Cabinet, and the recently adopted Constitution effectively domesticated Conventions Nos 87 and 98. Her Government encouraged the Government of Zimbabwe to address the outstanding issues such as the finalization of the lines of conduct for the police and the security forces, and called on the Office to continue to provide the necessary support to the Government, in particular technical assistance to enhance capacity.

**The Worker member of Denmark** recalled that since 2002, this Committee had been attempting to establish a constructive dialogue with the Government of Zimbabwe with a view to finding solutions to the serious violations of these Conventions. On several occasions, the Government of Zimbabwe had made promises but nothing or little had changed. Among its many recommendations, the Commission of Inquiry had called for the Human Rights Commission to be rendered operational as soon as possible. It had also recommended ensuring that the Human Rights Commission and the Organ for National Healing and Reconciliation were adequately resourced so that they could contribute to the defence of trade union and human rights in the future. He took note of the indications provided by the Government concerning the passing of the Human Rights Bill and the crafting of activities involving these institutions. However, four years after its establishment, the Human Rights Commission was still not operational and its Chairperson had resigned in December 2012 due to lack of independence and funding of the Commission. In April 2012, the African Commission on Human and People's Rights had found the Government guilty of human rights violations, and this decision had been endorsed at the African Union Heads of State Summit in January 2013. Moreover, the ZCTU had announced in May 2013 that they would mobilize workers to boycott the forthcoming polls if reforms agreed in the Global Political Agreement were not implemented.

**The Government member of Zambia** acknowledged the efforts made by the Government of Zimbabwe in addressing the key outstanding issues raised by the Committee, with regard to its obligations under Conventions Nos 87 and 98. Based on the Government's report, the country had made significant strides in tackling the matters before this Committee. The Government, in consultation with the social partners, had agreed on principles for the harmonization of labour legislation, had reviewed the labour laws which were now being considered in Cabinet, and had addressed issues relating to the domestication of Conventions Nos 87 and 98. The Government was in the process of putting in place the TNF aimed at strengthening social dialogue and had undertaken a series of training of Government officials and social partners, from 2011 to 2013, in an effort to build capacity. Her Government considered that such efforts ought to be encouraged and called upon the Office and the Committee to note and continue to support the joint implementation efforts of the Government and the social partners.

**The Worker member of Swaziland** expressed his disappointment that the POSA was still in force and had been systematically used in order to repress basic civil liberties and trade union rights. Police and security forces had been harassing trade unionists with interrogations and interruptions of trade union meetings which could often only be conducted with the presence of security agents. Any opin-

ion or act considered detrimental to public order or interest was punishable by imprisonment. The Government had done nothing to prove its commitment to amend the aforementioned Act. In 2013, a private member bill, that could have introduced changes, was rejected by the Senate of the National Assembly. Moreover, the Supreme Court had ruled that only Cabinet could initiate legislative amendments. He also expressed serious concern about the situation of Ms Hambira.

**The Government member of Malawi** took note of the progress made in the implementation of the recommendations of the Commission of Inquiry regarding the observance by Zimbabwe of Conventions Nos 87 and 98. Her Government called on the ILO to continue providing technical assistance to the Government so as to ensure that the recommendations made by the Commission of Inquiry were fully implemented.

**The Worker member of Australia** expressed deep concern over the continuing lack of progress with respect to workers' and trade union rights in Zimbabwe, including the right to organize for workers in the public service. The various restrictions imposed on the basic labour rights of public sector workers had been the subject of criticism by the Commission of Inquiry and the Committee of Experts. Public servants in Zimbabwe only had limited rights to form and join trade unions, to collectively negotiate and to strike. The law also prohibited strikes in "essential services", a term used in a much broader way than permitted by ILO jurisprudence, which included, for example, occupations such as railway engineers, electricians and pharmacies. In addition, other services could be deemed "essential" by the Minister, with the effect of arbitrarily depriving workers in these occupations of any right to take industrial action, without granting them any compensatory guarantees. The Commission of Inquiry had also observed the extensive violation of trade union rights of teachers, including numerous cases of dismissal or transfer for participating in legitimate trade union activities. Since 2009, the Government had been repeatedly assuring the international community that it intended to address all these deficiencies, in particular to reform the law in relation to the basic rights of public servants to organize and to collectively bargain by harmonizing the Labour Act and the Public Service Act. It had also taken advantage of ILO technical assistance in this respect without showing any real, tangible and substantial progress on these issues. The Teachers Union of Zimbabwe continued to report harassment of union members for participating in legitimate trade union activities and government interference in union affairs. She strongly urged the Government to bring national laws and practice into conformity with Convention No. 87, including with respect to workers engaged in the public service.

**The Government member of Kenya** noted the progress made by the Government in implementing the principles of Convention No. 87 and its commitment to continue conforming to the recommendations made by the Commission of Inquiry in 2009. He further noted that the Government had initiated a labour law reform and had strengthened social dialogue, and underlined the Government's need for sustained technical assistance to implement the remaining recommendations and entrench freedom of association. The Government was urged to pursue its efforts to promote the principles of Convention No. 87 with a view to implementing an inclusive social dialogue, in particular within the framework of the TNF.

**The Worker member of Angola** expressed her dissatisfaction with the continued lack of progress in the adoption of the agreed measures to promote civil rights. She recalled that the Committee of Experts had called for improved social dialogue and that several seminars had been held with ILO technical assistance. However, despite the

social partners' agreement, there had been no legislation on a forum for tripartite negotiations. Moreover, the set of draft guidelines for legislation on the subject that had been adopted and approved by Cabinet in June 2012 had not yet been promulgated. She pointed out that the current mandate of Cabinet and Parliament ended on 29 June 2013 and that the next Government would have to start all over again. The Government had endorsed the Kadoma Declaration "Towards a Shared National Social and Economic Vision" but, although the document emphasized the importance of good labour relations and trade union rights, the mutually agreed mechanism for the social partners to follow up the declaration had never materialized. Given the lack of progress that had been made towards social dialogue, she appealed to the Committee to insist on active, immediate and sincere participation by the social partners in bringing about changes that could ensure full application of Convention No. 87.

**The Government member of Botswana** recalling that this case had been discussed for a long time, stated that notable progress had been achieved. His Government expressed satisfaction at the efforts and the commitment made by the Government and the social partners towards full compliance with Convention No. 87, and called on the Committee to encourage and support the Government to achieve this outcome.

**The Worker member of Nigeria** stated that the application of the current legal framework had continued to bypass workers and their organizations and make mockery of the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by Zimbabwe. The need for an urgent, timely and collaborative reform process had been underlined by the Commission of Inquiry, and Zimbabwe had benefitted from technical assistance to achieve this outcome with very little to show. The speaker added that acts of anti-union discrimination against trade union members and officials remained widespread, and workers were not adequately protected due to legislative gaps and insufficient measures to curtail anti-union discrimination. The Supreme Court continued to issue decisions that licensed employers to refuse to reinstate unlawfully dismissed workers. The Court had developed the principle that unlawfully dismissed workers must look for alternative employment. If workers failed to prove that they had taken measures to this end, the damages awarded to them, which were neither adequate nor dissuasive, would be reduced even further (for example, *Olivine Industries (Pvt) Ltd v. Caution Nharara Judgment No. SC88/05*). The speaker also indicated that the right to establish workers' organizations without previous authorization was seriously hampered by the registration procedure. Pursuant to section 33 of the Labour Law any person who wished to make any representation to the registrar relating to the application could do so, and the registrar had to take all representations into account. This provision was used by employers in order to impair the registration of trade unions. The Zimbabwe Metal Energy and Allied Workers Union (ZMEAWU), into which several branch unions had merged in 2007, had applied for registration seven years ago. The Zimbabwe Diamonds and Allied Workers Union had applied for registration in April 2013. Lastly, the speaker urged the Committee to take account of the lack of progress in improving existing legal regulations. Acceptance of technical assistance had been used as a pretext for reforms that lacked genuine political commitment.

**The Government representative** noted with appreciation the statements acknowledging the progress that had been achieved so far and encouraging the Government to pursue its work. The incidents mentioned by the Worker members had not been brought to the attention of the

Government and would be duly examined as soon as signalled to the authorities. With respect to Ms Hambira, Secretary-General of the GAPWUZ, the Government representative stated that she was free to return to Zimbabwe and that the Government was ready to consider proposals from the workers, if any, so that this matter could be resolved. Concerning the labour law reform, while noting the desire to move forward with greater speed, the speaker indicated that this was a process and results could not be expected over night. As regards the situation in the diamond sector, the issues needed to be brought to the attention of the Ministry of Labour so as to enable the Ministry to engage in finding solutions to obstacles encountered by workers in this industry. The lack of resources of the Human Rights Commission was due to the fact that the entire Government did not have adequate resources at its disposal. The speaker highlighted his Government's commitment to continue to give effect to the recommendations of the Commission of Inquiry and to keep the Office and the Committee of Experts up to date on future developments.

**The Employer members** expressed their appreciation to the Government for its responsiveness to the submissions of the Committee. They were pleased that the Government had accepted the recommendations of the Commission of Inquiry and had taken some positive steps towards bringing national legislation into line with Conventions Nos 87 and 98. It was clear however that more needed to be done to ensure full compliance with these Conventions. The Employer members urged the Government to continue taking positive steps together with the social partners. They expected that the steps taken to enact the legislative reform would soon be completed and that information in this regard would be provided at the next meeting of the Committee of Experts. The Employer members further encouraged the Government to dedicate resources for the education and training of police and security forces so as to enhance understanding of Convention No. 87 and ensure that the application of the POSA was in line with that Convention. As regards the strengthening of social dialogue, they expected that the bill concerning the TNF was in line with Convention No. 87 and would be adopted without delay. The Employer members also encouraged the Government to fully operationalize the Human Rights Commission. Lastly, they supported the upcoming proposal of the Worker members for a technical assistance mission in order to ensure continued progress in Zimbabwe.

**The Worker members** recalled that in 2009, the Commission of Inquiry had found systematic violations of trade union rights and had issued several recommendations, the implementation of which had been assessed by the different speakers. The Government had certainly introduced some measures, but none of them had resulted in definitive decisions or specific results. Moreover, it had never undertaken to put an end to the discrimination and violence suffered by trade unionists, and the police and security forces continued to commit violent acts and interfere in union business, and social dialogue had scarcely been strengthened. The Worker members requested that the Commission of Inquiry's recommendations be implemented forthwith. They also requested the Government to accept a high-level technical assistance mission in order to speed up the implementation of the recommendations, identify the obstacles and ensure the full respect of Convention No. 87 in law and in practice, and to report back to the Committee of Experts. If the Committee would still be unable, the following year, to see evidence of effective progress in the application of the Commission of Inquiry's recommendations, serious consideration would be given to using article 33 of the ILO Constitu-

tion, which provided for measures to be taken in such cases.

### **Conclusions**

The Committee took note of the oral information provided by the Government and the discussion that followed.

The Committee noted that the outstanding issues concerned the need to bring the relevant legislative texts into line with the Convention so as to guarantee freedom of association rights to workers, both in the private and public sectors, and the need to ensure that the POSA was not used to infringe upon legitimate trade union rights and in this respect, to ensure that training on human and trade union rights for the police and security forces continued, to carry out together with the social partners a review of the application of the POSA in practice, and to elaborate and promulgate clear lines of conduct for the police and security forces.

The Committee noted the information on the capacity-building activities for social partners and non-state actors that had taken place in 2012 and 2013 with the ILO technical assistance. It further noted the planned activities for July–August 2013 with law enforcement agencies and the cascading of such sessions to all ten provinces. The Committee further noted the information on the process of the labour law review and harmonization, which, according to the Government, involved the social partners, as well as on the guarantees for freedom of association, in both the private and the public sectors, and the right to demonstrate under the new Constitution.

The Committee expressed the firm hope that the law and practice, including the Labour Act and the Public Service Act, would be brought fully into line with the Convention in the very near future and encouraged the Government to continue cooperating with the ILO and the social partners in this respect. The Committee requested the Government to: ensure the continued training of the police and security forces with a view to ensuring the full respect of human and trade union rights; take steps for the elaboration and promulgation of clear lines of conduct for the police and security forces; and ensure the POSA is applied in a manner that is in conformity with the Convention. The Committee urged the Government to provide the resources necessary for the full and rapid operationalization of the Human Rights Commission. The Committee further requests the Government, as it had suggested, to discuss the proposals of the workers' organizations on possible concrete steps to be taken to ensure the safety of Ms Hambira, General Secretary of the General Agriculture and Plantation Workers' Union of Zimbabwe (GAPWUZ), upon her return to the country. The Committee invited the Government to accept a high-level technical assistance mission to assess the obstacles to the rapid implementation of the recommendations of the Commission of Inquiry and the full implementation of Convention No. 87, both in law and in practice. The Committee requested that this information, as well as a detailed report from the Government, be transmitted to the Committee of Experts for examination at its next meeting this year.

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**Right to Organise and Collective Bargaining Convention,  
1949 (No. 98)**

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**GREECE (ratification 1962)**

A Government representative welcomed the acknowledgement by the Committee of Experts of the grave and exceptional circumstances experienced in Greece. Her Government also welcomed the recognition by the Committee on Freedom of Association (CFA) of the exceptional and particularly dire conditions brought about by the financial fiscal crisis in Greece, and of the continuous efforts made by all the parties, the Government and the social partners, to address them. In June 2011, this Com-

mittee had had the opportunity to discuss this case and had recommended in its conclusions, that an ILO high-level mission visit Greece in order to explore the complexity of the issues involved. The Government representative reiterated that the bailout plan for the Greek economy envisaged the implementation of measures that would enhance labour market flexibility and ensure, at the same time, both the protection of workers and the competitiveness of the Greek economy. Measures had been adopted to restructure the system of free collective bargaining, in compliance with the principles set in the Convention. These measures had reformed the collective bargaining system by establishing decentralization in the implementation of collective agreements, placing emphasis on the enterprise level in order to facilitate the adjustment of wages to the economic potential of enterprises. Furthermore, the statutory minimum wages complemented the wage-setting system, filling the gaps between the collective agreements, as the statutory extension of collective agreements had been suspended since November 2011 by Act No. 4024/2011, together with the application of the favourability principle in case of conflict between collective agreements concluded at different levels. These reforms had been outlined in the updated Memoranda attached to the revised economic adjustment plans of the international loan agreements, signed between the Government of Greece and the Troika (the European Commission, the European Central Bank (ECB) and the International Monetary Fund (IMF)). However, despite the provisions included in the Memoranda for social dialogue on all issues related to labour market reforms, political conditions and timetables had hindered such a process.

In light of the above, and in particular with regard to comments of the Committee of Experts on the development of a comprehensive vision for labour relations, she stated that the Minister of Labour, Social Security and Welfare had initiated, since July 2012, a new round of consultations with the representatives of the social partners, in the belief that social dialogue, on the one hand, would contribute to the restoration of balance in the labour market and, on the other, would enhance its efficiency and smooth operation. With regard to the importance of a space for social dialogue and the role of social partners in reviewing the measures already taken, the speaker indicated that in relation to setting minimum wages, a new system for fixing the statutory minimum wage had been introduced in December 2012 by Act No. 4093/2012. The Act stipulated that by virtue of a Ministerial Cabinet Decree, the statutory minimum wage-fixing process would be defined taking into account the state and prospects of the economy and of the labour market (especially in terms of employment and unemployment rates). Consultations between the Government and representatives of the social partners, as well as specialized scientific, research and other bodies would be held in this process. Meanwhile, Act No. 4093/2012 determined the statutory minimum daily and monthly wages as provided for by Ministerial Cabinet Decree No. 6/2012. The minimum wage served as a safety threshold for all workers in the country, which meant that all types of collective agreements, including the National General Collective Agreement (NGCA), might establish wages higher than the statutory minimum wages. The NGCA remained the cornerstone of the collective bargaining system due to the general implementation of its non-wage clauses, whereas wage clauses of the NGCA applied only to employees working for employers represented by the signatory employers' organizations. On 14 May 2013, a new NGCA had been signed, demonstrating the consensus of the signatory parties to reinforce bipartite social dialogue. Moreover, since July 2012, successful collective bargaining

had taken place at the sectoral level, resulting in the conclusion of collective agreements in major sectors of the Greek economy, such as tourism, commerce, private health services and the banking sector. With regard to collective bargaining at the enterprise level, 976 collective agreements had been signed in 2012 compared to 179 in 2011. These collective agreements had been signed either by trade unions or associations of persons. The association of persons gave a collective voice to employees at the enterprise level and was legally qualified as a trade union, according to Act No. 1264/1982. Furthermore, by virtue of Act No. 4024/2011, it was possible to establish an association of persons in small firms of less than 20 employees. These associations of persons ensured high union density due to a participation requirement of three-fifths of the employees in the enterprise, and they acquired the right to sign a collective agreement only if there were no enterprise trade unions. The speaker observed that the requirement for the establishment of a trade union, was at least 20 members, and the union was nullified when its members were less than ten. She emphasized that the above clarifications demonstrated the compliance of all reforms with the provisions of the Convention. While ensuring the rights to freedom of association and collective bargaining, the Conference did not imply a certain system to be applicable and did not prohibit the reform of a national system, provided that the core of these rights was respected. Regarding the funding of the Organization for Mediation and Arbitration (OMED), the “Special Fund for the Implementation of Social Policies” (ELEKP) had been established in 2013, by virtue of Act No. 4144. The operation of this fund lay within the competence of the Manpower Employment Organization (OAED), which had assumed the responsibilities of the Workers’ Social Fund (OEE), including the funding of OMED.

The report of the ILO high-level mission had already provided valuable insight into the positions shared by the Government, the social partners and the international bodies involved in the international loan agreement, namely the Troika. In light of the above, the Government welcomed the cooperation with the ILO. The Government representative indicated that she was looking forward to the national seminar in the framework of the initiative “Promoting a balanced and inclusive recovery from the crisis in Europe through sound industrial relations and social dialogue” organized jointly by the ILO and the European Commission in Greece at the end of June 2013. The Government expected that this seminar could initiate the re-engagement in social dialogue to implement policies enhancing economic growth, combating unemployment and protecting workers’ living standards.

**The Employer members** observed that this case raised a variety of issues relating to the recent financial and economic crisis in the country, and it was important to focus only on the issues relating to the Government’s application of the Convention. The CFA had recently reviewed substantially similar allegations concerning the Government’s application of the Convention. Although it was not always appropriate to refer to the conclusions of the CFA, due to that Committee’s specific mandate, the context of the case it had examined was similar to that of the present discussion. In this regard, qualifying the context of the country as grave and exceptional, the CFA had in its conclusions, called for the promotion and strengthening of social dialogue, as had the Committee of Experts. Likewise, when the Conference Committee had reviewed this case during its 2011 session, it had also concluded that the Government needed to make a better effort to engage in social dialogue. In addition, the Convention allowed for emergency measures to be implemented subject to certain caveats. Articles 3 and 4 of the Convention expressly referred to taking measures appropriate to national condi-

tions. This was incredibly relevant in this context, as the country was debt-laden and experiencing a financial and economic crisis.

**The Worker members** recalled that the case raised the issue of the relevance of the austerity policies pursued within the European Union, particularly the Eurozone. According to the Government itself, the harsh measures adopted had been practically dictated by the Troika in exchange for the provision of loans which the country urgently needed. The report of the ILO high-level mission was largely supportive of the Government. Nevertheless, the Government remained ultimately responsible for the policies that it was implementing. The conclusions of the Ninth European Regional Meeting held in Oslo in 2013 reaffirmed the desire of the tripartite constituents to pursue an upward course out of the crisis. In the present case there was a visible need to increase the coherence of policies with international and regional organizations and institutions on macroeconomic, labour market, employment and social protection issues, as underlined by the Oslo Declaration in 2013. The Worker members endorsed the Committee of Experts’ request for the creation of a space in which the social partners would be able to participate fully in the determination of any subsequent amendments to the agreements with the Troika, relating to aspects that represented the very core of industrial relations, social dialogue and social peace. With a view to enabling a job-rich recovery, consultations needed to be held between the Government and the social partners regarding: the protection of wages and their purchasing power; the formulation and implementation of labour market policy measures; the means of tackling pay inequality issues, including collective bargaining; the future of social security; the reform of the labour administration system; and collective bargaining in the public service. The Worker members echoed the concerns of the Committee of Experts regarding the measures taken under the law of 12 February 2012, concerning the approval of the plan for credit facilitation agreements in the context of the European Financial Stability Facility (EFSF). That law aggravated the situation by imposing the abolition or renegotiation of collective labour agreements, which had been converted into agreements of indefinite duration. In particular, it enabled collective agreements to be concluded, on the workers’ side, not by representative trade unions but by “associations of persons” which did not offer the guarantees of independence corresponding to workers’ representatives. Finally, the Government had unilaterally imposed various flexibility measures, which gave employers numerous possibilities for making unilateral changes to key conditions in employment contracts. Voicing their deep concern for the Greek workers, the Worker members endorsed the declaration in the report of the ILO high-level mission to the effect that the ILO should have the capacity to assist the social partners in discussions regarding a model for social dialogue and collective bargaining, enabling them to preserve their role especially in collective bargaining at sectoral level.

**The Worker member of Greece** expressed the view that social dialogue and collective bargaining had been used as leverage tools for the negotiations of the loan mechanism and that authoritarian unilateralism had replaced democratic tripartism, thus making the social partners redundant. In February 2012, the social partners in Greece had been engaged in talks on a broad agenda, including the freezing of the national minimum wage for the next two or three years. The social partners had been renegotiating an agreement that was to expire after a year. However, this round of collective bargaining had never been concluded: the Government, under pressure from the Troika, had, despite its pledges to respect social dialogue outcomes, unilaterally legislated a 22 per cent slash in the national

minimum wage, thereby bringing wages to below subsistence levels. This interference by the Government had given the final blow to labour institutions. Moreover, the Government had virtually abolished collective bargaining outcomes, as set out in the NGCA; had wiped out jointly agreed-upon minimum standards of work; had pushed huge groups of workers below the poverty thresholds, as social security contributions and taxes had been included in the gross amount of the wages; and had automatically reduced minimum welfare benefits that were directly linked by law to the minimum wage. She declared that since 2010, there had been a steady disintegration of a once functioning industrial relations system. While the IMF and the European Commission had described government interventions to reduce the scope of collective bargaining rights and diminish the wage-setting powers of trade unions as “employment friendly” policies, this was a sorely tested fallacy: spiralling unemployment, poverty, relentless recession, bankrupt businesses and households, and a gravely disinvested economy confirmed their wholesale failure. The IMF itself had recently admitted this failure.

Referring to the Committee of Experts, she stressed that weakening collective bargaining had hurt recovery; that collective bargaining was key for constructive processes that linked crisis responses to the real economy; and that social dialogue was vital in crisis situations. Moreover, the speaker pointed out that workers had been doubly disempowered: serious economic disempowerment was compounded by a critical loss of institutional capability to survive in an increasingly hostile labour market. She emphasized the need for intensive, frank, constructive and meaningful social dialogue, which was key for a comprehensive vision of labour relations. One starting point for such a vision was the NGCA and the notion that the wage-setting mechanism should fully conform to international labour standards, which means that it should be governed by collective bargaining. Taking into account the recommendations made by the ILO on various occasions, the speaker argued that overt intervention in lawful wage-setting mechanisms violated the core of the Convention, expressed grave concern with regard to the impact of the situation on collective bargaining processes, and expressed the hope that the Committee would deliver a strong message on the imperative need to respect labour rights as fundamental human rights, while implementing fiscal and social strategy measures. Lastly, she emphasized that the argument that social dialogue was an unaffordable luxury in times of crisis and that it was better for the State to simply intervene, was unwise and politically hazardous, as it ignored the political and economic added value of social dialogue for the operation of the system and for social cohesion. Social dialogue was not an idle discussion between opposing parties but a fundamental political and social process which, when destroyed, led to the vices of undemocratic decision-making.

**The Employer member of Greece** stated that, in the report of the Committee of Experts, five points of alleged non-conformity of the national legislation with the Convention could be identified. With regard to the first two points, the Committee had said that there had been no violation of the Convention considering that the legal imposition of a maximum three-year period for collective agreements was not contrary to the Convention, provided that the parties were free to agree on a different duration. The same applied to the abolition of unilateral recourse to compulsory arbitration under Act No. 4046 of 2012 and Act No. 6 of 28 February 2012 of the Council of Ministers. Currently, recourse to arbitration was only possible with the consent of all the interested parties. Furthermore, the CFA had adopted the same position regarding the abolition of compulsory arbitration in Greece. The legislation

was thus in conformity with the provisions of Article 6 of the Collective Bargaining Convention, 1981 (No. 154), Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), and Collective Bargaining Recommendation, 1981 (No. 163). The speaker considered that the most difficult issue concerned the third point relating to interventions by the legislature regarding the content of the NGCA, which in fact played the role of an inter-occupational collective agreement. For decades, this collective agreement had determined wages and other minimum conditions of work applicable to all employers and all workers in the country, regardless of their trade union affiliation. However, the legislative intervention had had the effect of significantly reducing the minimum wages fixed by the 2010 inter-occupational collective agreement. This intervention had also suspended wage increases and the payment of seniority bonuses provided for in collective agreements at all levels. Furthermore, she specified that the levels of wages and all other forms of remuneration provided for in an inter-occupational collective agreement would only be compulsory for employers affiliated to signatory organizations. As regards other questions (for example, additional paid holidays), the inter-occupational collective agreement would apply to all employers and workers in the country. Minimum wages would from now on be determined through administrative means, after consultation of, *inter alia*, the social partners. In that context, the legal reduction of minimum wages laid down in the inter-occupational collective agreement was certainly contrary to Article 4 of the Convention, as was the suspension of the clauses relating to wage increases on the basis of seniority. However, the same did not apply to the future fixing of wages by administrative means, to which the Convention was not opposed. It should be noted that all interference in the content of collective agreements, whether or not justified by the gravity and exceptional nature of the economic crisis in the country, concerned the collective agreements in force at the time of publication of the respective laws. Currently, the contracting parties were not subject to any restriction regarding the content of collective agreements. However, in the current absence of a NGCA, it was up to the former signatory parties to find the means to emerge from the impasse. Referring to the definition of “collective agreements” in the Collective Agreements Recommendation, 1951 (No. 91), the speaker indicated that, to facilitate the conclusion of a collective agreement in an enterprise which did not have any enterprise union, Act No. 4024/2011 allowed workers to be represented to that effect by a “association of persons”. The association of persons actually belonged to the category of primary-level trade unions which had been recognized since 1982 by the basic law on trade unions. It had always enjoyed the right to strike without any concerns being raised in this regard. The recognition of the association of persons as a social partner actually represented a logical and even necessary development, since it constituted no more than a supplementary form of trade union organization. However, these associations had to account for at least 60 per cent of the workers of the enterprise, whereas enterprise trade unions were authorized to conclude a collective agreement regardless of the size of its membership. The last point concerned the relationship between enterprise collective agreements and branch collective agreements. Initially, in the event of a conflict between these two types of collective agreements, the agreement most favourable to the employees prevailed. Nowadays, enterprise collective agreements, even the least advantageous to the employees, always prevailed over branch collective agreements. The favourability principle had therefore given way to the “speciality” principle, inasmuch as the agreement closest to the employment relationship to be regulated applied.

Since there did not appear to be any international rule establishing a hierarchy among the various levels of collective agreements, the legislative reform would enable enterprises to adjust their wage bill to their own economic situation, in such a manner as to preserve jobs.

In conclusion, the speaker recognized that collective bargaining was currently going through a difficult phase; the change in the legal context having somewhat disrupted collective labour relations. Hence the issues in question were not legal ones but rather of a political and economic nature. Lastly, the speaker indicated that the Hellenic Federation of Enterprises and Industries (SEV), as the most representative employers' organization, had several times expressed its commitment to social dialogue and collective bargaining, and had declared its willingness to participate, with the workers' confederation and the Government, in any joint platform at the appropriate level with a view to finding adequate solutions to the current situation, with the assistance of the Office.

**The Government member of France**, speaking also on behalf of the Government members of Cyprus, Germany, Italy, Portugal and Spain, considered that social dialogue was a privileged instrument for government action, in particular through the consultation of the social partners in the process of economic reform. Greece was currently facing an unprecedented crisis the effects of which had been particularly severe for the country. In such a difficult context, due note should be taken of the Government's undertaking vis-à-vis the Committee to respect the principles of the Convention and of its intention to protect workers' living standards. The Government could only be encouraged to continue along those lines.

**The Worker member of the United Kingdom** stated that the application of the Convention was a fundamental building block in enhancing social protection and strengthening social dialogue. Greece had established well-developed machinery and institutions for collective bargaining, which were now experiencing wide interference, with profound effects on the lives of workers, their families and communities. The measures of the Memorandum of Economic and Financial Policies were dismantling almost every aspect of the collective bargaining system. The NGCA had been abolished. Ninety per cent of the workforce in small enterprises could not join a union. With pay cuts and slashed pensions, poverty in Greece was soaring. More than one third of the population had an income of less than the poverty line set at just over €7,000 per year per person in 2012, and almost 44 per cent of children lived below the poverty line. There was little social assistance and few received unemployment benefits. It was estimated that at least 40,000 people were homeless. There had been an explosive growth in soup kitchens and a sharp drop in access to medicine and health services. She considered that this Committee must demand that the Convention be respected, that social dialogue be reinstated, and that workers and their organizations be able to participate in decisions about labour market and living standards. The fact of an economic crisis made these demands even more critical, not less.

**The Worker member of France** observed that, for three years, Greek workers had suffered from unusually brutal and widespread austerity measures, which had plunged the country into deep recession and seriously restricted the economic and social rights of employees and pensioners. The most vulnerable sectors of society had been particularly affected by the measures that the Government had implemented in an effort to apply the policies imposed by the European Union and the IMF. In that regard, the Government had passed several laws since 2010; on 5 March 2010, an austerity law (No. 3833/2010) had imposed severe wage and paid leave cuts in the public and private sectors, which had already been cut, once again,

under a subsequent law. The right to collective bargaining was controlled by the Government, which prohibited the conclusion of collective agreements that might lead to a wage increase. The favourability principle that had guaranteed that collective agreements at company or local levels could not derogate from the provisions of national or sectoral conventions, but could improve or supplement them, had been discontinued. The situation was made worse by the prohibition against forming trade unions in small and medium-sized enterprises. The Committee of Experts had rightly considered that the Government should allow the exercise of freedom of association in small and medium-sized enterprises with 20 workers or fewer in order to guarantee that trade union organizations could exercise the right to collective bargaining and maintain the favourability principle, as enshrined in Recommendation No. 91. The Government had also taken measures deregulating the labour market and making it more flexible, and had reduced the amount of welfare benefits. All those restrictive and socially regressive measures openly violated Greece's international commitments. Nonetheless, on 5 May 2013, a national collective agreement had been signed by the majority of employers' organizations and the Greek General Confederation of Labour (GSEE), in an effort to maintain for the future the existence of this general private sector agreement, which demonstrated the fact that the main social partners remained committed to the principle of independent collective bargaining. There was no doubt that there were serious, ongoing violations of the Convention. The 2012 report of the Commissioner for Human Rights of the Council of Europe, the 2011 report of the ILO high-level mission and the more recent report of the CFA, all corroborated the opinion of the Committee of Experts that there had been serious violations of fundamental workers' rights. If emergency measures had been necessary, they should have been the subject of prior consultations and negotiations should have been in force for a very limited time. However, the Government had chosen to deny all social rights as well as the established jurisprudence. The violations of the Convention observed by the supervisory bodies were the result of deliberate political decisions which affected trade unions' right to organize and the right to collective bargaining, thus hugely and needlessly reducing workers' and pensioners' standards of living, instead of planning to restructure the debt over the longer term, or taking other measures that would not ruin the economy. The Committee should strongly denounce that situation and require the Government to fully respect freedom of association and the right to collective bargaining, and to put an end to socially regressive policies.

**The Worker member of Italy** stated that the labour market restructuring and austerity measures had had a very high cost for Greek society, hitting harder the most vulnerable: children, the elderly and migrants, especially women in those groups. As a consequence, the right to work had been severely compromised, which set a dangerous precedent for the European social model and governance. Unemployment was today more than double the Eurozone average rate, registering a 95 per cent increase in three years (2009–11) and reaching 27 per cent in February 2013. Austerity measures widened inequality and the gender gap in employment: unemployment for women was much higher than that of men, and women were more affected by legislation promoting flexibility in the labour market. The Greek Ombudsperson had reported a steady increase of complaints concerning unfair dismissals due to pregnancy or maternity leave or sexual harassment. The blind attack led against collective bargaining systems had entailed the deliberate dismantling of the welfare state on one side and a growing black market for labour on another side. Decentralization of the labour market was

indeed the central objective of the Troika. The UN Independent Expert on the effects of foreign debt, had noted, on his recent mission to Greece, that the prospects of a significant part of the population to access the job market and secure an adequate standard of living in line with international human rights standards had been compromised. The most highly educated workers were leaving the country, posing a threat to the national potential. These facts proved that austerity policies were only worsening the situation.

**An observer representing Public Services International (PSI)** stated that successive “rescue” packages were presented as an extreme remedy to save Greece from bankruptcy. Their provisions were summarily incorporated into Greek legislation and implemented instead of using collective bargaining as a means of achieving greater efficiency and better management of enterprises and public institutions. Moreover, the Troika had been pressuring the Government since February 2012 to cut 150,000 public sector jobs by 2015, which would have a wide impact on living standards and the potential for employment of future and current generations. She pointed out that quality public services were the foundation of democratic societies and successful economies. The driving force of the privatization of these services was the maximization of corporate profits rather than public interest. One of the key demands of the Troika was that the Government undertake massive privatizations to raise funds (€50 billion) so as to reduce the public debt. Among the enterprises targeted for privatization were public utilities which provided essential public services such as water and sanitation and energy. Moreover, public health systems had become increasingly inaccessible, in particular for poor citizens and marginalized groups, due to increased fees and co-payments, closure of hospitals and health care centres, and more and more people losing public health insurance cover, mainly due to prolonged unemployment. She recalled that the Convention applied to public service workers, with the only possible exception of the police and armed forces, and public servants engaged in the administration of the State, and demanded that public sector workers’ rights to collective bargaining be respected and that the current crisis should not be used as an excuse for dismantling social dialogue mechanisms in Greece. The austerity programme was being implemented in the context of a social protection system, which was characterized by protection gaps and which, in its current form, was not able to absorb the shock of unemployment, reductions of salaries and tax increases. Instead of strengthening the social safety net and making it more comprehensive, priority appeared to have been accorded to fiscal consolidation at the expense of the welfare of the Greek people. She called on the Government to engage in meaningful collective bargaining as one of the main instruments of getting out of this crisis and re-building democratic structures.

**The Government representative** assured that her Government would take serious note of all comments, and expressed particular appreciation for the common statement made by the Government members of Cyprus, France, Germany, Italy, Portugal and Spain, sharing their belief in the importance of social dialogue in the process of economic reforms. With respect to the points raised by the Employer and Worker members, she observed that the joint declarations by the social partners on issues referring to the collective bargaining system had failed to address all the key issues of the reforms with consensus and did not constitute social dialogue per se. The reform of the collective bargaining system was a political issue which did not touch upon the legal aspects of the Convention. The rationale behind the reform was to increase flexibility of the wage-setting system and swiftly adjust wages to the

conditions of the Greek economy. In particular, the NGCA wage cuts were temporary, since they could be modified through collective bargaining process. The restrictions of the scope of application of the NGCA had been introduced in relation to the establishment of the statutory minimum wage system. This reform was a political issue to be addressed only by consensus of the social partners, mainly by expanding the applicability of the NGCA through increasing the participation of the signatory employers’ organizations, and by setting minimum wages different from the statutory minimum wage. Unfortunately, the NGCA of 14 May 2013 had not set minimum wages, which demonstrated the difficulties of the bipartite social dialogue and the necessity of the statutory minimum wages. The duration of collective agreements, albeit, determined by law at a maximum of three years, did not hinder the signatory parties to agree otherwise and reaffirm by exercising their right to collective bargaining, the continuation of the collective agreements. This practice was widespread in the ethics of collective bargaining in Greece since 60 years, as the signatory parties used to update by amendments their long standing collective agreements. Despite the abolition of the unilateral recourse to arbitration, the restricted mandate of the arbitrators to issue awards only upon basic wages, did not prevent the signatory parties to agree upon a different system of collective dispute resolution that would provide a wide mandate to the arbitrators for all issues of common concern. This possibility was established in section 14 of Act 1876/1990 and, if included in the NGCA, could be binding for all employers and employees in the country. Lastly, she pointed out that the abovementioned issues demonstrated the need for a comprehensive social dialogue at all levels which had to be embraced by the social partners. To this end, the Government looked forward to the active engagement of the ILO to help build solid and effective social dialogue to overcome the economic crisis.

**The Employer members** expressed their appreciation for the robust discussion on this case. While hearing a lot of serious concern expressed by various speakers in their contributions, they pointed out that many statements related to the economic upheaval in Greece and not to its compliance with the Convention. They referred to the massive changes taking place in Greece and underlined that it took time to adapt to change. In this regard, the Convention did not require a specific system of collective bargaining. Therefore, and recalling that the CFA had referred to the situation in Greece as grave and exceptional, the Employer members expressed the hope that the conclusions, while focusing on the application of the Convention, would be realistic given the context. Lastly, they noted that there had been some consensus on increasing social dialogue, and also called for measures to this end.

**The Worker members** expressed their firm support for the Committee of Experts’ request for the creation of a space for the social partners that would enable them to be fully involved in the determination of any further alterations within the framework of the agreements with the Troika, that touched upon matters that went to the heart of labour relations, social dialogue and social peace. They echoed the Committee of Experts’ call on the Government to review within that forum, in conjunction with the social partners, all the measures that had been discussed before the Conference Committee, with a view to limiting their impact and duration and to ensuring proper guarantees to protect workers’ living standards. The Worker members strongly urged the Government to ensure that the social partners could play an active role in any wage-setting mechanism. The Worker members strongly urged the Government, within the framework of the follow-up to the 2011 high-level mission, to accept, as a matter of ur-



gency, a programme of technical assistance and cooperation for itself and the social partners to help create a space for social dialogue, taking as a starting point the NGCA and aiming at the implementation of the comments of the Committee of Experts. The Government should submit a report to the Committee of Experts at its next meeting to enable it to assess the progress achieved.

### Conclusions

The Committee took note of the statement made by the Government representative and the discussion that followed.

The Committee observed that the outstanding issues in this case concerned numerous interventions in collective agreements and allegations that, within the context of austerity measures imposed by loan agreements between the European Commission, the European Central Bank and the International Monetary Fund and the Greek Government in a context characterized as grave and exceptional, collective bargaining was seriously weakened and the autonomy of the bargaining partners violated.

The Committee noted the information provided by the Government representative concerning the reform of the collective bargaining legal framework through the establishment of decentralization in the implementation of collective agreements due to the economic crisis. She further provided information on the Special Fund for the Implementation of Social Policies (ELEKP) that had been established in 2013 and was being operated by the Manpower Employment Organization (OAED), which had assumed responsibility for the Workers' Social Fund, including the funding of the Organization for Mediation and Arbitration (OMED). She stated, however, that the statutory minimum wage fixing process which would be established by ministerial decree would be defined in consultation with the social partners. She reiterated that the critical economic situation and the complicated negotiations at international level provided no room for consultation with the social partners prior to the legislative reforms. She observed that the national seminar on promoting a balanced and inclusive recovery through sound industrial relations and social dialogue, jointly organized by the ILO and the European Commission on 25 and 26 June, would provide an important opportunity to capitalize on ILO experience to reinforce trust on common goals and confidence between social partners and the Government. She expressed her expectation that this event would initiate the re-engagement in social dialogue to implement policies enhancing economic growth, combating unemployment and protecting workers' living standards.

The Committee recalled that the interference in collective agreements as part of a stabilization policy should only be imposed as an exceptional measure, limited in time and degree, and accompanied by adequate safeguards to protect workers' living standards. Mindful of the importance of full and frank dialogue with the social partners concerned to review the impact of austerity measures and the measures to be taken in times of crisis, the Committee requested the Government to intensify its efforts, with ILO technical assistance, to establish a functioning model of social dialogue on all issues of concern with a view to promoting collective bargaining, social cohesion and social peace in full conformity with the Convention. The Committee urged the Government to take steps to create a space for the social partners that would enable them to be fully involved in the determination of any further alterations that touched upon aspects going to the heart of labour relations and social dialogue. It invited the Government to provide additional detailed information to the Committee of Experts this year on the matters raised and on the impact of the abovementioned measures on the application of the Convention.

### HONDURAS (ratification: 1956)

The Government provided the following written information.

With technical support from the ILO, a Labour Code Reform Committee of the Ministry of Labour was currently preparing a draft text focusing on 13 sections of the Labour Code to bring it into line with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and four sections to bring the Labour Code into line with Convention No. 98 (including section 469 of the Code dealing with sanctions in cases of anti-union discrimination). The draft sections, which would take due account of the recommendations of the Committee of Experts, will be submitted first to the Ministry of Labour and Social Security and then to the Economic and Social Council (CES). Draft section 469 specifically provides that the fines should be increased, from the present level of 200 to 10,000 Honduran lempiras (HNL), to five to 20 times the minimum wage, that is from HNL32,650 to HNL130,600 at the current average minimum wage of HNL6,530 (US\$310), and that for repeat offences the relevant fine should be increased by a further 50 per cent.

The Committee of Experts also requested that it be informed of the judicial sentences handed down by courts for acts of anti-union discrimination. The Ministry of Labour and Social Security expects to receive this information from the Public Prosecutor's Office shortly and it will be sent to the Committee of Experts in due course. As to the absence of adequate and comprehensive protection against all acts of interference and of sufficiently effective and dissuasive sanction for such acts, the Committee of Experts requested the Government to take into account that the protection afforded by Article 2 of the Convention is broader in scope than that provided for under section 511 of the Labour Code. As indicated above, a committee within the Ministry of Labour and Social Security was working, with technical support from the ILO, on a proposal to amend section 511 and bring it into line with Article 2 of the Convention. In due course, this proposal would be submitted to the authorities at the Ministry of Labour Social Security and subsequently to the CES, taking full account of the recommendations of the Committee of Experts. The draft reform of section 511 of the Code provides for fines for acts of interference on the part of employers of between five and 20 times the minimum wage, which would be imposed by the General Labour Inspectorate. The draft also provides that, when members who represent the employers, or who hold managerial posts, or are in positions of trust are elected to a trade union board, the elections will be declared null and void.

Turning to Article 6 of Convention No. 98 (the right to collective bargaining of public servants who are not engaged in the administration of the State), the Ministry of Labour and Social Security, following up on the recommendations of the Committee of Experts, had drawn up a proposal to amend sections 534 and 536 on public servants' right of association and limitations thereto. The draft amendments provide that public servant trade unions have the right to submit petitions in order to improve their general working conditions. In addition, the proposed reform provides that public servant trade unions would have all the powers of other workers' unions and that their petitions would be handled on the same basis as all others, even when the workers in question cannot call or conduct a strike.

In addition, before the Committee, a Government representative referred to the political, economic and social conditions of his country that were having an impact on the subject under discussion. He mentioned the achievements of the current administration in the areas of planning, civic participation, productivity, development and

minimum wages, and endorsed and updated the replies to the comments made by the International Trade Union Confederation (ITUC) in 2009, 2011 and 2012. With regard to the lack of adequate protection against acts of anti-union discrimination owing to the penalties established in section 469 of the Labour Code, he stated that section 469 as amended would read as follows:

Any person who by violations or threats in any way infringes the right to freedom of association shall incur a fine of five to 20 times the minimum wage, to be imposed by the General Labour Inspectorate, subject to full verification of the facts of the violation concerned.

For repeated offences, the standard fine shall be increased by 50 per cent.

Regarding cases in which criminal penalties had been imposed for acts of anti-union discrimination, he mentioned that the requested information was still awaited from the Public Prosecutor's Office, which was undergoing a reform process further to the work of an audit board appointed by the National Congress. Nevertheless, he observed that precedents already existed in the Supreme Court of Justice (such as appeal cases Nos 401-2005, 326-2009 and 54-2005), and that the abovementioned information would be transmitted through official channels in due course. With respect to the absence of protection against all acts of interference and the lack of penalties that acted were sufficiently dissuasive, he indicated that work was in progress to amend section 511 of the Labour Code with a view to bringing it into line with Article 2 of Convention No. 98. Section 511 as amended would read as follows:

Trade union members who, by virtue of their posts in the enterprise, represent the employer or hold managerial posts or positions of trust or are easily able to exert undue pressure on their colleagues shall be barred from election to the executive committee of a primary level or enterprise trade union or from appointment as union officers. The foregoing provision applies to managers, deputy managers, heads of personnel, private secretaries working for the executive committee, the management or the administration, department directors (chief engineer, chief medical officer, legal adviser, technical directors, etc.) and any other similar posts. Should any union member holding any of the abovementioned posts be elected, the election shall be deemed null and void. Any union member who has been duly elected and then takes up one of the abovementioned posts shall automatically relinquish his/her trade union office.

Should any of the situations described in the first paragraph of this section occur, it shall be deemed an act of interference by the employers against the workers or workers' organizations and shall incur a penalty of five to 20 times the minimum wage, to be imposed by the General Labour Inspectorate.

With regard to the right to collective bargaining of officials not engaged in the administration of the State, work had been undertaken on a proposal to amend sections 534 and 536 of the Labour Code relating to the right of association of public employees and the limitations thereon. Section 534 as amended would read as follows:

The right to organize in trade unions shall extend to workers throughout the public service, with the exception of members of the armed forces of Honduras and police forces of any kind. Public employee trade unions shall have the power to submit to representatives of the institutions lists of demands designed to improve their general conditions of employment, as established in section 56 of the present Code.

Section 536 as amended would read as follows:

Public employee trade unions shall have all the powers of other workers' unions and their lists of demands shall be handled on the same basis as all others, even when they are not entitled to call or conduct a strike.

The Government of Honduras was ready to submit a report to the Committee of Experts containing updated information on further developments regarding the steps taken to bring the labour legislation into line with the ratified Conventions, in the framework of the CES, with support from the ILO. The Government considered that as a result of the efforts made and the technical support of the Office it had been possible to make progress on the preliminary drafts for the reform of the Labour Code, and those drafts would require a consensus involving workers and employers to achieve the proposed objectives.

**The Worker members** recalled that, since 1998, ten observations on the application of Convention No. 98, in particular on the need for sufficiently effective and dissuasive sanctions against acts of anti-union discrimination and acts of interference by employers or their organizations in trade union affairs, were addressed to the Government. No developments had taken place to date. Yet, in 2001, the Government had announced a revision of the Labour Code with respect to two points: sanctions against persons violating the right to organize freely and protection against dismissal of workers envisaging to establish a trade union. The Government had also committed to set up a system of dissuasive sanctions against acts of anti-union discrimination. With regard to the issue of protection against acts of interference raised by the Committee of Experts, national legislation merely provided that unionized workers who, on account of their duties in the enterprise, held management posts or positions of trust or who were easily able to exercise undue pressure on their colleagues, could not be part of the executive committee of the union. The comments contained in the reports of the Committee of Experts in 2005, 2007, 2009, 2011 and 2013 demonstrated the continued unwillingness of the Government with regard to the follow-up measures requested.

The Worker members recalled that this "double footnote case" illustrated the criteria used to identify such cases (seriousness and persistence of the problem, urgency of the situation, quality and scope of the Government's response, and in particular the clear and repeated refusal on the part of a State to comply with its obligations). They referred to the written information supplied by the Government in which it announced a series of reforms underway with the objective of bringing the Labour Code in line with Conventions Nos 87 and 98 and to modify the amount of fines. However, the Worker members emphasized the lateness of this announcement and the confidence problem that arose in this regard, as government authorities could have submitted these legislative changes to the workers a long time ago so that they could have been discussed within the competent tripartite bodies. In its 2009 report, the Committee of Experts had raised new questions to which no answers were provided by the Government, for instance as regards: anti-union practices in export processing zones; delays in the administration of justice in cases of anti-union practices; non-compliance with court orders to reinstate trade unionists; the setting up of parallel organizations by employers; a draft act which could limit the right of collective bargaining to unions representing more than 50 per cent of the total number of employees in the enterprise; and numerous anti-union dismissals in various enterprises in the export processing zones, cement and bakery industries. The issue of the right to collective bargaining for public servants not engaged in the administration of the State had also been raised. In this regard, the Committee of Experts had indicated in 2009 that the procedure of "respectful statements" referred to by the Government, could not be considered as being in accordance with Convention No. 98. All issues had once again been raised in the 2012 observation.

The Worker members recalled that the fundamental right to collective bargaining was only meaningful and effective if workers' organizations were independent, outside the employers' control and free from interference from the authorities. They emphasized that serious problems persisted concerning the right to collective bargaining in practice, particularly in the education sector, where a virulent anti-union harassment was exercised against unions. Twenty-three union leaders of four organizations of teachers had been removed from office and dismissed; only two had been reinstated in their former jobs. In March 2012, the Ministry of Education had eliminated, without negotiation, the principle of deduction of union dues at source, thereby depriving unions of their financial resources. More than 1,000 teachers had been suspended for several days for taking part in union meetings. Without the ability to organize and participate in union meetings, and with the unions being beheaded, one could wonder how collective bargaining could be free and effective within the meaning of Convention No. 98. In the public sector, wages were frozen, collective bargaining was paralyzed and, when negotiations took place, collective agreements were not applied. Precarious work, called "hourly work", without a contract and not covered by collective bargaining, was on the rise. Recalling more generally that, in terms of observance of working conditions, the fines were so low that it was cheaper to pay them than to remedy the situation, they stated that, although technical assistance had often been proposed, the present situation illustrated the persistent refusal of the Government to take appropriate measures to ensure that the right to collective bargaining was upheld.

**The Employer members** stated that the comments of the Committee of Experts were based on observations made some years ago by the ITUC relating to legislative matters, the creation of parallel unions and anti-union practices. With regard to legislative matters, they indicated that they did not agree with the Committee of Experts that there was insufficient protection against anti-union acts and that penalties were inadequate. In fact, the Convention did not provide for specific measures; rather, mechanisms appropriate to national circumstances should be put in place. The Convention did not require the imposition of fines. The fines established in the Labour Code ranged from US\$12 to US\$200, to ensure that they could be adapted to the severity of the offence and an employer's ability to pay. It was impossible, without supplementary information, to determine whether the amount of the fines served as an effective deterrent. The Committee should have sought additional statistics on cases of anti-union discrimination, instead of requesting that the fines be increased.

With regard to section 511 of the Labour Code, the Employer members recalled that the Committee of Experts had considered that sufficiently dissuasive sanctions should also be imposed against acts of interference by employers in workers' organizations. In that respect, they indicated that the situation and the type of protection necessary should have been investigated. In fact, section 511 provided for mechanisms to be established only where necessary. The observation of the Committee of Experts did not mention problems of interference by employers in the operation or administration of trade union organizations. Neither did it indicate that the protection provided for in section 511 was insufficient. With regard to the right of public servants not employed in the state administration to bargain collectively, the Employer members agreed with the Committee of Experts that sections 534 and 536 of the Labour Code should be amended to allow unions of public employees to submit lists of claims and sign collective agreements. At the same time, they took note of the Government's statement that such matters

would be examined by the CES in the framework of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

**A Worker member of Honduras** stated that the situation of systematic violations of workers' labour and human rights in Honduras was the result of non-compliance with the national labour legislation and the ratified ILO Conventions. He denounced the fact that acquired rights were being restricted or removed altogether, the rights to organize and collective bargaining were not being respected, there was undue interference in internal trade union affairs, the unions' executive committees received threats, trade union leave was cancelled and the entire trade union movement was constantly being harassed.

**Another Worker member of Honduras** observed that the Government neither safeguarded nor protected labour rights and human rights. Section 120 of the general provisions of the General Budget of the Republic approved by the National Congress for 2013 had frozen civil servants' salaries and collective bargaining in decentralized, devolved and independent state enterprises. He also denounced the dismissals of union leaders, in violation of trade union immunity, the creation of parallel unions and the dismantling of unions that had been legally established. With respect to the Workers' Union of the National Autonomous University of Honduras (SITRAUNAH), the speaker observed that since 2007 it had not been possible to negotiate a collective agreement. The situation had become so serious that the union leadership had been dismissed and complaints had been submitted to the criminal courts. The establishment of a parallel union had been encouraged with a view to its participation in collective bargaining. Regarding the Workers' Union of the National Pedagogical University (SITRAUPN), he drew attention to the non-compliance with and failure to negotiate collective agreements and to the creation of a parallel workers' association. The speaker also mentioned the non-compliance with and failure to negotiate collective agreements in the cases of the Workers' Union of the Danli municipality, the Diario Tiempo Workers' Union, the Workers' Union of the Institute for Public Servants' Retirements and Pensions (SITRAIJUPEM), the Workers' Union of the Executive Directorate of Revenues (DEI), the Workers' Union of the National Vocational Training Institute (SITRAINPOP), the Workers' Union of the National Agrarian Institute (INA), the Beverage and Allied Industries Workers' Union (STIBYS), the workers of the Comayagua municipality and the Workers' Union of the Honduran Institute of Children and the Family (SITRAIHNFA). In view of the above, he requested that a direct contacts mission be sent to investigate in situ the allegations made in plenary.

**An observer representing Education International (EI)**, denounced the refusal of trade union leave to the members of central executive committees of four educational organizations, the dismissal of 20 union leaders who had retained their posts thanks to trade union immunity, and the dismissal of over 1,000 education workers on the ground that they had attended assemblies in 2012 and 2013; 50 workers were in the process of being dismissed. She also mentioned interference in trade union affairs, the suspension since March 2011 of deductions of union dues, the criminalization of protests and strikes, and the existence of a smear campaign by the Government. Moreover, the police attacks during peaceful demonstrations that had led to the death of Ms Ilse Ivania Velásquez Rodríguez in March 2011, had remained unpunished.

**The Employer member of Honduras** stated that, while allegations had been made of acts of anti-union discrimination (without however making reference to any specific cases), he considered that there was adequate protection of the rights to freedom of association and collective bar-

gaining in the country. The speaker refuted the view that the amount of the fines prescribed for acts of anti-union discrimination was too low. Moreover, he considered that the amount of the fine did not impact on the ability of the administrative and judicial authorities to impose sanctions on both private and public parties that violated those rights. The Criminal Code had indeed been amended without consultation; however, the amendment in no way hindered protection of freedom of association and collective bargaining from an administrative or judicial point of view. He expressed support for the proposed revision of section 469 of the Labour Code and recalled that from 1992 to 1995, with assistance from ILO experts, a tripartite consultation process had taken place with a view to revising the Labour Code. The draft revision, which included the elements that had been referred to during the current discussion, should have been taken up by the CES. Regrettably, it had not been submitted to the legislative body by the Government of the time. Turning to the lack of adequate protection against acts of interference, he agreed that section 511 of the Labour Code needed to be revised, as did all other provisions that would be deemed unnecessary. He added that he would not pronounce himself on any specific case since none were mentioned in the allegations. As for the prohibition of concluding collective agreements in the public sector, it was clear that, in that regard, the allegations were false, since there were collective agreements in central Government, in the municipalities, in the autonomous institutions and in the decentralized institutions. He regretted that the Government had not submitted the information on time and correctly. He also drew attention to the fact that all issues highlighted by the Committee of Experts must be examined and approved by the CES before being sent to the National Congress. The Labour Code needed to be revised, in line with the provisions of Convention No. 144, with a view to bringing it into conformity with the Conventions that had been ratified.

**The Government member of Colombia**, speaking on behalf of the Government members of the Committee which were members of the Group of Latin American and Caribbean countries (GRULAC), welcomed the initiatives of the Government to reform the provisions of the Labour Code which were highlighted in the report of the Committee of Experts, and thanked the Government representative for the additional information provided which illustrated its commitment to comply with Convention No. 98, taking into account the recommendations formulated by the Committee of Experts. Cooperation was of the utmost importance, and they trusted that the ILO would continue to provide the necessary technical assistance to Honduras, and encouraged all social partners to spare no efforts to maintain a constructive dialogue so that the labour law reform would culminate in a satisfactory solution for the three parties.

**The Worker member of Mexico** indicated that the seriousness, persistence and urgency of this case justified sending a direct contacts mission to the country so as to promote the rule of law based on a legal system that guaranteed the workers' right to organize and collective bargaining. The Government did not recognize the legal personality of genuine unions but granted it to purported unions created by employers. When, exceptionally, workers succeeded in concluding a collective agreement, it was not complied with. Also, workers were not allowed to go on strike in the event of breach of the collective agreement. This was a situation similar to that of Mexico, where the collective agreements registered with the local conciliation and arbitration boards only contained minimum legislative requirements and never adjusted wages. Indeed, those were collective agreements signed by trade unions that enjoyed support from employers, without

knowledge of the workers. The similarity between this system and the situation in Honduras raised the suspicion that the collective bargaining model of Honduras had been exported from Mexico.

**The Worker member of the United States** stated that, in March 2012, 25 Honduran unions and labour federations and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) had filed a petition to request investigation of abuses of labour rights under the labour chapter of the Dominican Republic – Central America–United States Free Trade Agreement (CAFTA-DR). The complaint had been accepted by the US Department of Labor in May 2012, in recognition that violations cited in the petition must be investigated, since the trade agreement required Honduras and the United States not only to comply with national laws but also with international labour standards of the ILO, in particular to respect “freedom of association and the effective recognition of the right to collective bargaining”. He indicated that the Committee of Experts was vital to the supervision of international labour standards, which were increasingly being used in bi-national and multilateral agreements that were key to international trade and industrial relations in multinational companies. In Honduras, the State had continuously failed to protect workers' rights, employers had not respected repeated efforts by workers to claim those rights, and no remedy had been provided when workers had demonstrated the violation of rights. According to the Committee of Experts' observation, the ITUC had reported in 2009, 2011 and 2012 ongoing anti-union practices in the export processing zones; anti-union dismissals; slow proceedings dealing with complaints of anti-union practices; and non-compliance with court orders to reinstate dismissed trade unionists. As the cases in the CAFTA petition demonstrated, the Government had failed to respond to those violations, such infringements continued impunity and employers had committed more violations as recently as 26 April 2013.

The speaker presented to the Committee one of the many cases described in the petition. An automobile parts manufacturer (joint venture between United States' and Korean companies), which employed approximately 4,000 workers for export production purposes, had refused to receive notice of the union's legal registration, had rejected the bargaining proposal duly presented in 2011 and had illegally dismissed the elected union leaders in January and February 2012. The Government had consistently failed to enforce laws to reinstate those union leaders. In March 2012, the union had held elections to replace the dismissed leaders but two days later three of the newly elected union leaders had been dismissed. In November 2012, the union had again presented its bargaining proposal according to the law, which the company had refused. On 4 March 2013, the union and management had agreed on terms of bargaining. On 6 March, the union had again presented its bargaining proposal to the company and the Ministry of Labour and Social Security. The company had repeatedly asked to reschedule the first negotiating session, using stalling tactics. The union had filed a complaint with the Ministry over the company's refusal to bargain. After having been refused entry three times and instructed to return at a later stage, a ministry official had declared that all efforts had been exhausted and had requested the Ministry to move to the mediation phase. Throughout April, the management had held mandatory meetings with workers, threatening to close the factory because of the union, and had dismissed at least 108 union members, including all remaining elected union leaders. Yet, in November 2012, the company had been hiring hundreds of workers, reaching a total of 4,200 workers before the mass firings had begun. As documented in numerous human rights reports, the

Government regularly used its powers, including the police and military, to enforce law and order during protests of civil society, teachers and unions. However, in the case of enforcing workers' rights, the State did not use those or any of its powers. He expressed concerns about broader political freedoms and human rights in civil society in Honduras. He trusted that the Committee could reach meaningful conclusions regarding the facts in the present case, and considered that a direct contacts mission of the ILO would be necessary to address the consistent failure of the Government to respect the right to organize and collective bargaining.

**The Worker member of Panama** considered that the Committee had the responsibility to take measures and follow up on the request of the Honduran workers to send a direct contacts mission to the country, taking into account the seriousness of the allegations (deaths and imprisonments). It was necessary to send a message of peace to the region. He also deemed regrettable that, as in Panama, union leaders were being called to trial and made subject to precautionary measures.

**The Worker member of Nicaragua**, referring also to the Common Trade Union Platform for Central America (PSCC), the Federation of Teachers' Organizations of Central America (FOMCA) and Education International for Latin America, endorsed and supported the allegations and demands made. The authorities had consistently violated labour legislation with regard to freedom of association and collective bargaining. Despite having resulted from collective bargaining and being enshrined in the Constitution, the Teachers Statute had been violated. Education workers who had taken part in protests had had their wages reduced. He also referred to the audit undertaken in the Institute for the Social Security of Teachers.

**The Worker member of Brazil** recalled that the Committee of Experts had been citing the Government's non-compliance with Conventions Nos 87 and 98 for years. If democracy was to work properly, it was essential that the rights embodied in those Conventions be respected. The legal system in force in the country did not allow workers to establish and join organizations freely or to engage in collective bargaining, and it encouraged political and financial interference in trade unions by the employers. There was no effective legal machinery to prevent such anti-union behaviour because the fines imposed were not dissuasive and because the judicial procedures were slow. Moreover, the right to strike was hampered by the fact that the requisite quorums for taking strike action were too high. Those requirements were also contrary to the principles laid down by the Committee on Freedom of Association.

**The Government representative** said that much effort had been invested in bringing the Labour Code into line with the Conventions, which illustrated the Government's goodwill. He also stated that tripartism was one of the Government's objectives. To that end, measures were being taken with a view to amending the regulatory framework of the CES. Likewise, within this body, discussions were being planned on the new labour inspection law and on amending the sections of the Labour Code in order to bring it into line with Conventions Nos 87 and 98. Nonetheless, Honduras was embarking on an election period which would culminate in November 2013; the necessary reforms would therefore have to wait until the new government had been elected.

**The Worker members** recalled the comments that the Committee of Experts had been formulating since 1998 and noted with regret the Government's lack of will to implement its recommendations, even though they were very clear. According to the report, the Convention was not currently being applied in Honduras. However, the Government had recently requested the technical assis-

tance that the ILO had been offering for years, which suggested that the situation had evolved and was a sign of goodwill on the part of the Government. As the Worker members saw it, one constructive move would be to propose that a direct contacts mission be sent to the country to facilitate the reforms that the Government had announced and to ensure that their implementation benefited from tripartite dialogue. The mission could present an annual follow-up report to the Committee of Experts which would examine the case as long as necessary in a special chapter of its report.

**The Employer members**, noting that the discussion was about compliance with one of the fundamental Conventions, it was a double footnoted case, and it had already been examined on numerous occasions, it was a case of serious problems of compliance with the Convention. They therefore supported the Worker members proposal for a direct contacts mission so that, with ILO assistance and the participation of the social partners, the Government could take steps to have the legislation amended so as to bring it into line with the Convention.

### **Conclusions**

**The Committee took note of the oral and written information provided by the Government and the discussion that ensued.**

**The Committee noted that the outstanding issues concerned the need for protection against acts of anti-union discrimination and interference in both law and practice, including in the export processing zones, and the right to collective bargaining for public employees.**

**The Committee noted the Government's statements according to which the authorities were currently working on a partial reform of the Labour Code with the technical assistance of the ILO, taking into account the recommendations of the Committee of Experts, in order to strengthen the protection in law against acts of anti-union discrimination and interference. Furthermore, there was a proposal by the Secretary of Labour to amend the Labour Code so as to ensure that the representatives of employees of public institutions would be able to present lists of claims, just like other unions; these texts would then be submitted to the CES, before being submitted to Parliament.**

**The Committee stressed the importance of the reform process being carried out in consultation with all the workers' and employers' organizations concerned. Observing that these matters have been pending for many years, the Committee expressed the firm hope that the abovementioned amendments would be submitted to the legislature in the near future so that it would be able to note tangible progress towards full compliance of the legislation and practice with the provisions of the Convention. The Committee requested the Government to accept a direct contacts mission to ensure the effective modification of the law and the practice for the full application of this fundamental Convention and to develop tripartite dialogue to resolve the matters concerned. The Committee requested the Government to provide a detailed report to the Committee of Experts for examination at its next meeting in 2013.**

**The Government representative** indicated that his Government was creating the right environment for social dialogue so as to promote tripartism and freedom of association. The CES was the appropriate forum for the issue to be dealt with as a priority. The next step would be to transmit it to the National Congress. His Government did not believe that a direct contacts mission was necessary, but would nevertheless receive it and facilitate its work. He was certain that, when the next report was submitted, this Committee would be able to applaud the progress made.

**TURKEY (ratification: 1952)**

A Government representative expressed his Government's deep regret at his country being included in the final list of individual cases for Convention No. 98. The Committee's decision undermined the credibility of the supervisory mechanism, implying that political considerations outweighed substantive and technical aspects. The decision of the Committee was contradictory since major progress and reforms had been achieved in the area of labour legislation on the basis of which the Committee of Experts had expressed its satisfaction with regard to the application of the Convention. He indicated that these legislative reforms showed the commitment of the Government to apply the Convention. The Government representative indicated that progress included amendments to the national Constitution in 2010, which had paved the way for reforms in labour legislation including the adoption of Act No. 6356 on trade unions and collective agreements, and amendments to Act No. 4688 on public servants' trade unions, which had been sent to the ILO. The amendments to Act No. 4688 enabled representatives of civil servants to negotiate and sign collective agreements. Furthermore, the scope of unionization in the public sector had been extended by reducing the exceptions provided for in law, and following a recent decision of the Constitutional Court, the ban on trade union rights for civilian personnel working at the military institutions had been eliminated. According to the Government representative, the most important changes had been made through the adoption of Act No. 6356, which had not only replaced the trade union legislation imposed by the military, but had also created conditions for more democratic and free industrial relations. The new features of the Act included: (i) the extension of the scope of application of the right to organize to self-employed workers; (ii) the repeal of restrictions on the establishment, composition and requirements to be a founding member of a trade union; (iii) the simplification of the procedure for the establishment of trade unions; (iv) the reorganization or reduction in the number of branches of activity from 28 to 20; (v) the repeal of the requirement for notarial attestation to join or resign from a trade union; (vi) the authorization of multiple trade union memberships for workers employed at different workplaces in the same branch of activity; (vii) the determination by the trade union statute of the maximum amount of union dues; (viii) the authorization of maintenance of membership during temporary unemployment; (ix) the extension of authorized international activities of trade unions; (x) the separation of individual liability from that of the legal personality of the trade union; (xi) the financial auditing by independent chartered accountants; (xii) the strengthening of freedom of association; and (xiii) the free determination of affiliation with a branch of activity by trade unions. Furthermore, the Act had introduced major improvements for collective agreements, and had thereby addressed the comments made by the Committee of Experts in its report, namely through: (i) the enabling of multilevel collective agreements via framework agreements; (ii) the establishment of a legal framework for the regulation of group collective agreements; (iii) the guarantee of the continuity of collective agreement after a full or partial transfer of business ownership; (iv) the reduction in the scope of strike bans; (v) the lifting of restrictions on various forms of strikes, industrial actions and picketing; (vi) the immunity of trade union liability for damages at workplaces during strikes; (vii) the authorization of all confederations to be represented before the Higher Board of Arbitration; and (viii) the replacement of prison sentences by administrative fines for certain infringements included in the previous Act.

With regard to the critical observations made by the Committee of Experts regarding threshold levels and the requirements to sign collective agreements, the Government representative indicated that the new Act had amended the branch of activity threshold from 10 to 3 per cent. Nevertheless, to give trade unions time to adapt to the new conditions, the threshold was set at 1 per cent until July 2016. On the other hand, thresholds for enterprises concluding collective agreements at the enterprise level were reduced from 50 to 40 per cent of the number of workers at the workplace. Concerning the protection of trade union members, he indicated that the Act regulated the protection of trade union officials, shop stewards and individual freedom of association with reference to the relevant ILO Conventions. Furthermore, union officials and shop stewards were given an absolute right of reinstatement. Shop stewards could not be dismissed without a justified reason, which had to be clearly and precisely stated in written form in full conformity with the Workers' Representatives Convention, 1971 (No. 135). Individual freedom of association was guaranteed in the recruitment procedure, employment and the termination of employment. In any lawsuit brought concerning the termination of an employment contract due to trade union affiliation, the burden of proof that the dismissal was not caused by trade union membership laid with the employer. It was frequently claimed, with regard to section 25(5) of Act No. 6356, that workers employed in workplaces employing less than 30 workers were excluded from special compensation for trade union violations. This statement was unfounded since it did not take into account the last sentence of paragraph 5 guaranteeing special compensation for all workers in the case of anti-union dismissal, which could not be inferior to a year's salary. Even if workers did not bring a case to court on the basis of the provisions on protection against dismissal, they were entitled to claim union compensation, which should not be lower than the worker's annual wage. The Government representative further stated that a case had been brought to the Constitutional Court concerning the annulment of the abovementioned provision and a decision was expected soon. His Government considered that the Committee should have awaited the implementation in practice of the new laws before including his country in the list of individual cases.

The Worker members said that they were following the events currently unfolding in the major cities in Turkey with deep concern. They condemned the disproportionate police brutality and expressed their support for those who were fighting for the application of democratic, social and trade union rights. They highlighted the fact that several trade union organizations in Turkey, supported by the International Trade Union Confederation (ITUC), had denounced the particularly frequent discrimination against trade unions in the public and private sectors. It would be helpful if the Government would indicate the procedure for examining complaints of anti-union discrimination in the public sector and would forward statistics on the examination of cases of anti-union discrimination and interference in practice in both the public and private sectors. The Government claimed only to have such statistics for the public sector. Without specific statistics on complaints made and how they had been dealt with, the Committee could not carry out its work. With regard to the public sector, the Worker members recalled that, although Article 8 of the Labour Relations (Public Service) Convention, 1978 (No. 151), provided a certain degree of leeway in the choice of procedures for settling disputes, they nevertheless needed to be quick, impartial and perceived as such by the parties concerned. The procedure for the public sector in Turkey involved submitting written or oral statements to superiors, with the possibility to have re-

course to administrative proceedings as a second step. They considered that that procedure, in particular the first stage thereof, did not guarantee impartiality. The Worker members highlighted problems posed by the adoption, on 18 October 2012, of the new Collective Labour Relations Act, which applied to the private sector. The Bill eventually adopted had been rejected several times by the trade unions. According to information available, the Act contained provisions that were a regression compared to those previously in force. Regarding the thresholds for forming enterprise trade unions, the legislative reform presented new obstacles and indirectly prevented the creation of new organizations in enterprises that already had a union. It was regrettable that the Committee of Experts had not been able to undertake an in-depth analysis of the new Act.

The Worker members noted that there had been significant changes regarding collective bargaining in the public sector. The 2010 constitutional reform had introduced the right of civil servants and public employees to conclude collective agreements. Several legislative amendments, including the adoption of Act No. 6289 amending Act No. 4688 of 25 June 2001 on public servants' trade unions, had subsequently been made in 2012 to give effect to the constitutional amendment. That Act had some positive aspects, for example, concerning the length of the bargaining period, but the effects of the changes in practice remained to be clarified. The Committee of Experts had, however, emphasized that some of its comments had not been taken into account, particularly regarding the direct participation of employers in bargaining, alongside the financial authorities, and the significant role played by bargaining between the parties. Regarding those two points, the usefulness of the General Survey on collective bargaining in the public sector was noted. The Worker members considered it necessary to ensure that the new Acts adopted did not jeopardize the principles of the Convention. An in-depth analysis of the new Collective Labour Relations Act and an assessment of whether Act No. 6289 on collective bargaining in the public service was in conformity with the Convention, Convention No. 151 and the Collective Bargaining Convention, 1981 (No. 154), and how it was being implemented should therefore be conducted.

**The Employer members**, recalling that Turkey had been a Member of the ILO since 1932, noted that the last time it had been called before the Committee because of the Convention had been in 2000. They drew attention to the information that the Committee of Experts had requested from the Government concerning the following: the procedure for examining complaints of anti-union discrimination in the public sector; statistical data showing progress in the efficient handling of alleged acts of anti-union discrimination; and a copy of the Collective Labour Relations Act, for the Committee to examine its contents and scope. They highlighted the legislative reform strengthening the rights of public servants and other state employees in the area of collective agreements. On the other hand, as the Committee of Experts had pointed out, there was no information on such issues as the need for legislation to guarantee direct employer participation in collective bargaining, along with the economic authorities.

The Employer members thanked the Government for the information on Act No. 6356 on trade unions and collective agreements, which was the product of social dialogue and replaced two standards on collective bargaining. Thanks to social dialogue and tripartism, the country had seen major social changes, which were reflected in the joint declaration by the social partners of 10 April 2013. Act No. 6289 on collective bargaining in the public sector and other significant changes had brought the country closer to effective compliance with the Convention.

Since, as a result of those reforms, the workers and employers and their organizations now benefited from a more appropriate level of protection, it was time for the Committee to revise its assessment of the application of the Convention in Turkey. Through technical cooperation activities, the Government should soon be in a position to comply fully with its provisions.

**A Worker member of Turkey** indicated that his organization had been actively involved in the preparatory process of Act No. 6356, but that the final text had been the subject of various amendments without a full consensus being reached. The Committee of Experts had expressed the hope that the new Act would make the necessary amendments to the legislation, but some important amendments were still pending. The new Act abolished union compensation in the case of dismissal of workers due to trade union activities in workplaces employing 30 workers or less, which was leading to difficulties in organizing six and a half million workers. Turning to representation requirements for collective bargaining, he considered that the threshold required for collective bargaining should be kept at a level that secured the existence of independent and strong unions and should not have a negative effect on the right to organize. The new Act had decreased the 10 per cent threshold required at branch level to 3 per cent. However, the main difficulty related to the requirement for a union to represent more than half of the workers in the workplace and 40 per cent of the workers at enterprise level, which had been maintained in the new Act. In addition, while the certificate of competence for collective bargaining of unions was issued by the Ministry of Labour and Social Security, an appeal against this certificate could be launched by the employer or another trade union, and necessary arrangements had to be made in consultation with the parties concerned to overcome this problem. Turning to the implementation gaps of other fundamental Conventions, in particular the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), he pointed out that the approach to search for loopholes in the legislation to keep the union away from the workplace still prevailed and was the biggest obstacle to the effective implementation of national legislation, Convention No. 87 and other Conventions. In this context, he referred to the difficulties encountered by the Food and Tobacco Workers Union in reaching a consensus with the public employer, including through a strike covering 10,000 workers, and by the Aviation Workers Union in trying to reach a consensus to reinstate 305 of the 350 members who had been dismissed due to their trade union activities.

**Another Worker member of Turkey** noted the legislative amendments and indicated that while improvements had been made, as underlined in the report of the Committee of Experts, there were still enormous problems for public employees or even drawbacks with regard to the application of the Convention, despite the visit of the high-level missions to the country in 2008 and 2010. He pointed to a number of difficulties: while the Act extended the period of collective bargaining to 30 days, in practice, collective bargaining was only possible over a period of 15 days, which was insufficient; the exclusive right of the heads of the respective parties to turn to the arbitration board in the event of disagreements; the dominant position of employers in the public workers arbitration board; the absence of the right of appeal with regard to a board decision; the remaining exclusion of public servants in military institutions and security guards from the right to organize under the amended Act No. 4688 (in this regard, he referred to dismissals of members of the police trade union "Emniyet-Sen"); the lack of regulations provided in the amended Act No. 4688 to prevent double standards among trade unions; and the non-recognition of any type

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Turkey (ratification: 1952)

of collective action such as strikes for public servants. Finally, the Worker member expressed the view that the current events in Turkey were a result of the lack of social dialogue between the Government and the social partners.

The **Employer member of Turkey** indicated that the country had just undergone a radical reform process regarding legislation on industrial relations. The recently adopted Act on trade unions and collective agreements included significant modifications on subjects like joining and resigning from trade unions; the number of branches of activities; bans on strikes and lock-outs; and eligibility for collective bargaining. Among the achievements, which had been subject to discussions and ILO criticism for about two decades, the conclusion of framework agreements had been made possible; the requirement for Turkish citizenship in order to be a founding member of a trade union had been removed; notarial attestation to join, resign from or be expelled from a trade union had been removed; the regulation of the functioning of trade unions through their statutes and regulations had been established, enabling trade unions to pursue their statutory activities freely; limitation on membership dues had been removed; thresholds regarding branches of activity had been reduced, and eligibility for bargaining at the enterprise level had also been reduced; the scope of the prohibition on strikes had been narrowed and imprisonment was no longer a penalty for certain offences. The new Act had been prepared through a wide process of social dialogue, so that almost 95 per cent of the provisions included in the new Act reflected a broad consensus among the Turkish social partners. He further referred to the signing by the Labour Minister and a large number of social partners of a Joint Declaration in 2013, in which support was expressed for opening the Social and Employment Chapter in European Union membership negotiations was expressed in view of the substantial legislative changes that had taken place in the country. The extent of legislative reforms and the commitment of the social partners meant that the case should be removed from the list of individual cases.

An **observer representing the International Trade Union Confederation (ITUC)** referring also to the Public Employees' Trade Unions (KESK) and the Confederation of Progressive Trade Unions of Turkey (DISK) stated that the current violations of trade union and human rights in Turkey restricted all aspects of freedom of association and the right to assembly. She expressed the view that the collective bargaining process in Turkey could not be addressed without considering the repressive atmosphere in the country, including repression faced by members of KESK. Examples of such repression included the travel ban on the President of KESK, who had therefore not been able to attend the Conference, the imprisonment of 89 unionists and investigations and trials on nearly all activities organized by KESK members. Some 500,000 public servants did not have the right to join or form trade unions. She went on to point to the importance of addressing trade union rights and political rights in the context of collective bargaining and their relation to other rights such as the right to join political parties of public employees, job security for all workers in the public sector and the right to child care facilities. Whereas the right to strike should be ensured in the context of collective bargaining, such a right did not exist in the public sector. Turning to the issue of representation requirements in collective bargaining, she highlighted the difficulties, including repression, encountered in representing public employees, which had led to other pro-government trade unions being more successful during the collective bargaining process. In addition, the appointment by the Government of the members of the arbitration boards for dispute settlement also implied a violation of the right to

collective bargaining as the Government could directly affect negotiations. The new Act did not withdraw the thresholds for collective bargaining and the requirement for a union to represent more than half of the workers at enterprise level still existed. As a result of the 3 per cent threshold at sectoral level, 28 out of 51 unions could lose their competence certificate. That meant that 5.1 million workers covering 6 per cent of the labour force would not be able to find a union able to sign a collective agreement.

The **Government member of Pakistan** indicated that Turkey had ratified all the fundamental Conventions, and that the application of Convention No. 98 had been noted with satisfaction by the Committee of Experts. It was therefore disappointing to see the case included in the list of individual cases. Turkey had taken significant steps to bring its legislation in line with Conventions Nos 87 and 98. The new laws had been adopted after intense dialogue with the social partners, which demonstrated that tripartism was functioning well in the country.

The **Worker member of France**, referring also to Education International, underlined the importance of effective tripartite social dialogue for social justice, the fight against inequality and respect for fundamental principles and rights at work, which, as the Committee for the Recurrent Discussion had recognized during the International Labour Conference in 2012, were human rights. Respect for freedom of expression within a democratic framework was fundamental to developing social dialogue, which was far from being a reality in Turkey. She went on to point out that the Committee on Freedom of Association, in its March 2012 conclusions on a complaint presented in 2010 concerning the violation of Convention No. 98, had recalled that "no one should be penalized for carrying out or attempting to carry out legitimate trade union activity". However, numerous trade unionists were currently in prison in Turkey or forbidden from travelling because proceedings were under way. Those proceedings were inordinately long, as could be seen from the case of 72 members and officials of KESK arrested by police and on trial since 2012. Some 22 trade unionists had spent 289 days in prison before their trials began. Although they had been released on bail, the proceedings against them were still continuing. The President of KESK had been forbidden from leaving the country because proceedings were ongoing and had therefore been unable to attend the Conference. Procedural delays were a form of harassment and intimidation of trade unionists. She emphasized that long periods of pre-trial detention constituted a violation of the European Convention on Human Rights. She considered that, under such circumstances, collective bargaining had clearly become impossible.

An **observer representing the IndustriALL Global Union** highlighted that Turkey had spent a very difficult year in terms of collective bargaining rights in 2012. According to national legislation, the collective bargaining process could only begin once a certificate of competence had been issued by the Ministry of Labour and Social Security. Until the enactment of the new collective bargaining legislation in November 2012, the Ministry did not issue any certificates of competence for any trade union. With this arbitrary and illegal administrative decision, the right of collective bargaining was de facto suspended contrary to the provisions of the Convention and Turkey's Constitution. The IndustriALL Global Union had filed a complaint before the ILO with respect to that situation. According to the national legislation, trade unions that could not get a certificate of competence were disabled in collecting dues and in appointing trade union representatives, endangering the viability of trade unions and obstructing workers from enjoying their fundamental rights. In particular, workers heavily abstained from joining trade un-



ions since the unions were not able to afford any protection to their members. He went on to state that the difficulties had not stopped with the adoption of the new Act. The new Act maintained thresholds for collective bargaining certification which still constituted barriers to the exercise of freedom of association and collective bargaining since many unions were likely to lose their certification with the creation of larger sectors. Turkey was the only country where a sectoral threshold was necessary for workplace collective bargaining and one third of union members did not have access to bargaining rights. In the meantime, workplace thresholds were still too high, creating huge difficulties for the unions. In addition, the new legislation did not provide any solution to the long-standing judicial processes resulting from the employers' common practice of challenging the issuance of certificates of competence by the Ministry of Labour. During such legal proceedings, union members were often dismissed, as shown by many concrete cases of famous brands in the textile, chemical and metal sectors.

**The Government member of Egypt** stated that the Government had taken significant steps to amend national legislation so as to ensure its conformity with international Conventions. The amendments had been made within the framework of constructive social dialogue and with the participation of all of the social partners. It should likewise be noted that a new Act on collective bargaining in the public service, in line with the principles set out in Conventions Nos 87 and 98, had been adopted in April 2012 and that certain provisions of the Constitution that restricted the right to bargain collectively had been abrogated. The speaker therefore considered that the case should not be examined further by this Committee.

**The Worker member of Germany** stated that the acts of discrimination in the private and public sectors aimed at trade unionists were a matter of concern and discrimination against people who wanted to organize constituted a clear violation of the Convention. The situation affected not only Turkish companies but also international corporations operating in Turkey. The speaker provided examples of employees who had been intimidated because they had wanted to join unions, including on 20 November 2007 when 17 organized employees were arrested in Ankara for allegedly creating a terrorist organization which, according to the union, were baseless claims. The employees were released after 200 days in prison and the Government had provided no information in that regard. In December 2012, 11 employees were sentenced by the criminal court in Ankara to imprisonment for a period of one to six years. Those cases demonstrated the extent of trade union discrimination and were a matter of great concern which should continue to be monitored closely.

**An observer representing Public Services International (PSI)** recalled that in the last year, there had been unprecedented attacks on trade union rights in Turkey, including the arrest in February 2013 of 151 trade union representatives, mostly members of KESK, and the detention of 15 female trade unionists in February 2012 and of another 67 trade unionists in June 2012. Some of those arrested had since been released but others were still imprisoned without formal charges having been filed against them. She indicated that armed police raids on union offices, using excessive violence, had been reported in recent months while a few days ago, municipal workers in Ankara were threatened with dismissal if they participated in protest actions. The speaker observed that the sole intention of the new draft labour law reform was to make it increasingly difficult for unions to register and bargain collectively and that it was essentially another element of the Government's anti-union strategy. She called upon the Government to put an end to the intimidation and harassment of trade union members and leaders, to promptly

release those detained and to undertake the revision of the labour law reform.

**The Worker member of the Netherlands** focused her comments on three issues. First, referring to the May Day celebration, she regretted that excessive police violence used in this year's gathering in Taksim Square had cast a shadow over the Government's initiative to declare 1 May as a public holiday, which had been generally accepted as progress. Secondly, concerning the protection against discrimination for trade union membership and activities, the speaker stressed that collective bargaining was one of the main instruments for income redistribution and, because it was so excessively restricted in law and practice, Turkey was among the top three countries identified by the Organisation for Economic Co-operation and Development (OECD) for income inequality. It was of the utmost importance that the new law on trade unions and collective bargaining agreements effectively removed legal barriers to collective bargaining. That was the only way that the Government could align its legislation with the Convention, and it was unfortunate that the Committee of Experts had not been able to comment on the new law which would have allowed for a discussion in the Committee. Thirdly, with regard to the so-called "double threshold", which imposed on trade unions a high requirement of representation before they could qualify for participation in collective bargaining, the speaker indicated that, from the information available, as well as the statement of the Government representative, it was understood that the double threshold still existed. It had been criticized by the Committee of Experts and by this Committee on several occasions. The percentage of required representation would be increasing from the current 1 per cent. The Committee had been asking the Government to bring its legislation into line with the Convention, which could include not increasing the representation threshold for the sector above 1 per cent. She recalled that workers in companies with less than 30 workers enjoyed less protection against anti-union discrimination. However, section 25(5) of the new Act was ambiguous and could be understood as implying that workers in small companies with less than 30 workers could no longer go to court to obtain compensation in case of unfair dismissal for trade union activities. The Government should be asked, at a minimum, to remove this blatant form of trade union discrimination as soon as possible. Economic growth should be based on a level playing field of fundamental labour standards, including Convention No. 98, which should apply to all workers.

**The Government representative** provided additional explanations on the various points raised during the discussion. Referring to the alleged dismissal of workers on the ground of union affiliation, he drew attention to the Penal Code and the trade union legislation providing for heavy sanctions in case of anti-union discrimination and indicated that persons who had grounds to believe that they were discriminated against due to their union activities could file a lawsuit at any time. Regarding the complaints of anti-union discrimination in the public sector, the speaker stated that measures were set out in Act No. 4688 and relevant circulars for the purpose of protecting the right to organize, avoiding any restrictions on freedom of association and ensuring sufficient protection against all types of discrimination. Section 18(2) of the Act provided that any public institution could not transfer the shop steward, trade union provincial or district representative and branch administrator to another position without stating the specific reasons for such transfer. With respect to the allegations that trade unionists were prosecuted on the grounds of terrorism as a means of systematically stigmatizing and delegitimizing trade union activities, his Government rejected these claims as completely unfounded.

Turkey was a democratic country based on the rule of law and had an independent judiciary. If any trade union members had been arrested or put on trial, this was not associated with their trade union activities but rather with their involvement in violent terrorist activities or the setting up of terrorist organizations. Information received from the Ministry of Justice and the Interior showed that certain trade unionists had been arrested for breaching the Penal Code Act No. 5237, the Fighting Terrorism Act No. 3713 and the Demonstrations and Marches Act No. 2911. As for the “double threshold” system as a barrier to collective bargaining, the speaker explained that the sector-level threshold would be lowered to 3 per cent as of July 2018 but added that the Government was prepared to consider the request of the Worker members not to increase that threshold above 1 per cent. Concerning the declining number of trade unions authorized to sign collective agreements, the speaker observed that the certification of competence for a trade union to conclude a collective agreement was previously determined by reference to inaccurate and inflated statistical data provided by the trade unions themselves. The Government had introduced a new system based on cross-checking the figures of the Social Security Institute since 2009, providing more accurate figures regarding trade union membership and unionization rates. According to recent statistics, in 2013, the rate of unionization in Turkey was 9.21 per cent, which was of course lower than previously established figures. It would now be for the trade unions to intensify their efforts so as to increase the number of their members.

With reference to the incidents surrounding the May Day celebrations at Taksim Square, his Government could not accept any accusations and he indicated that the Government had opened the way for May Day celebrations in Taksim Square after a long period of prohibition. With one exception, May Day was peacefully celebrated throughout the country with 136 events in 76 provinces and the participation of 250,000 people. That year, Taksim Square was closed to mass gatherings for safety reasons due to ongoing construction works. Some marginal groups provoked violent incidents damaging public and private property but police action was at no point directed against any trade union premises or any group exercising its right to freedom of association or freedom of speech.

The Worker members emphasized the fact that the Government should be asked to submit the statistical data that the Committee of Experts had requested so that it could verify whether the procedure used for complaints of anti-union discrimination in the public sector afforded sufficient protection. As for the private sector, since the Government had said that there were no statistics available on cases of anti-union discrimination, it should be asked to implement a reliable system for identifying such cases. In addition, the Government should also provide detailed information on how the new law governing labour relations had taken account of the comments of the Committee of Experts over many years, as some of the requirements of the law appeared to run contrary to the provisions of the Convention. The Worker members concluded by emphasizing that since the collaboration between the Office and the Government had not yet produced the desired results, technical cooperation should be strengthened in order to resolve the urgent issues: removing the provisions from the law on labour relations that could result in discrimination between workers in small and large enterprises; not increasing the threshold that had been set for the establishment of trade unions, given that the Government had expressed its goodwill in that regard; and removing the obstacles to freedom of expression and trade union industrial action.

The Employer members appreciated the progress that had been made in terms of labour legislation, particularly as it was the result of tripartite social dialogue. However, additional information was required, including specific statistical data, in order to determine the extent of the problem in the public sector. In addition, the legislation should be amended in consultation with the social partners to be in full conformity with the Convention. To that end, the Government should accept technical assistance from the Office, undertake to gather the information that had been requested and send a detailed account in time for the forthcoming session of the Committee of Experts.

### **Conclusions**

The Committee took note of the oral information provided by the Government and the discussion that ensued.

The Committee noted that the outstanding issues concerned numerous allegations of acts of anti-union discrimination in both the public and private sectors and the national mechanisms available to enable complaints about such acts, as well as the need to ensure a legislative framework for free and voluntary collective bargaining.

The Committee noted the information provided by the Government concerning the adoption of the law on trade unions and collective agreements No. 6356 and the law concerning collective bargaining in the public service No. 6289, adopted in the spirit of tripartism and intensive social dialogue, as well as with ILO standards as a main reference point. It further observed the Government’s enumeration of a number of provisions that were brought into closer conformity with the Convention. The Government also stated that the comments of the workers’ representatives concerning the double threshold system would also be taken into consideration.

The Committee welcomed the elements of progress that had been observed in this case through the adoption of the law concerning collective bargaining in the public service but further noted the need to intensify efforts related to certain categories of public service workers who were not covered by this law as well as other limitations to collective bargaining in the public sector. The Committee expressed the firm hope that the legislation, and its practical implementation, would ensure fuller conformity with the Convention and invited the Government to avail itself of the technical cooperation of the ILO in this regard. In particular, the Committee requested the Government to establish a system for collecting data on anti-union discrimination in the private sector and to ensure the removal of any ambiguities in the new legislation in light of its assessment by the Committee of Experts. The Committee requested the Government to provide all relevant information, including as regards the functioning of national complaints mechanisms and all statistical data related to anti-union discrimination in the private and public sectors. Finally, the Committee requested the Government to supply a detailed report to the Committee of Experts for examination at its next meeting this year.

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

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**DOMINICAN REPUBLIC (ratification: 1964)**

The Government provided the following written information.

On 26 January 2010, the National Congress adopted the final amendment to the Constitution, reaffirming the nation’s commitment to respect the prohibition of any act considered discriminatory. Article 38 stipulates: “The State is founded upon respect for the dignity of the individual and is organized for the real and effective protection of the fundamental rights inherent to every person. The dignity of human beings is sacred, innate and invio-

lable. Public authorities have a fundamental duty to respect and protect human dignity.” Likewise, principle VII of the Labour Code states that: “Any discrimination, exclusion or preference on grounds of sex, age, race, colour, national extraction, origin, political opinion, trade union activity or religious belief is prohibited, apart from those exceptions made in law for the purpose of protecting individual workers.” Principle IV of the Labour Code stipulates: “Labour laws shall be territorial in scope and shall apply without distinction to Dominicans and foreigners.” This means that the obligations and rights provided for in labour standards apply equally to Dominican and foreign workers, regardless of their migration status, and the benefits deriving from the employment relationship are therefore exactly the same and are provided on an equal footing.

In addition section 6 of Act 135-11 states: “Any person living with HIV or AIDS has the right to work; consequently, any labour discrimination by an employer, whether physical or legal, public or private, Dominican or foreign, is prohibited; and the employer shall not, directly or indirectly, request a test to detect HIV or its antibodies as a condition for obtaining or keeping a post or for promotion.”

As evidence of the integration of policies on migration with the world of work, the inter-institutional agreement reached between the Ministry of Labour, the Ministry of External Relations and the Directorate General for Migration has been used to coordinate action on requests for registration of contracts of employment for people who are not Dominican. Specifically, a visa is issued, once a contract has been offered by an enterprise, then the contract is registered with the Ministry of Labour. Lastly, the migrant worker is issued with an identity document by the Directorate General for Migration. As an example of this procedure, a pilot programme was undertaken at an enterprise in the Dominican Republic’s agricultural sector, under which working visas were granted to 325 workers of Haitian origin. Their contracts were registered and the Directorate General for Migration issued an official document regulating their migration and work status. The Ministry of Labour, the Ministry of External Relations and the Directorate General for Migration have organized three activities in the last seven months: a workshop for employers in the hotel sector; a workshop for the construction sector, held jointly with the National Construction Association; and a workshop for all those in charge of local offices and heads of department of the Ministry of Labour. With regard to comments on wage differences between Dominican and foreign workers in the construction sector, it should be pointed out that the training programme covered the issue of equal pay between men and women and between Dominican and foreign workers, as provided in the Labour Code.

The Government also highlights the work of the Department for Legal Assistance, which operates within the Ministry of Labour and provides free legal assistance to all workers, including workers of Haitian origin. In March this year, with assistance from the International Organization for Migration (IOM), a leaflet produced by the Ministry of Labour was translated into Creole, which gives specific information on how to file any kind of labour-related complaint and on fundamental rights. In 2013, memoranda of understanding have been signed between the Ministry of Labour and the country’s main laboratories.

Resolution No. 39/2012 established the Technical Committee for Equal Opportunities and Non-Discrimination, consisting of experts in the fields of gender and development, the General Directorates of the Ministry of Labour and the Technical Unit for Comprehensive Care (UTELAIN). Two forums were held on equal opportunities and non-discrimination and one on

labour relations and human development. The latter was organized to celebrate the International Day for the Elimination of Violence against Women on 25 November, in which representatives of workers, employers and the Government participated. Between January and May 2013, the Government carried out the following actions in the area of equal opportunities and non-discrimination: the “Manual for Women’s Labour Rights” was reviewed by the Committee created by decree to deal with these matters; an awareness-raising workshop on equal opportunities and non-discrimination was held for heads of regional labour offices; an awareness-raising workshop on equal opportunities and non-discrimination was held for the deputy minister, directors and departmental heads within the Ministry of Labour; an awareness-raising workshop on equality and non-discrimination was held for technical staff in the Directorate General for Employment, UTELAIN and other units of the Ministry of Labour.

A draft Decree on the creation of a tripartite committee on equal opportunities and non-discrimination has been prepared, which will allow employers, workers and State institutions to coordinate and carry out specific actions to benefit both male and female workers in the country, and also to develop programmes on non-discrimination policies. In January 2013, the Ministry of Labour drew up a Strategic Development Plan for 2013–16, which contains a component entitled Equal Opportunities and Non-Discrimination and which built on a similar plan that was implemented in 2009–12. The lack of information for which the Government has been called before the Committee to address does not mean that it has abandoned either its policy of zero tolerance towards any form of discrimination or its efforts to ensure the effective application of the Convention.

In addition, before the Committee, a **Government representative** reiterated the information contained in the written document submitted by the Government and added that his Government categorically rejected all forms of discrimination, be they directed at Dominicans or foreigners. The Supreme Court had ruled on 2 June 2012, that foreigners who desired or were obliged to make use of the justice system, either as complainant or defendant, did not have to post a bond; they could therefore pursue litigation without cost. The speaker also mentioned the adoption of the Regulations to the General Migration Act, in October 2011, which applied not only to those who wished to enter the Dominican Republic, but also to those living in the country in an irregular situation. The Ministry of Labour was devising a mechanism to monitor all workers through the Labour Registration System (SIRLA). In 2012, 14,676 foreign workers had been registered, of whom 5,662 were Haitian. As of May 2013, 5,585 contracts for Haitian workers had been registered. The Government had introduced an orientation and training programme for employers and workers on relevant legislation in force. The Department for Labour Inspection also operated a preventative inspection system to monitor effective compliance with standards, which included the issue of equal pay. In 2012, the Labour Migration Unit had been established, under decision No. 14/2012.

In 2013, it was agreed with several laboratories that they would not carry out tests that were not covered by the country’s existing standards without the consent of the individuals concerned. In particular, the agreements contained legal provisions expressly prohibiting tests that could give rise to discriminatory acts against men or women. The Government representative also provided information on gender and anti-discrimination training measures for staff of the Ministry of Labour and on other training and awareness-raising activities carried out. His Government requested the Office to continue offering

technical assistance and underlined the Government's commitment to providing information on all measures taken to apply the Convention.

**The Employer members** recalled that the case had been double footnoted by the Committee of Experts in 2012. The Committee of Experts had made 12 observations on the case. The Employer members thanked the Government for its detailed report on the activities that it had carried out, and for the additional written information provided. They also observed that, in its observation, the Committee of Experts had twice noted with interest elements related to the case. Firstly, concerning measures to address discrimination based on colour, race and national extraction, it had noted with interest the adoption on 19 October 2011 of Regulation No. 631-11 to the General Migration Act, section 32 of which established that the same fundamental rights applying to nationals were guaranteed to resident foreigners. Secondly, with regard to real or perceived HIV status, the Committee of Experts had noted with interest the adoption of Act No. 135-11 on 7 June 2011, section 6 of which prohibited HIV testing as a requirement for obtaining or keeping a job or obtaining a promotion. The Employer members also noted those issues with interest, as well as the additional measures that the Government was taking. It was perhaps as a result of the recommendations of the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and of the Independent Expert on minority issues, cited in the observation of the Committee of Experts, that the Government was taking effective action that was increasingly in line with the Convention. The Employer members noted the Government's willingness to receive technical assistance from the Office and its commitment to keep the ILO informed of the progress achieved.

**The Worker members** observed that the Committee had already been examining for some 20 years the application of the Convention not only to migrant workers of Haitian origin, but also to dark-skinned Dominican nationals. Other serious forms of discrimination included HIV testing, pregnancy testing in export processing zones (EPZs) and cases of sexual harassment in industry. Regarding discrimination based on colour, race or national extraction, a new Regulation on migration had been adopted on 19 October 2011 providing that foreign residents were guaranteed fundamental rights on equal terms with Dominican nationals. According to the report of the Committee of Experts, migrant workers in an irregular situation would be regularized and allowed to work and to benefit from social security coverage on an equal footing with national workers. Nevertheless, the national trade unions still considered that the discrimination problems of Haitian migrants persisted, even the second or third generation who had been born on Dominican territory. It was reported that the poorest inhabitants of the country were of African extraction and included some 800,000 immigrants of Haitian origin, most of whom did not have an identity card and therefore had no access to social security. They were paid significantly lower wages than national workers particularly in the construction and agriculture sectors. It was, therefore, necessary to check the facts on the ground in order to establish the situation of migrants who were non-resident in legal terms, namely those who had no residence permits.

Despite assurances from the Government that national law prohibited all forms of discrimination, thousands of Haitians living and working on the national territory were still without equal rights as a result of being without identity documents, while the only figure put forward by the Government concerned a measure to give legal status to 325 workers in agriculture. Attention should also be drawn to the difficulties faced by these workers, espe-

cially young women working in garment factories in EPZs who, in violation of the Convention, were subjected to mandatory pregnancy testing before being hired, with the results of such tests being sent to the employers. However, the Government had not supplied any information on the progress made in the adoption of amendments to the Labour Code in that respect or on the application in practice of section 47(9) of the Labour Code, which prohibited sexual harassment by representatives of the employer. Apart from awareness-raising measures for medical laboratories, the Government had provided no clear indication of its intentions to combat such practices. Regarding real or perceived HIV status, it should be welcomed that under the 2011 Act it was forbidden to require HIV testing as a condition for obtaining or keeping a job, or for promotion, and any dismissal on that basis would be deemed null and void and punishable by heavy fines. It remained to be seen whether those measures would be effective, as there was evidence that HIV detection tests were continuing in practice. The situation was unacceptable and warranted very close scrutiny by the Committee.

**The Employer member of the Dominican Republic** stated that the current legislation made it possible to strengthen non-discriminatory practices. The legislation established equality of rights for all men and women with any distinction. Under the General Migration Act and its Regulation, it was planned to regularize the status of all foreign nationals living in the country. Act No. 135-11 also guaranteed the rights of persons living with HIV and AIDS. The Directorate General for Migration of the Dominican Republic was not only engaged in regularizing the migratory status of persons in transit, but could also claim other important achievements in that process. Employers were taking up the challenge in relation to those matters. They had promoted, participated in and co-sponsored activities against discrimination and to improve equality of opportunity with the Ministry of Labour. Such meetings had been held in various sectors, such as EPZs, agro-industry and tourism. The tripartite programme developed in the EPZ sector to establish policies for the prevention of HIV and AIDS and to guarantee the rights of those concerned warranted special attention. The participants included the Dominican Association of Free Zones (ADOZONA), workers' organizations from EPZs, UTELAIN and the National Council for EPZs. Since 2011, the ILO, through its Office in Costa Rica, had been implementing the Bávaro-Punta Cana Regional decent work project. The success of the project had meant that it was being replicated in other areas in the country. The employers in his country considered that the case needed to be examined on the basis of official verifiable information, leaving aside political considerations and they were committed to continue promoting and applying the relevant legislation. He requested that ILO assistance continue with a view to strengthening the inspection system.

**The Worker member of the Dominican Republic** stated that the workers in the country had been fighting for their human rights for over 50 years and that in the process they had obtained significant advance including with respect to the new Constitution, the Labour Code and the legislation concerning HIV and AIDS. They had been actively involved in drafting those texts, which were very clear. Those texts raised no concerns for the workers. The problem was that often they were not applied, or at least not properly. In this context, there were also serious violations 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). For example, his organization, the Autonomous Confederation of Workers' Unions (CASC), worked with Haitian workers, social organizations and the Catholic priesthood to improve the conditions of em-

ployment of Haitian workers. The CASC also received complaints of discrimination based on sex or on real or supposed HIV status from workers in EPZs, although this only occurred where there were no workers' organizations, which demonstrated the relationship between the Convention under examination and other workers' rights. The Dominican and Haitian Governments had reached agreements for Haitian workers to have official documents; however, the problem of official documents concerned not just Haitians, but Dominican nationals as well, who could not therefore have access to social security. He also referred to the efforts being made so that workers in the informal economy could have access to social security. In general, the situation was changing for the better as a result of the active contribution of the trade unions. He considered that a distinction needed to be made between the law, which was clear, and its implementation, which was where the problems arose. He asked that the ILO provide training. Meanwhile, there would always be some people who engaged in discrimination, and cooperation was needed so that individual cases could be resolved and to achieve full observance of human rights for everyone.

**The Government member of Colombia**, speaking on behalf of the Government members of the Committee, which were members of the Group of Latin American and Caribbean Countries (GRULAC), said that they had listened carefully to the details provided by the Government representative concerning the action taken in relation to the Convention and the comments made by the Committee of Experts. Those comments related to the Regulation to the General Migration Act and the establishment in 2012 of a labour migration unit in the Ministry of Labour with the objectives of ensuring compliance with the rights of migrants through inspection procedures, guaranteeing compliance with labour laws applicable to foreign nationals and disseminating information on the rights of foreigners. She also stated that in 2012 the Ministry of Labour had established the Committee for Equal Opportunities and Non-discrimination, which sought to raise the awareness of workers and employers concerning the application of labour laws from the perspective of equality and equity between all the partners in the world of work. She reiterated the commitment of GRULAC to the protection and promotion of equality of opportunity and non-discrimination in employment in all parts of the world. They welcomed the efforts made by the Government and encouraged it to continue with the measures taken with a view to the successful implementation of the Convention.

**The Worker member of the United States** recalled that the Dominican Republic – Central America–United States Free Trade Agreement (CAFTA–DR), signed in 2004 by the Governments of the Dominican Republic, the United States and other countries, required the Dominican Republic to comply with its national laws and ILO standards. However, the Government had long delayed the promised action to address persistent problems of workplace discrimination faced by women, people of colour and migrant workers. For a number of years, the Committee of Experts had raised concerns about the persistence of discrimination based on sex, and particularly mandatory pregnancy testing, sexual harassment and the failure to apply the legislation effectively, especially in EPZs. Although the action taken included training and awareness-raising efforts, the Government had failed to provide adequate information on the related laws and on practices to prevent or eliminate such recurring practices. Moreover, workers and unions continued to report systematic practices of gender discrimination in EPZs and elsewhere. Most workers in EPZs were poor, young, unmarried mothers between the ages of 19 and 25, whose workplace experiences left them devastated. Many reported pressure

to have sex with their supervisors under threat of dismissal or punishment if they refused. Others continued to report compulsory pre-employment HIV and pregnancy tests, as well as recurrent questions on their marital status. If they tried to form unions to put an end to harassment, they were dismissed. Although women's employment had a strong positive impact on social and economic development in most countries, that could only happen when it was decent work in terms of wages, and the right to organize and to non-discrimination. She also drew attention to a recent case concerning discrimination in supply chains. Following the dismissal of 84 Haitian coconut peelers from a coconut farm, the plant owner had closed the facility and disappeared without paying the wages and severance payments due after up to 13 years of service. Dominican union leaders who had accompanied representatives of the workers found that many of those concerned had been brought to the country illegally, some as children, to work in inhumane conditions. Disturbingly, the Ministry of Labour had approved the plant closure without any investigation into the wages, severance and other payments due to the workers, who were all Haitian migrants. Similar problems had been made concerning the supply chain for aloe-based products. Although the focus was most frequently on problems of freedom of association in global supply chains, the examples provided showed that the private voluntary audit and certification systems used by multinational corporations and major brands failed almost completely to identify serious workplace discrimination on grounds of gender, race and the national origin of migrant workers.

**The Worker member of Brazil** stated that the situation in Haiti was forcing Haitians to migrate to various neighbouring countries, with the majority going to the Dominican Republic. Haitians suffered systematic discrimination in terms of wages and social security, among other areas. The documentation problems that they suffered from as a result of not being appropriately regularized made them especially vulnerable and employers took advantage of that vulnerability to increase their own profits and to pay them less or not at all. The lack of documents made it much more difficult for those workers to exercise their rights. There was legislation in the Dominican Republic which, if applied, would resolve the problem and guarantee Haitian workers the same rights as the rest of the population. He mentioned a coconut husking enterprise in San Cristóbal where workers had not received their wages and had protested for 20 days in front of the Ministry of Labour. Worse still, the closure of the enterprise had been authorized by the Ministry of Labour without paying the workers, which was unacceptable. If people could be hired and dismissed without being paid, there was a serious problem which could not be resolved merely through discussion in this Committee. There should be a mission to address these problems in the country through a process of dialogue with all the social partners.

**The Worker member of Costa Rica** emphasized the gravity of the situation faced by women in the Dominican Republic. Discrimination against women took various forms. The requirement for negative pregnancy tests prior to recruitment was highly discriminatory as it was in violation of the protection required for reproduction. Women should only inform employers that they were pregnant if they needed protection, for example against dismissal. Such information should not be required in the interests of employers. Equality of opportunities and of remuneration did not exist for women, even though they were engaged in work of equal value requiring the same level of skills as the work performed by men. The existence of sexual harassment was a matter of concern in EPZs, transport and the banana industry. Many employers also required

HIV testing, which was in violation of a whole series of ILO standards. Haitian women migrant workers were subjected to extreme levels of discrimination. The Government had failed to provide them with the necessary papers, which meant that their children, who were often born in the Dominican Republic but not issued with birth certificates, were denied access to school and were condemned to a life of extreme poverty. The United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had called on the country to adopt a policy and legal strategy, supplemented by an ethical and cultural strategy to eradicate the deep-rooted causes of racism and racial discrimination in the country and bring an end to the invisibility and silence of minority groups and other persons who were victims of discrimination. However, the Government had not expressed any interest in the adoption of such strategies. International trade union confederations would remain vigilant concerning the Dominican Republic and other countries in the subregion which continued to violate human rights systematically and would denounce them to the international community.

The Government representative indicated that the comments made by the various members of the Committee, and the indications provided by the Employer and Worker members with a view to improving the application of the Convention were appreciated. In no country in the region, and even in the world, was there so much solidarity with Haitians. In the Dominican Republic, Haitian women crossed the border so that they could give birth a few hours later in Dominican hospitals. His country offered opportunities for work, land and housing to Haitian workers, and education for Haitian children. His Government challenged anyone who so wished to ask the thousands of Haitian and dark-skinned Dominican workers how they felt working in the Dominican Republic in the tourism, telecommunications, telemarketing and construction sectors. With regard to discrimination on grounds of sex, he indicated that the previous week discussions had recommenced on possible amendments to the Labour Code, with the establishment of a tripartite commission for that purpose. In January 2013, the Ministry of Labour had prepared a strategic plan for 2013–16, which contained a component on equality of opportunities and non-discrimination, and which built on a similar plan for 2009–12. A total of 81 seminars had been organized for private sector enterprises on the prohibitions contained in Act No. 135-11 on HIV and AIDS. Workshops had also been organized for persons responsible for communication in the Ministry, and in particular a workshop organized by the ILO had been held with broad participation by trade union federations and EPZs. Some 22 memoranda of understanding had been concluded with private enterprises.

With reference to the allegations concerning the lack of equality for Haitian workers, he emphasized that acts of discrimination were minimal, as indicated by the Worker member of the Dominican Republic. What would happen to Dominican workers when they arrived in Puerto Rico in small boats and were detained by the authorities? Were they able to demand that they be regularized by the authorities of Puerto Rico? In relation to the references made to an enterprise in the coconut sector which had closed in accordance with the national legislation, his Government would produce a document from the lawyers representing the trade union federations requesting the labour court of San Cristóbal to suspend the execution of the measures ordered and to shelve the case as a result of an amicable settlement. That implied that the case had been set aside and a definitive solution reached. The rights of the workers had been ensured. The Government reaffirmed its commitment to the continued application of

policies resulting in equality for men and women without any type of discrimination, in accordance with the Convention and the national legislation.

The Employer members noted the full information provided by the Government and the concerns expressed by the various Worker members. In particular, amendments had been made to the Constitution and to the legislation respecting labour, migration and access to work on health grounds. The Employer members noted that the new legislation prohibited employers from requiring HIV tests prior to recruitment and that there was full equality of rights between Dominican and foreign workers. They hoped that the legislative amendments would be applied in practice so as to resolve the problems raised by the Committee of Experts at its sessions in 2011 and 2012. They noted with interest the Government's request for the Office to extend its cooperation and technical assistance with a view to achieving the objectives set out in the Strategic Development Plan 2013–16 and to issuing a decree on the functions of the Tripartite Committee on Equal Opportunities and Non-discrimination. They hoped that the Government would provide further information reporting additional progress.

The Worker members emphasized the serious problems that arose in the application of the Convention with hundreds of thousands of migrants of Haitian origin living and working in the Dominican Republic who did not enjoy equality of treatment with Dominican nationals, and who were without identity documents and excluded from social security. Although it knew of the situation, the Government pretended to be unaware of it. The Committee should therefore continue to follow the case closely. In addition to noting that the legislation was not in full conformity with the Convention, attitudes would have to change with a view to attaining greater mutual respect between individuals. The points raised by the Committee of Experts needed to be resolved without delay as it was a long-standing case, which had warranted a double footnote in 2012. The Government should therefore: (i) report to the Committee of Experts on the measures taken to give full effect to Regulation No. 631-11 of 2011 of the General Migration Act and to ensure that migrant workers did not suffer any discrimination based on any of the grounds set out in the Convention; and (ii) take measures requiring employers to comply with the provisions of the Labour Code, with particular reference to such despicable practices as pregnancy tests prior to recruitment and tests for HIV status. Information demonstrating the effective implementation of these measures needed to be provided to the Committee of Experts for its 2013 session. The Government should be called upon to avail itself of ILO technical assistance on those issues.

### **Conclusions**

The Committee took note of the oral and written information provided by the Government representative and the discussion that followed.

The Committee recalled that it had last examined this case in 2008, and that it raised issues with respect to discrimination in employment and occupation against Haitians and dark-skinned Dominicans, discrimination based on sex, including mandatory pregnancy testing and sexual harassment, and mandatory testing to establish HIV status.

The Committee noted the information provided by the Government in relation to recent developments, including with respect to the strengthened legislative and regulatory framework addressing discrimination generally, and discrimination against migrants in particular, as well as clearly prohibiting HIV testing as a requirement for obtaining or keeping a job. It also noted the inter-institutional agreement aimed at ensuring coordinated action regarding requests for registration of employment contracts of migrants and the

issuance of visas and identity documents, as well as the awareness-raising activities that had been undertaken. It noted further the establishment of the Technical Committee for Equal Opportunities and Non-discrimination, and the elaboration of the Strategic Development Plan, 2013–16.

Welcoming the initiatives taken by the Government, the Committee also noted that the practical impact of these measures remained unclear. The Committee, therefore, requested the Government, in collaboration with employers' and workers' organizations, to take firm steps to ensure workers were protected against discrimination in practice on all the grounds enumerated in the Convention, including workers of Haitian origin and dark-skinned Dominicans, migrant workers in an irregular situation, women working in export processing zones, and workers in construction and in agriculture. It also urged the Government to continue and reinforce its efforts to raise awareness in this context and to bring an end to the practice of pregnancy testing and HIV testing to gain access to and to maintain a job. The Committee also asked the Government to ensure the efficacy and accessibility of monitoring and enforcement to address discrimination, and to ensure that complaints mechanisms were accessible to all workers in practice, including for those not represented by trade unions.

The Committee welcomed the Government's request for ILO technical assistance in order to continue to make tangible progress in the application of the Convention, and hoped that such assistance would be provided in the near future. The Committee requested the Government to provide a report to the Committee of Experts, including detailed information regarding all issues raised by this Committee and the Committee of Experts, for examination at its next meeting.

#### ISLAMIC REPUBLIC OF IRAN (ratification: 1964)

A Government representative stated that his Government attached significant importance to the proper functioning of the ILO supervisory system and would continue to do so. While the Government had submitted an exhaustive report to the Committee of Experts, containing the requested documents and information it had not been duly taken into account. The Committee's report stated that no action had yet been taken or reported on the measures to amend section 1117 of the Civil Code, to ensure equal family allowance and child benefit for men and women workers, and to review the Bill on early retirement of women. Contrary to the findings of the Committee, in order to give effect to the Convention, the Government had further strengthened its supervisory mechanisms, and in 2011 four technical bodies were established to amend the Labour Law, the Social Security Act, and the occupational safety and health regulations, and to promote social dialogue. The Government had provided the Committee of Experts with a full explanation on the above issues. In particular, the Government had submitted to Parliament several legislative amendments pertaining to female workers and was awaiting their final approval. In particular, the speaker referred to those ensuring equal pay for work of equal value for men and women workers, and prohibiting any type of discrimination based on the principles of the Convention; prohibiting termination of employment of female workers during the period of pregnancy and maternity (section 77 of the Labour Law); and prohibiting night work for women, except with respect to jobs exceptionally specified and authorized by the Tripartite Council on Technical Safety and Occupational Health.

Commenting on the Labour Law amendment, the speaker noted that the Council of Ministers had adopted a new bill incorporating, among other points, the views of the social partners. The proposed bill was submitted to Parliament on 22 October 2012. Prior to its final approval, the bill still could be subject to revision and amendment by the social partners who were constantly consulted by

the parliamentarians on the matter. Commenting on the situation of social dialogue in the country, he indicated that contrary to the observation made by the Committee of Experts, the ILO Declaration on Fundamental Principles and Rights at Work had received rather special attention of the Government and the legislature. As a result, the number of provisions concerning social dialogue in the new Labour Law had increased from 18 to 29. Section 131(4) of the Labour Law had been amended in close consultation with the social partners. The new amendment had duly provided for the establishment of free trade unions and their confederations at the enterprise, and/or industry levels. Referring to the concerns expressed by the Committee of Experts in respect of the absence of an appropriate legal framework for freedom of association and social dialogue, the Government categorically rejected any such assumptions and reiterated its strong adherence to the principles of social dialogue. The Government interacted with social partners not only out of obligation, but also due to the necessity to ensure sustainable development and social justice. Institutions such as the High Tripartite Labour Council, the High Tripartite Employment Council, the High Tripartite Council of Safety and Occupational Health were just a few examples of the numerous national frameworks that practiced social dialogue in an environment of freedom of association. In addition to the above national tripartite structures, workers' and employers' associations were also consulted on the establishment of the National Tripartite Committee on the Labour Law Amendment.

With regard to the situation of women workers, the observation of the Committee of Experts underestimated both the realities of the Iranian developing society and the Government initiatives for the promotion of the status of women in the world of work. He also reiterated the Government's earlier statement to the effect that the Family Protection Bill had been officially approved by Parliament in 2011 and had entered into force. Regarding the early retirement of women Bill, he recalled that based on the Civil Service Early Retirement Act adopted in 2007, the Government was only authorized to practice the retirement scheme for official and contractual employees with at least 25 years of service by granting them a maximum of five years annual incentives. Contrary to the finding of the Committee of Experts, there was no coercion in this respect. The Bill did not impose any age condition and it was only enforced provided that the employees applied voluntarily, irrespective of their age and gender. Furthermore, the Family Allowance Amendment provided family allowance for both male and female workers (even for a couple working at the same workplace). As per section 86 of the Social Security Act, the salary and fringe benefits specified in the Labour Law were paid based on the work value and irrespective of the gender of the worker. Hence, a husband and wife working at the same enterprise were equally and indiscriminately entitled to housing, food, and family and child allowances. With regard to section 1117 of the Civil Code, the speaker reiterated that this provision had been officially superseded by the Family Protection Bill that granted equal rights to both spouses to prevent each other from taking up a job or profession that may adversely affect the dignity, integrity and the interests of the family. Any such decision by a spouse could be appealed in court, pursuant to the new Family Protection Law. Accordingly, section 1117 of the Civil Code had been irrevocably repealed.

Regarding the alleged denial of access to top management positions to women, there was no legislation or procedure that could either explicitly or implicitly encourage such practice. To the contrary, women's role in administrative and legislative decision-making positions, as in the Parliament, the Council of Ministers and the judiciary,

showed significant progress in terms of women's access to higher managerial positions, both in the public and private sectors. Nowadays, women occupied the position of advisors and vice-advisors to the President, Parliament, etc. Many of them were also members of parliamentary standing committees, government decision-making committees, chief executives of the Central Bank, chaired various city councils, High Council of Cultural Revolution, High Council of Employment, High Council of Health and the High Council for Youth, were deputy ministers and headed public and private organizations. Furthermore, with regard to the alleged failure to address the issue of giving women access to all positions in the judiciary, including those qualified to hand down judgments, the speaker stressed that all female and male judges were equally paid and women enjoyed the same position in the penal courts, family courts and juvenile courts. As sitting judges, together with their male judge colleagues, they could also deliver equally binding judgments. The Government pledged to genuinely partner with the ILO and the Committee of Experts on technical cooperation and looked forward to furthering collaboration with a view to ensuring the application of international labour standards.

**The Worker members** stressed that the Islamic Republic of Iran was among the countries with the widest gender gap in the world. They recalled that in 2010 this Committee expressed its deep disappointment that firm promises made by the Government in 2006 to take all appropriate measures to bring its legislation and practice into line with the Convention had not been fulfilled. While noting that the Government had submitted a report on the implementation of the Convention in August 2011, the Worker members found the content of the report unsatisfactory. They shared the Committee of Expert's deep regret regarding the lack of progress in revising the legal framework and pointed out that none of the legal revisions requested by the Conference Committee in 2010 and before, had been put in place. Legislation prohibiting discrimination in employment and education had still not been adopted, a National Committee to Monitor the Application of International Labour Standards was still identifying its goals, and section 1117 of the Civil Code, which provided that a husband could prevent his wife from taking up a job or profession, as well as the obligatory dress code, had still not been repealed.

While recognizing that the Government had adopted several measures which, at first glance, appeared to be promoting women's employment, the Worker members considered that these measures seemed to be intended to promote the role of women as mothers and housewives, rather than to support female participation in the workforce. They stressed that the newly proposed legislation might in fact deteriorate access to employment and education for women, in particular for single women. They also deplored proposals that, although not accepted, were indicative of the restrictive atmosphere in which women sought employment, such as the obligation for single women below the age of 40 to require permission from a tutor or an Islamic lawyer to apply for a passport. Moreover, the recent restriction in the access of women to certain university courses could reverse the trend in women's access to higher education and further limit their access to higher level employment and decision-making positions. The Worker members reiterated their concerns with respect to discrimination in social security regulations that may favour the husband over the wife in pension, child and other benefits. Many women worked in the informal economy, and women tended to be employed in lower paid, less secure jobs.

The Worker members further addressed the issue of discrimination against religious and ethnic minorities and stated in particular that the Baha'i were not permitted to

hold governmental jobs, either in the civil service, in education or in the legal system. In the private sector, business licences were often denied or revoked, and Muslim employers were warned against hiring or retaining Baha'i employees. The Worker members recalled that the Committee of Experts also addressed the issue of discrimination on the basis of political opinion. The Islamic Republic of Iran ranked among the four countries with the highest number of journalists in prison and, contrary to the Government's claims that trade unions could freely be established in the country, the painful experience of workers who tried was that of serious repression, including long periods of imprisonment. Restrictions on the right to organize and lack of trade union freedom and independence were hindering effective social dialogue that could address the issue of discrimination in employment and education.

**The Employer members** noted with regret that no concrete results had been achieved even though for many years, both the Committee of Experts and this Committee had been raising concerns regarding the laws and regulations that discriminated against women. While the Committee of Experts had noted in 2009 certain improvements in the areas of education, vocational training and employment of women, it remained concerned about the lack of evidence of real progress regarding the situation of women in the labour market. The Employer members stressed that despite the Family Protection Act, section 1117 of the Civil Code, which provided for the right of a husband to object to his wife's profession, still had not been repealed or amended. While the Employer members welcomed the Government's indication that the number of female judges had increased, the Committee of Experts observed that the Government had not addressed the issue of giving women access to all positions in the judiciary, including those qualified to hand down judgments, as no steps appeared to have been taken to address these limitations set out in the 1982 Law on the selection of judges and Decree No. 5080 of 1979. The Employer members noted the Government's indication that both men and women were not hired after the age of 40, with a possible extension of five years. In this respect, they pointed out obstacles for women being employed after the age of 30, and were concerned about the lack of information regarding women in the labour market. They also raised concerns about the legislation imposing a dress code and the discrimination in social security provisions. All these legislative measures had a negative impact on the employment of women. The Employer members urged the Government to take concrete steps to ensure comprehensive protection against direct and indirect discrimination on all the grounds enumerated in the Convention.

**The Worker member of Canada** indicated that Iranian Gross Domestic Product (GDP) increased by 2.5 per cent annually and was expected to double in the next five years resulting in a 45 per cent inflation rate. This meant that married women needed more than ever to work to satisfy the needs of their families. However, according to the Government's report concerning the implementation of the Employment Policy Convention, 1964 (No. 122), only 16 per cent of women participated in the labour market. Only 3.5 million Iranian women, compared to 24 million men, received a salary, were entitled to holidays, maternity leave and pension. There were many more women in the informal economy in a wide range of jobs where they represented from 50 to 90 per cent of the workforce. In addition, working women still had the primary obligation for domestic responsibilities. Women were trapped between two conflicting trends: with some pushing for law reform to remove employment restrictions for women, while others preferred that women stayed at home as provided for in the current Civil Code, which empowered



men to bar their wives from taking up work. Despite the high literacy rate for both men and women (90 per cent), women were restricted to some areas of education and excluded from the core industrial and economic sectors. While 60 per cent of students in medicine, humanities, arts and science were women, only 20 to 30 per cent of the students in technical or agricultural studies were women. Almost 25 per cent of women and 43.8 per cent of young persons were unemployed. In its report in the framework of Convention No. 122, the Government had referred to a five-year development plan providing for a massive privatization scheme, the establishment of private employment agencies, and self-employment. This approach had already been adopted by other Asian countries in the 1980s, leading to a rampant development of young female sweatshops. In addition, women, even in family enterprises, earned one third of men's salaries. The supervisory bodies had already referred to the growing number of forced marriages and the increase in trafficking of women and young girls. Discrimination was deeply rooted in Iranian textbooks where the dominant role of men at home and work was emphasized.

**The Worker member of Turkey** indicated that due to the existing discrimination on the grounds of political opinion, ethnicity and religion, young people, academics, politicians, human rights defenders and journalists were fleeing the country in order to escape imprisonment or even death. Many came to Turkey. There were more than 15 refugee camps in Turkey, six of which provided accommodation mainly to Iranians. More than 150,000 young Iranians were currently studying in Turkish universities and were afraid to return to their country. Public employees and others with a different political opinion, religion or origin from that of the national regime suffered from discrimination. This situation mainly affected women, both in law and in practice: the rate of employment of women was very low; they needed their husbands' permission to work and travel; they had to observe a strict dress code; there were honour killings and the minimum age for marriage was set at 13. Women were discriminated in all sectors of education, and 14 fields of education were altogether forbidden to women. In contrast, men had the right to polygamy and the unilateral right to divorce. The speaker called on the Islamic Republic of Iran to comply with the Convention, and change its discriminatory legislation, taking into account the ILO's guidance.

**A representative of the European Union**, speaking on behalf of the European Union (EU) and its Member States, as well as Croatia, Iceland, Montenegro, Serbia, The former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina, Norway and the Republic of Moldova, expressed deep concern at the situation of human rights in the Islamic Republic of Iran, which continued to deteriorate. They called on the Iranian authorities to live up to the international human rights obligations that the Government had entered into. Alarmed by the severe discrimination against women and the pervasive gender inequality, they urged the Government to take concrete and immediate steps to ensure that laws and practices were fully in line with the Convention, including with a view to ensuring that women in temporary and contract employment benefited from all entitlements and facilities, and eliminating the discriminatory practices against women in recruitment and in job advertisements. Deploring the systematic discrimination against religious minorities, the speaker noted that the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran had reported that the Baha'i were subjected to severe socio-economic pressure and that in some cases they had been deprived of property, employment and education. They also deplored the reports of prosecution and persecution of teachers, students and trade unionists advocating for

social justice, for equal rights, employment and for women's rights. Recalling the recurrent lack of information during the discussions of this case, the Government was urged to cooperate fully with the supervisory bodies by providing the information requested on equality of opportunity and treatment between men and women, and the Government was invited to avail itself of ILO technical assistance.

**The Worker member of France** observed that with respect to discrimination based on political opinion, union membership and involvement in trade union or human rights activities, in particular, the Committee of Experts paints a disastrous picture of the prevailing situation in the Islamic Republic of Iran, which is the reason the case had been placed before the Committee this year. However, the reality was far worse. Discrimination in employment was systematically directed against independent trade unionists, journalists, human rights defenders, teachers, lawyers and those who criticize the Government, as well as against their family members. The Islamic Republic of Iran was second among the countries with the largest number of journalists in prison, most for having expressed views that differed from those of the Government. Mr Ahmad Zaidabadi, for example, had been sentenced to six years in prison and banned for life from practicing his profession. Lawyers were also imprisoned for defending human rights and were banned from practicing their profession. Such was the case of Ms Nasrin Sotoudeh who had been awarded the Sakharov prize in 2012 and yet had been sentenced to six years in prison and banned from practicing for ten years. Many other human rights defenders and critics and opponents of the Government were being persecuted, dismissed, imprisoned or tortured simply for exercising their right of expression. Membership of a trade union such as a teachers' union, also brought the risk of prison, exile or some other form of punishment. All demonstrations by teachers, students and trade unionists calling for social justice or equal rights in education and employment were met with extreme violence. Many trade unionists, such as Mr Rasool Bodaqi and Mr Mahmood Baqeri, were currently serving time in prison due to the denial of freedom of expression. There was reason to fear that such information, horrific as it was, offered but a glimpse of the reality facing thousands of Iranian workers, human rights defenders and trade unionists.

**The Government member of the Bolivarian Republic of Venezuela** stated that his Government had taken note of the fact that the Committee of Experts had welcomed the increase in the number of female judges in the Iranian judiciary. The rise in equal opportunities and treatment for men and women in the workforce, the decrease in unemployment, measures designed to improve women's access to training and education, and the ongoing efforts of the Government to promote women's entrepreneurship had also been noted. He stated that there was legal protection to prevent gender-based discrimination. His Government considered that the Committee should take those efforts into account in its conclusions.

**The Government member of Canada** expressed her Government's disappointment at the continuing discrimination against women, religious and ethnic minorities in employment and occupation in the Islamic Republic of Iran and the lack of measures taken by the Government to address these issues. Despite the strong and sustained urging of this Committee in the past to amend or repeal the legislation, employment laws and regulations discriminating against women were still in place. Section 1117 of the Civil Code, the social security regulations and obligatory dress code continued to prejudice women. Job advertisements were regularly discriminatory; women also faced unequal access to education and job training.

Religious minorities faced persistent and pervasive discrimination. Members of the Baha'i faith were discriminated against in access to education, universities and occupations in the public sector; they had been deprived of property, employment and education. The legislative and policy frameworks in place to protect workers against discrimination and sexual harassment had not proved effective or adequate. It was not sufficient for these frameworks to exist; workers must be aware of their rights and be able to access credible and effective avenues for pursuing redress. The Government's continued failure to respect its obligations under the Convention in the face of repeated calls for change by the Committee demonstrated a lack of seriousness and good faith. Her Government urged the Government to take concrete and decisive action to end discrimination against women and ethnic and religious minorities in employment and occupation and to promote women's empowerment and women's entrepreneurship. Only true progress in these areas would ensure respect for the human dignity of women and ethnic and religious minorities. The Government should engage with the ILO in good faith to secure technical assistance in order to bring its legislation and practice into line with the Convention and the recommendations of the Committee.

**The Government member of Pakistan** expressed appreciation for the Government's comprehensive reply to the questions raised by the Committee of Experts. The Government had established technical groups to address amendments to the Labour Law and the Social Security Act, issues of occupational safety and health, and the promotion of social dialogue. There had also been some improvements, including the increase in the number of female judges and the efforts made regarding the new bill incorporating, among others, the views of the social partners. While expressing hope for the further strengthening of such measures and legislation, he emphasized that there was always room for improvement on the other unresolved issues. His Government therefore encouraged dialogue and appropriate resolution in this regard.

**The Government member of India** expressed his Government's appreciation concerning the efforts made by the Government for the better application of the Convention, including that several measures had been taken to strengthen its supervisory mechanisms, by establishing four technical groups in the last two years to address amendments to the Labour Law and the Social Security Act. Furthermore, the Council of Ministers had succeeded in adopting a new bill incorporating, among others, the official points of view of the social partners, and currently a bill was under consideration in Parliament. Only dialogue and cooperation would help in resolving the outstanding issues, and his Government called on all member States to extend their cooperation to the Government for the full application of international labour standards.

**The Government representative** stated that some of the views and topics addressed in the discussion did not fall under the mandate of this Committee, and that comments of a political nature unrelated to the matters under discussion could jeopardize the legitimacy of the Committee. More than 70 per cent of university entrants were women, and that his Government was not aware of any legislation that either explicitly or implicitly encouraged discrimination against women in top management positions. Women's role in administrative and decision-making positions, as in the Council of Ministers and the judiciary, on the contrary, had shown significant progress in terms of women's access to higher managerial positions, both in the public and private sectors, including as advisers to the President. All female and male judges were equally paid, and female judges enjoyed the same calibre and position in the penal courts, family courts and juvenile courts. As sitting judges, female judges could also deliver judgments

in the cases before the courts. Currently, out of the 8,002 judges, 614 were female and there had been an increase of 16.2 per cent in the number of female judges since 2009.

The speaker strongly refuted that discriminatory employment advertisements were an existing practice, as constructive steps had been taken to address this. As a result of social dialogue, the Iranian Confederation of Employers' Associations had agreed to assist with defining the tasks with a view to the implementation of the Convention, which would address discriminatory recruitment processes in the private sector. Moreover, the Government had abided by the comments of the Committee of Experts to repeal the discriminatory legislation and regulations. Concrete steps had been taken to ensure the repeal or effective amendment of legislation, regulations and instructions to further promote women's equality of opportunity and treatment in employment and occupation, including with respect to the amendment of section 1117 of the Civil Code and the Social Security Act. Regarding the early retirement of women, he indicated that this was voluntary and did not have a negative impact on women's career paths, including access to higher level positions, or result in women receiving lower pensions. The Government did not allow for the promotion of discrimination, stereotypical attitudes or hatred against religious minorities. Despite false information in this regard, religious minorities were respected in the country. Religious minorities, including unrecognized religious minorities, were protected against discrimination and had equal access and opportunity to employment and education. In most provinces with religious or ethnic minorities, these groups had been assigned a proportional number of managerial positions in government, and the Government would provide information to the Committee of Experts on this subject on a regular basis to confirm its commitment in this regard. All measures taken to improve labour relations and conditions had been founded on a culture which favoured the promotion of social dialogue and the extension of social protection.

**The Worker members** stated that in spite of numerous examinations of this case, no real progress had been made to comply with the Convention. Furthermore, the information that had been provided was of a general nature and no substantive measures and targets had been indicated. The response of the Government to discredit the concerns and deny the problems raised by the social partners, added to the Worker members' concerns. The lack of ability of the Government to repeal even the most patently discriminatory legislation and regulations was deeply regrettable. The new measures that were being proposed further restricted access to the labour market for women, instead of guaranteeing equal access to employment and education. Difficult access to information concerning discrimination in these areas hindered the discussions between workers and the Government. Moreover, the repression of independent trade unions was a major obstacle for assessing the situation on the ground and opening a process of social dialogue to address the issues at stake. The situation was so serious and the Government's lack of cooperation so clear, that the Worker members found every reason to file a complaint on the basis of article 26 of the ILO Constitution, but had chosen not to do so this year. The Government therefore needed to take the issue seriously and take the necessary measures. While the Government's acceptance of ILO technical assistance was to be noted, three conditions for such assistance were not met: (i) restrictions on trade union rights prevented meaningful social dialogue on the Convention; (ii) restricted access to independent information prevented a factual assessment of the situation; and (iii) technical assistance required clear and time-bound objectives and implementation plans in order to be effective. The Worker members

proposed that a high-level mission visit the country, as soon as possible, before the forthcoming session of the Committee of Experts, based on a clear and wide mandate for fact-finding and for setting a time-bound action plan aimed at ensuring compliance with the Convention.

The Employer members expressed the hope that the information submitted by the Government concerning access of women to certain high-level positions, including judicial positions, and the statistical data regarding women's participation in the labour market, would be provided to the Committee of Experts to allow this Committee to engage in more careful consideration. While measures were being taken, there remained significant barriers to women's participation in the labour market, and discrimination against women in employment continued. This serious case had been considered before by both this Committee and the Committee of Experts. The tripartite partners had expressed concerns and the Committee of Experts had repeatedly urged the Government to take immediate action to ensure the full application of the Convention in both law and practice. The Employer members once again expressed regret regarding the lack of progress made in this regard, and expected that the issues relating to the employment of women would be addressed in the near future. In this respect, the repeal of section 1117 of the Civil Code was imperative. Moreover, legislation that restricted the role of female judges, imposed a dress code, restricted access to employment for women over 40 years of age and resulted in the discriminatory application of social security provisions was unacceptable. Recalling the long-standing issues concerning compliance with the Convention, the Employer members reiterated that they would be deeply disappointed if the measures taken or envisaged by the Government did not remove restrictions on women's employment. It was now the moment to take proper and concrete action in this regard. Therefore, the Employer members expressed support for the Worker members' request for a high-level mission.

### **Conclusions**

**The Committee took note of the oral information provided by the Government representative and the discussion that followed.**

The Committee recalled that it had been raising concerns for a number of years including with respect to discrimination in law and practice against women, ethnic and religious minorities, and the absence of an environment conducive to social dialogue on the implementation of the Convention.

The Committee noted the Government's indication that four technical groups had been established to address the amendment of the Labour Law, the Social Security Act and the Occupational Safety and Health By-laws, and the promotion of social dialogue, and that a number of amendments had been proposed. The Committee also noted the Government's indication that more detailed information was provided in the report it had recently submitted for the Committee of Experts' meeting in 2013.

The Committee expressed deep regret that no concrete results had been achieved since the Committee last examined this case in 2010. The Committee strongly urged the Government to move from promises to meaningful progress regarding the elimination of discrimination against women and ethnic and religious minorities. While welcoming the increase in women's labour market participation and in the number of female judges indicated by the Government, the Committee noted that there remained significant barriers to women's equality of opportunity in employment and occupation. The Committee also expressed continued and deep concern regarding the systematic discrimination against members of religious and ethnic minorities, and noted that dis-

crimination against the Baha'i remained particularly serious.

The Committee urged the Government to take concrete and immediate action to end discrimination against women and ethnic and religious minorities in law and practice, to promote women's empowerment and women's entrepreneurship, to take decisive action to combat stereotypical attitudes underlying discriminatory practices, and to address sexual and other forms of harassment. It also urged the Government to ensure that any new measures would not further restrict access of women to the labour market and reinforce traditional roles and prejudices. Noting with deep concern discrimination in employment and education on the basis of political opinion, in particular with respect to journalists, teachers, students and trade unionists, the Committee urged the Government to take effective measures to ensure protection against discrimination on the basis of political opinion and respect for freedom of expression. It also regretted the continued absence of an environment conducive to freedom of association and social dialogue, and urged the Government to address this as a matter of urgency with a view to addressing the gaps in law and practice in the implementation of the Convention.

Emphasizing the seriousness of this case and the lack of progress, the Committee urged the Government to accept a High-level mission to examine all the points raised by the Committee of Experts and the present Committee concerning the application of the Convention. The Committee requested the Government to include in its report to the Committee of Experts due in 2013, complete information regarding all issues raised by this Committee and the Committee of Experts, for examination at its next meeting.

The Government representative considered that his Government had participated in the discussions of the Committee in a transparent and constructive manner. While his Government was fully prepared to clarify any further questions and to submit a detailed report to the Committee of Experts, he stated that the outcome of the discussions might have been different had this Committee taken into account the information recently submitted by his Government. His Government had always engaged in constructive discussions and submitted detailed information and welcomed that some of the social partners had highlighted some positive measures taken, as was duly reflected in the conclusions. However, it was regrettable that some of the improvements and reforms made by his country – which had been presented to this Committee – had not been adequately reflected by the Committee of Experts. Technical cooperation was the road to follow and his Government looked forward to engaging with the ILO in this regard. His Government would closely consider this Committee's conclusions so as to address them in their entirety.

### **REPUBLIC OF KOREA (ratification: 1998)**

The Government provided the following written information.

The Korean Government aimed to set best practice in the management of labour migration by implementing various policies to protect migrant workers at every stage from the "entry" and "employment" to the "departure" period. With respect to entry, migrant workers entering the Republic of Korea under the Employment Permit System (EPS) were given opportunities to work in the country in a fair and transparent manner. A fair and transparent selection system was in place to prevent EPS workers from being taken advantage of by a broker or being put in a difficult situation by irregularities or corruption. After entering the Republic of Korea, EPS workers were provided with significant integration training and awareness education concerning their legal rights. The education costs were fully borne by their employers. Workers were

provided with detailed information regarding their rights under all relevant labour laws, as well as detailed instructions on the procedures for filing a complaint when their rights had been infringed upon.

During employment under the EPS, any discrimination against migrant workers was prohibited and labour laws including the Industrial Accident Compensation Insurance Act, the Minimum Wage Act and the Labour Standard Act were equally applied to both migrant workers and Korean nationals. The 47 local labour offices across the country were responsible for receiving and reviewing complaints submitted by migrant workers. The Government provided guidance to, and conducted roughly 5,000 inspections per year on workplaces which employed migrant workers. The 60 local job centres under the Ministry of Employment and Labour were helping migrant workers address relevant legal concerns and employment-related affairs, such as questions related to extending employment periods. A total of 34 support centres and one call centre for migrant workers were in operation in the country. They offered a variety of services to migrant workers free of charge. For instance, they provided counselling services, legal assistance, free Korean culture classes, free medical check-ups and shelters to migrant workers. Free interpretation services were at the disposal of migrant workers. Approximately 200 interpreters were in service at any given time and 500 interpreters remained available. The Government, in cooperation with the embassies of countries of origin, organized cultural events for migrant workers so that workers from the same country had opportunities to meet and share information with one another. In 2012, nine cultural events had been organized for six countries including Thailand and the Philippines, in addition to six multi-country events which had been held. Migrant workers were provided with fully funded vocational training by the Government in a range of fields. In 2012, 4,935 migrant workers had completed vocational training in areas such as computer literacy, operation of heavy construction equipment and car repair. The Government also required insurance designed exclusively for EPS workers. Elements of the mandatory insurance required by the Government included return cost insurance for return flight ticket, casualty insurance for accident and death not associated with work, guarantee insurance for overdue wages, and departure guarantee insurance for severance pay. These represented requirements tailored to protecting workers and supporting their interests for the entire duration of their work experience.

With respect to departure and return measures, under the returnee support programme, EPS workers were invited to information sessions which were held to inform them of ways in which to prepare for the return to their home countries. Examples of instruction provided, included how to collect unpaid wages and receive insurance benefits. In 2012, 77 information sessions were held and attended by 5,122 EPS workers. The Government provided job placement services for returnees. It held job fairs to connect jobseeking returnees with Korean companies in their home countries. In 2012, 2,087 returnees had received such job placement services and 377 of those persons succeeded in finding employment. A package of services ranging from free customized vocational training to job placement services was provided to help returnees settle in their countries within a short period of time. For migrant workers who had left the Republic of Korea without receiving insurance compensation, which was due to them under the departure guarantee insurance taken out by employers, or the return cost insurance taken out by the migrant workers themselves, the Government provided services to ensure that such insurance compensation was received. In 2012, EPS workers had received 204 million won (KRW) (approximately US\$182,000) under

departure guarantee insurance and KRW278 million (approximately US\$248,000) under return cost insurance. Under the current EPS, a migrant worker was allowed to change workplaces a maximum of three times during the first three years of employment and a maximum of two times during an extended period of employment of up to one year and ten months. Therefore, a migrant worker could change workplaces a maximum of five times over the course of four years and ten months. If EPS workers changed employment for a reason not attributable to them, such as a temporary shutdown or permanent closure of the business at which they were employed or a violation of working conditions by the employer, they could change workplaces without being subject to the limit on the maximum number of workplace changes. Under the EPS, when a migrant worker changed workplaces for any of the legitimate reasons outlined, he or she might request a change of workplace at a job centre for which no confirmation from the employer was required. Only if an EPS worker requested a change of workplace under the claim that his or her employment contract had been terminated, job centres at times verified with the employer with regard to whether the employment contract indeed had been terminated. An EPS worker needed no permission from the employer to change workplaces. Most of the violations of labour laws that were found in 2011 had been simple violations of the administrative obligations or procedures prescribed by labour laws, such as the Labour Standards Act. The violations had included failures to specify working conditions in writing (1,051 cases), failures to post the main contents of labour laws at the workplace (979 cases), failures to post a list of workers (894 cases), failures to inform workers of the minimum wage (710 cases) and failures to provide sexual harassment education (593 cases). Furthermore, there had been 341 cases of overdue wages and 63 cases of paying less than the minimum wage. With respect to equality of opportunity and treatment of women and men, the percentage of female workers and managers had risen steadily in workplaces which were subject to the Government's affirmative action scheme: in 2009, 34.01 per cent of female workers and 14.13 per cent of female managers; in 2010, 34.12 per cent of female workers and 15.09 per cent of female managers; in 2011, 34.87 per cent of female workers and 16.09 per cent of female managers; and in 2012, 35.24 per cent of female workers and 16.62 per cent of female managers.

With respect to measures regarding maternity protection and support for work-family balance, the use of paid maternity leave (up to 90 days) and childcare leave available to those with a child under the age of 6 had increased. The number of workers who had taken maternity leave had increased by approximately 35 per cent between 2008 and 2012: 68,526 in 2008; 70,560 in 2009; 75,742 in 2010; 90,290 in 2011; and 93,394 in 2012. The number of workers who took childcare leave had doubled between 2008 and 2012: 29,145 in 2008; 35,400 in 2009; 41,732 in 2010; 58,137 in 2011; and 64,069 in 2012. To support and facilitate a healthy work and family balance, additional legal changes were made in 2012. Currently, workers were able to work shorter hours instead of taking childcare leave, and were able to take leave to care for a sick family member.

With respect to supervisory activities of labour inspectors concerning discrimination against non-regular workers, in 2012, the Government had inspected a total of 5,431 workplaces which employed a large number of non-regular workers, such as fixed-term and dispatched workers. Of the workplaces inspected, 4,267 had been found to have committed 17,103 violations of labour laws. A total of 191 cases had been sent to the prosecutors' office, fines had been imposed in three cases and administrative action

had been taken in 244 cases. The violations included failure to specify working conditions in writing (1,737 cases), failure to inform workers of the minimum wage (1,530 cases), and failure to provide the workers with wages or compensation within 14 days after they left the workplaces due to death or resignation (1,334 cases). Cases such as the dispatching of workers to workplaces where dispatched workers were not allowed to work, or the dispatching of workers by unauthorized agencies (168 cases) had been sent to the prosecutors' office. Other cases including discrimination against non-regular workers in terms of bonus compensation and vacation (108 cases) had been addressed through administrative measures.

In addition, before the Committee a **Government representative** highlighted that the Government had been striving to eliminate any and all forms of discrimination in employment and occupation in order to promote the overall employment quality. Migrant workers under the EPS enjoyed equal protection with nationals under labour legislation, and the migrant workers' quality of life had been improved by a variety of support programmes provided by the Government, before entry, during employment and after departure. The EPS had been recognized by the international community as a pioneering labour migration management system. In addition, workers under the EPS were allowed to change workplaces up to five times. However, they were granted unlimited workplace changes under a certain set of criteria provided in the law, such as the temporary or permanent closure of the business, violations of employment contracts or unfair treatment by the employer. Referring to the conclusions of the Conference at its 40th Session, which had recognized that a certain degree of restriction on labour migration was necessary, the speaker underlined that frequent and unlimited workplace changes might result in illegal interventions by unauthorized brokers.

The Government had introduced comprehensive policy measures in 2011 for the protection of non-regular workers against discrimination and to reinforce the social safety net for workers in precarious situations. The measures included: (i) the extension of the application period for remedial action against discrimination from three months to six months; (ii) amendments to the Act on the Protection of Dispatched Workers in August 2012, so that illegally dispatched workers were to be hired directly and immediately by the actual employers directly overseeing them; and (iii) giving labour inspectors authority to identify and properly address discrimination against fixed-term and dispatched workers based on wages and working conditions. These measures had been accompanied by progressive results. The speaker also indicated that giving standing to trade unions to represent non-regular workers concerning discrimination cases was not compatible with the litigation procedures, as the unions were not the party directly affected by the discriminatory treatment, nor would they benefit from remedial action.

Concerning equal opportunity and treatment between men and women, the Government had implemented policies including reduced working hours during childcare, a family care leave system and maternity protection. For female workers who had experienced career disruptions, the Government was providing comprehensive employment services such as career counselling, job placement and vocational training for their reintegration into the workforce. The Government had started taking affirmative action measures in public institutions and private enterprises with more than 500 employees, and from May 2013, the affirmative action programmes had been expanded to cover all public institutions.

Concerning discrimination on the ground of political opinion, the Constitution mandated political impartiality on the part of all public officials, including government

officials and teachers at public schools, thereby prohibiting this category of employees from engaging in political activities in favour of a specific political party or politician. In 2012, the Constitutional Court had held that the prohibition and restrictions on political activities of public officials, including schoolteachers, was constitutional. The speaker emphasized that the Government had been making more efforts to ensure quality employment and fairness in its society to achieve further equality by consulting with the social partners.

**The Worker members** recalled that, in 2009, this Committee had concluded that protecting migrant workers against discrimination and abuse required persistent attention from the Government. They indicated that the 2012 legislative amendments to allow migrant workers to change jobs, particularly in the case of difficult working conditions or unfair treatment, were important but that problems remained in practice as a result of the fact that the burden of proof rested with the worker, and due to language problems, the absence of legal assistance and the obligation to continue working in the same workplace during the investigation. They also underlined the fact that the Government had not provided information on safeguards for workers who complained to a labour inspector or the police, or on how "objective recognition" as a victim of discrimination, which would allow a worker to request an immediate change of workplace, could be obtained. They were surprised that, in the vast majority of cases, requests for a change of workplace were made for reasons other than a breach of employment contract. Workers were often invited, or rather forced, to change their reason in mid-procedure, for fear of their requests being rejected. Moreover, given that migrant workers who left their employers would be sent back to their country of origin if they did not find other work within three months, they often had to choose between putting up with discrimination and abuse by their employers or being deported. With regard to gender-based discrimination, the Worker members mentioned irregular work, which was largely performed by female workers, and the frequency with which workers were dismissed on the grounds of pregnancy, childbirth or having to look after a child. Another problem was the lack of financial resources and expertise in the area of equal opportunities for men and women. Although honorary inspectors for equality at work had been appointed in enterprises, few tangible results had been achieved owing to a lack of training and awareness. The Worker members also deplored the fact that discrimination on the ground of political opinion existed in the education sector.

**The Employer members** underlined that under the EPS introduced in 2004, more than 200,000 workers had entered the country between 2004 and 2009. Several pieces of labour legislation applied equally to migrant and Korean workers. While the EPS had initially been based on the assumption that workers would continue to work with the employer with whom they had first entered an employment agreement, practical issues led to the relaxation of that assumption. Workers were now permitted to change employers up to three times (in the first three years) for specified reasons, and the list of acceptable reasons for changing workplaces had recently been extended. The Employer members indicated that the right of foreign workers to stay in the country was vested in the contract signed with the first employer and, in principle, the worker should remain with this employer. While this was not always possible in reality, setting a limit on the number of changes of employer was therefore not, in and of itself, an act of discrimination. Nonetheless, it was not always easy for migrant workers, with considerations of different culture and language, to raise concerns about their employment, and they might experience difficulties

in the permitted changes. The Employer members therefore encouraged the Government to continue initiatives to ensure that migrant workers received the information and assistance required. The Employer members echoed the call of the Committee of Experts for the Government to take the necessary steps to ensure that in practice the EPS, including the re-entry and re-employment system, allowed for appropriate flexibility to change workplaces so as to avoid situations in which workers became vulnerable to abuse and discrimination on the grounds set out in the Convention.

Turning to the issue of discrimination on the basis of sex and employment, the Employer members recalled that while any form of discrimination was inappropriate, workers in non-permanent work should not automatically receive the full conditions available to permanent work, and in the case of subcontracting, it was not necessarily appropriate to apply the same conditions of work to workers hired by different companies. A key aspect in managing discrimination was the means by which workers could raise concerns and seek redress, and new measures in this regard included an increase in the time limit for filing a complaint as well as new advisory and supervisory powers for labour inspectors. Measures adopted regarding the employment of women included utilizing honorary equal employment inspectors appointed by individual enterprises, the requirement of all public organizations, and private companies of a certain size, to report annually on the employment of women, and requiring large companies with low female participation to submit affirmative action plans to the authorities. However such measures relied on commitment at the workplace level. Therefore, the Employer members requested the Government to consider additional measures that would assist in making such measures systematic, to facilitate improvement of the participation of women in the workforce. Turning to discrimination based on political opinion, the Employer members noted that the group of teachers dismissed in 2012 had all been reinstated after court action. This indicated that protections against discrimination were in place. However, this was a complex issue, as Korean law required that public sector employees remain politically neutral. The Committee of Experts had noted that exceptions to the general protection against discrimination on grounds of political opinion were permitted in certain cases, but for the exception to be valid “the criteria used must correspond in a concrete and objective way to the inherent requirements of a particular job”. There was a lack of information on whether an objective assessment of the inherent requirements of a teacher’s job had been undertaken. Therefore, the Employer members echoed the request of the Committee of Experts that the Government take measures to provide proper protection to primary and secondary teachers.

A Worker member of the Republic of Korea highlighted that despite the amendment made to section 25(1) of the Act on Foreign Workers Employment, etc. and the EPS, it was still extremely difficult for migrant workers to change workplaces due to strict restrictions. A new system introduced in 2012 had further aggravated the migrant workers’ situation. Therefore easing the criteria to allow changing of workplaces was necessary, by including the situation where there was a large discrepancy in wages and working conditions compared with other workers performing the same type of job. Referring to the female overrepresentation in precarious work, and to the fact that female non-regular workers received only 40 per cent of wages of male regular workers, the speaker highlighted that this structured gender pay gap was to be attributed to the flawed legislation. Under current legislation, it was extremely difficult for workers in precarious situations to seek remedies, due to fear of reprisals by employers, in-

cluding dismissals. The speaker emphasized that due to various forms of employment created, increasing numbers of workers were outside the scope of the Labour Standards Act or the Trade Union and Labour Relations Adjustment Act, leading to deteriorating working conditions and a lack of social security. It was necessary to cover workers in special employment arrangements by these Acts, to include the principle of direct employment in the Labour Standards Act, and to give standing to trade unions in seeking remedies. Citing the employment rate of women, which had been 46.3 per cent in January 2013, the speaker emphasized that women, in particular female workers in precarious situations, were under pressure to leave the workforce, despite maternity and childcare leave systems provided in the legislation.

Another Worker member of the Republic of Korea stated that in-house subcontract workers were facing the worst discrimination in terms of working conditions, including wage differences and job security. The Guidelines on protection for in-house subcontract workers, published by the Government in 2011, in fact protected employers using indirect employment. In the manufacturing sector, in which the dispatch of labour was prohibited, this form of labour was increasing continuously. A system of converting fixed-term contracts to non-fixed term ones, which had been proposed by the Government, was not effective. For example, even after the conversion to non-fixed term contracts pursuant to the instruction of the Government, these workers had been placed in a certain category with no possibility of promotion, and their wages were only 64 per cent of regular workers. A new measure taken by the Government in 2012 concerning changing of workplaces for migrant workers also constituted discrimination on the ground of country of origin. Under this new measure, migrant jobseekers were forced to wait until being contacted by employers, without knowing the type or the place of work, thereby being subjected to extreme insecurity. Concerning discrimination based on political opinion, the speaker highlighted that dismissals of teachers, members of the Korean Teachers and Education Worker’s Union (KTU), members of the Korean Government Employee’s Union (KGEU) and public officials, were being used to deny legal recognition of these trade unions.

The Employer member of the Republic of Korea highlighted that migrant workers were permitted to change workplaces without limit for reasons not attributable to workers, and up to three times in the case of termination. The Constitutional Court had held in 2011 that the limitation on the number of changes did not violate the rights of foreign workers. The frequent mobility would undermine employers’ ability to manage their workers and increase their financial burden of providing education and training to workers. In practice, workplace changes did not require permission from employers, since employers were obliged to report to the authorities upon requests for changes made by workers. To further improve the rate of economic participation by women, which was lower than men’s, wage flexibility and diversification of employment were the solution to assist women to have full access to the labour market. In this regard, legislation had been revised, and labour inspections had been implemented since August 2012. As a growing number of large enterprises were changing or planning to change their non-regular workers to regular workers, as shown in the Guidelines on protection for in-house subcontract workers, the issue of non-regular workers would soon be improved. The Republic of Korea was the only country in Asia in which legislation required enterprises to take affirmative action measures. Although affirmative action had not always been perfectly implemented since its introduction in 2006, enterprises were trying to implement measures in this regard, as shown in the increasing trends

of female employment and women in managerial positions, which was higher in the private than in the public sector. Concerning discrimination on the ground of political opinion, though the Supreme Court had ordered the reinstatement of the teachers concerned, it had held that the teachers had violated their duty to remain politically neutral, which was a constitutional requirement.

**The Worker member of Japan** declared that Korean and Japanese workers were facing many common problems, the most important of which was discrimination on the basis of sex and employment status. The most discriminated against were female non-regular workers. She underlined that when the number of non-regular workers was broken down by sex, there were more regular workers (60.9 per cent) in the case of men than non-regular ones. In the case of women, there were more non-regular workers than regular workers, and the wages of non-regular women workers were low. Also, the number of workers in “special types of employment” was increasing rapidly, and those workers were not recognized as employees in labour legislation. In the name of global competition, workers were being deprived of the rights embodied in ILO instruments and the protection for workers was weakening. The Worker member hoped that the Government would take the necessary measures to implement fully the provisions of the Convention, not only for the betterment of Korean workers, but also for the promotion of decent work in the region and in the world.

**An observer representing Public Services International (PSI)** rejected and expressed concern at the difficult situation faced by trade unions in the public service. Precarious work was increasing every year in the public service and the Government had reduced the budget to a minimum, which did not allow for any new recruitment. That meant that public servants were seeing an increase in their workload and that subcontracting and temporary posts were being used. For example, education support workers in precarious conditions, who made up almost half of all precarious workers in the public sector, received wages between 50 and 70 per cent lower than regular staff for the same work. Women were the most affected. Although the Government stated that it would regularize the work situation of public servants, the speaker considered that, in reality, the situation of those workers would simply get worse as fixed-term contracts were replaced by open-ended part-time contracts. The Government had in fact announced that it was thereby planning to increase the employment rate to 70 per cent. That would mean doing more work in less time for less money. Pressure at work was already so intense that the suicide rate had risen in recent months. It was regrettable that the Government considered that women preferred flexible working hours so that they could take care of their families. It served only to perpetuate gender differences and condemn women to lower-paid jobs. Rather than solving the problem of precarious work, such policies were a means of perpetuating deep-seated inequalities. Policies based on the principle of stable and secure work should be adopted instead, so as to guarantee high-quality public services.

**The Worker member of the Netherlands** recalled that the Government recently announced measures to create “good part-time jobs” and that the Korean trade unions were concerned that these measures would promote the increase of temporary low-quality employment instead of contributing to more decent employment and less discrimination. She noted that the Government likened the proposed measures to the “Dutch model”. Consequently, she thought it relevant to share information about the Dutch experience with atypical and part-time employment relations. In 1999, a law on atypical employment had been introduced, which regulated these types of employment, instead of prohibiting fixed-term, part-time and

indirect employment relations, in order to offer flexibility and security to these workers, while ensuring the application of the principle of equal pay for work of equal value, including all worker benefits. As a result, one third of the Dutch labour force no longer had permanent or open-ended employment contracts. Women, in particular, took part-time jobs, and for some groups of workers – young workers, care workers, workers in the agricultural and food sectors – atypical employment relations became typical. While for many of these workers, the regulation of the principle of non-discrimination had led to an improvement of their labour conditions, for a large group of workers, the quality of employment had deteriorated when permanent jobs had been replaced by fixed-term contracts, and when new forms of flexible employment had emerged, such as on-call and zero-hour contracts offering only a few hours of employment. Noting the risk of an increasingly divided labour market, the Government of the Netherlands and the social partners had agreed that additional measures were needed, including the prohibition of some forms of flexible employment, to prevent the mushrooming of bad employment contracts. Therefore, and given the huge wage gap noted by the Committee of Experts between the regular and non-regular workers in the Republic of Korea, she expressed her serious concern at the Government’s statement that it aimed to follow the “Dutch model”, and asked which measures it intended to take to convert non-regular employment into regular employment, to ensure the monitoring of non-discrimination, and to guarantee the full trade union and collective bargaining rights of non-regular workers.

**An observer representing Education International (EI)** considered that the prohibition of primary and secondary school teachers to engage in political activities, as opposed to university lecturers, was discriminatory and in clear violation of the Convention. The rationale brought forward by the Government concerning the difference in the treatment of these two categories of teachers with regard to their different roles (teaching or teaching and research, respectively) was unjustified, since all citizens were equal and should be given the same opportunity to influence decisions in the political, economic and social spheres of society, as also provided for by article 80 of the 1966 ILO–UNESCO Recommendation stating that teachers should be free to exercise all civil rights generally enjoyed by citizens. She further considered the practice of not allowing dismissed or retired teachers to unionize to be discriminatory. The Korean teachers’ union, Chunkyojo, was threatened with the cancellation of their registration because it maintained the union membership of teachers who had been dismissed based on political opinion, as well as those of retired teachers. For the same reason, the Government was also still refusing to register the Korean Government Employees’ Union (KGEU). She requested the ILO supervisory bodies to urge once again the Government to respect international labour standards by giving all teachers civil and political rights, reinstating teachers dismissed for exercising freedom of speech, and allowing dismissed and retired workers to unionize.

**The Worker member of Nepal** indicated that for many Nepalese workers, working in the Republic of Korea meant a better job with a good salary and decent working conditions. The workers believed that the involvement of the respective governments meant that their labour rights were protected. They spent more than a year in language and skills training, at the end of which they were placed on a roster expecting to be selected for a job. The Act on Foreign Workers Employment, etc. of 2003 prescribed that the rights and interests of foreign workers applied to them in the same way as to their Korean counterparts. According to the law, the migrant worker could seek a suitable job that they could perform well in good working

conditions, consulting a list of workplaces, which could be chosen and changed if the conditions appeared to be not suitable or in case of exploitation. The majority of migrant workers performed difficult and unwanted jobs. In August 2012, the Government enforced a new measure on the right of migrant workers to change workplaces. Under the new measure, migrant workers looking for new employment were no longer provided with a list of workplaces with job openings as they had in the past. As a result of this measure migrant workers were put in a situation where, should they be looking for a new job, they had to wait to be contacted. They had no certainty regarding the job or location that would be offered. As a consequence, migrant workers were forced to endure job searches in highly insecure conditions. Moreover, as migrant workers were required to return to their home countries if they could not find a new workplace within three months, they were either forced to sign new employment contracts, regardless of conditions, before the three months were up or had to avoid changing workplaces altogether regardless of how dissatisfactory their present workplace was. As such, the new measure constituted a violation of migrant workers' recognized right to choose their place of employment freely and freely enter into employment contracts. This was clearly a form of discrimination in employment based on country of origin. Moreover, equal opportunity for men and women did not seem to apply in the EPS system either since, despite the fact that many women passed the EPS-TOPK (Test of Proficiency in Korean), very few got the chance to work in the country. Women should enjoy equal opportunity for work.

The Government representative pointed out with regard to migrant workers, that since August 2012, the Government had started connecting employers and migrant workers directly through job centres, rather than providing workers who requested a change of workplace with the list of employers looking for migrant workers. This measure was expected to reduce the costs for both migrant workers and employers and was in no way a restriction on migrant workers' freedom of choice as they were able to ask for recommendations of workplaces at these job centres at any time. In addition, she indicated that the burden of proof in cases of unfair treatment and discrimination did not always lie with the worker, but depended on the nature of the case. Regarding the issue of in-house subcontracting, investigations were under way to determine the legality of the broader in-house subcontracting practices of one particular company, while the Government had also been putting forward efforts to facilitate dialogue between the social partners in order to find solutions to the number of subcontracted workers employed directly by that company. As for the In-house Subcontracting Act, the Government had not been trying to achieve the legalization of illegal dispatches for the benefit of the employers, but for the protection of working conditions and employment security. With regard to the wage gap between men and women, she indicated that there had been a significant improvement from the 35 per cent gap of 2009 to a 31 per cent gap today. The Government had introduced laws to prohibit discrimination based on gender and conducted inspections in more than 30,000 workplaces per year to ensure compliance with the law. Moreover, considering the fact that the income gap between men and women could be attributed to women's career disruption because of pregnancy, the Government had adopted various measures to ensure work and family balance, including maternity leave before and after childbirth, as well as childcare leave, and to help women return to the labour market. The Government had appointed honorary equal employment inspectors among recommended workers to deal with issues of gender discrimina-

tion and sexual harassment with objectivity and fairness within workplaces. She declared that, in order to eliminate discrimination against women, it was essential to secure cooperation among labour, management, government and civil society stakeholders. Regarding the political impartiality of public officials and teachers, she stated that the Government had taken disciplinary measures against public officials who joined or supported a political party because this was in violation of the law and the Constitution. As for the non-registration of the KGEU, this was because of the organization's failure to comply with current labour laws and had no correlation to public officials' obligation of political impartiality. She underlined that the Convention did not include a specific clause concerning the right to establish unions, in order to avoid the duplication of the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

She concluded by referring to the preparatory works of the Convention and to the 1996 Special Survey on equality in employment and occupation, and stated that the concept of national extraction did not refer to nationality and the distinctions that could be made between citizens of one country and those of another, but to distinctions between the citizens of the same country. She expressed the Government's acknowledgment that everyone should be given equal opportunity and treated with equal respect in the workplace, and reiterated the Government's firm commitment to the elimination of all forms of discrimination in employment and occupation.

The Worker members recalled that the Republic of Korea had ratified the Convention in 1998 and, despite the Committee of Experts' examination of the application thereof since 2005 and its many suggestions and recommendations to the Government, the situation of the workers remained a source of great concern regarding protection against discrimination and was testimony to a clear lack of will on the part of the Government. Moreover, it also appeared that the Government had failed to understand that it was necessary not only to transpose the principles of the Convention into national law but also to monitor their application. Such monitoring could only be improved if the workers concerned were informed and assisted by the trade unions that represented them. Most workers who suffered discrimination were in precarious employment. In view of that growing phenomenon, it was necessary to train honorary inspectors to take charge of monitoring equal opportunities for men and women in enterprises. Furthermore, since discrimination on the basis of political opinion especially affected teachers, the Government should take steps without delay to protect teachers at all levels. The Government should request technical assistance from the ILO to ensure the rapid adoption of the necessary amendments to the Act on Foreign Workers' Employment, etc. and to bring them into line with the provisions of the Convention. The recommendations of the Committee of Experts should be implemented without delay and the Government should provide clarifications on the following: (i) the definition of the expression "unreasonable discrimination" used in notification No. 2012-52 and also the grounds of discrimination covered; and (ii) how, and by which authority, it was "objectively recognized" that a foreign worker was a victim of discrimination and therefore did not have to wait for the outcome of the investigation concerning his or her request for a change of workplace to leave the employer. The Worker members asked the Government to take steps to supply information to all workers and employers on the new provisions of the Act on Foreign Workers' Employment, etc. especially information regarding non-discrimination, and to foreign workers in particular on the new rules regarding changes of workplace and on the current legal provi-



sions and relevant procedures available concerning sexual harassment. The Worker members urged the Government to supply information on the inspection of workplaces employing migrant workers (number of enterprises inspected and workers concerned, number and nature of violations detected and remedial action taken), as well as on the number and content of complaints brought by migrant workers before labour inspectors, the police, the courts and the National Human Rights Commission, and the follow-up action taken.

The Employer members noted the concluding statements of the Government pointing out the issues and the initiatives being taken in this regard, as well as their underlying rationale, for instance in relation to the provision of access of migrant workers to employers and the creation of job centres, and the ability of agents or brokers to take advantage of the lack of cultural familiarity and language abilities of migrant workers during the placement procedure. The Employer members endorsed the fact that the Government had taken account of these issues and was looking at ways to counter them. However, they recognized that these might not have been perfect measures and therefore endorsed the cause for further measures to be taken, in order to ensure that discrimination did not become inherent to the new practices. While there was no country that could claim to be free from discrimination, some principles needed to be observed. First of all it had to be ensured, through the creation of laws and regulations that were entirely consistent with the Convention, that no systemic or institutionalized discrimination occurred. Secondly, these rules also had to be applied in practice and should be designed so as to root out all instances of discriminatory practice, to call them to account and to discourage their emergence. The quest of governments was whether they had systems in place which were able to identify issues and discriminatory practices before they occurred or to deal with them immediately after their occurrence. Those who suffered discrimination needed to be able to bring their cases to the attention of the instances that dealt with them. They therefore encouraged the Government to continue to take measures to raise awareness among migrant workers of their rights and obligations regarding discrimination. With respect to women in the workplace, and more particularly with regard to the income gaps referred to by the Government, a distinction had to be made. The fact that women did not work in full-time jobs and therefore earned less could be either a result of choices or availability. The cases where women made their choices freely could not be called discrimination. Only in cases where they were not able to choose the work that they wanted to do, were there issues that could be called discrimination that should be rooted out by governments. With regard to the issue of political opinion, the Employer members drew the attention to the fact that not only the Government of the Republic of Korea, but also governments around the world, looked at their public service with an expectation of political neutrality, for example, public servants performed their service without fear or expectation of favour of the government in charge, with the understanding that the government could and did change. This being an underlying principle of the public sector, the Committee of Experts had allowed for some possible restrictions, as long as they were concrete and objective and directed at a specific job. The Employer members recalled that the teachers that had been arrested had subsequently been released, which showed that the Korean legal system was balanced. The Employer members encouraged the Government to ensure that any restrictions that were placed on public servants were balanced, and noted that while primary and secondary school teachers had some constraints, other teaching personnel at

the higher education level did not. They asked the Government to consider this as an issue in the future.

### **Conclusions**

The Committee took note of the oral and written information provided by the Government representative and the discussion that followed.

The Committee recalled that it had last examined this case in 2009. The Committee considered issues regarding protection of migrant workers from discrimination and abuse, discrimination on the basis of employment status, equality of opportunity and treatment of women and men, and discrimination based on political opinion.

The Committee noted the information provided by the Government regarding the range of services provided to migrant workers, and the recent changes to the Employment Permit System (EPS) expanding the list of reasons for which workers could change workplaces. Regarding discrimination based on sex and employment status, the Committee noted the Government's indication that the time limit for filing a complaint had been increased from three to six months, and that labour inspectors had been granted powers to address discrimination against fixed-term, part-time and dispatched workers. It also noted the information provided by the Government regarding the system of appointing honorary equal-employment inspectors to assist enterprises to address gender discrimination issues, and the expansion of the requirement for companies with low female participation to file affirmative action plans.

Recalling that the issue of protecting migrant workers from discrimination and abuse required the Government's continued attention, the Committee urged the Government to take steps, in collaboration with employers' and workers' organizations, and without delay, to ensure that the EPS, including the "re-entry and re-employment system", provided appropriate flexibility for migrant workers to change employers and did not, in practice, give rise to situations in which they became vulnerable to abuse and discrimination on the grounds enumerated in the Convention. The Committee also requested the Government to continue to strengthen initiatives to ensure migrant workers received all the assistance and information they needed, and that they were made aware of their rights. Given the large and increasing number of non-regular workers, the majority of whom were women, the Committee asked the Government to examine the impact of the recent measures taken to address non-regular employment, to ensure that they were not in practice resulting in discrimination. Given the low labour market participation of women, the Committee requested the Government to take systematic measures to ensure that women could freely choose their employment and had access, in practice, to a wide range of jobs. The Committee urged the Government to ensure rapid, effective and accessible procedures to address discrimination and abuse in practice. It also urged the Government to take steps to ensure effective protection against discrimination based on political opinion, in particular for pre-school, primary and secondary school teachers, and to ensure that concrete and objective criteria were used to determine the very limited cases where political opinion could be considered an inherent requirement of a particular job.

The Committee urged the Government to avail itself of ILO technical assistance. It requested the Government to include in its report to the Committee of Experts due in 2013, complete information regarding all issues raised by this Committee and the Committee of Experts, for examination at its next meeting.

**SAUDI ARABIA (ratification: 1978)**

A Government representative referred to the ILO High-level Mission that had visited Saudi Arabia in September 2006. The mission had observed the level of economic, political and social progress witnessed by the country and the changes in the composition of the labour market. The mission had drafted recommendations which were being taken into account by the relevant State bodies. Since 2006, there had been positive developments, including the promulgation of the Labour Code, which was the outcome of the inputs of national experts in consultation with ILO experts and the social partners. The Labour Code was comprehensive and took into account the majority of the Committee of Experts' observations. In this regard, the speaker underlined that the majority of laws (especially the Labour Code), regulations, instructions and the decisions of the Shura Council and the Council of Ministers, reaffirmed that the official policy was based on combating all forms of discrimination, segregation or exclusion on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin, in conformity with Article 1 of the Convention. He stated that Saudi society was based on equality in rights and obligations, in line with the Constitution and the rules of Islamic Sharia which prohibited all forms of discrimination, exploitation or injustice. With respect to persons residing in Saudi Arabia, he indicated that there was no discriminatory policy, declared or hidden, towards these persons, whose numbers exceeded 11 million. They contributed without any discrimination or segregation to the sustainable development of Saudi Arabia as well as to the development of their countries of origin through their remittances, and the experience they acquired. Concerning the legislation in force, all regulations were based on the prohibition of discrimination or segregation in treatment between citizens or between citizens and migrant workers, as evidenced by the Labour Code. There was no distinction between men and women, or between citizens and non-citizens.

Concerning the specific issues raised by the Committee of Experts, he stated that section 6 of the Labour Code regulated casual, seasonal and temporary work without any discrimination between such workers and permanent workers as to obligations, maximum number of hours of work, weekly and daily rest periods, overtime, official holidays, training, occupational safety and health and occupational accidents. All workers could resort, on an equal footing, to dispute settlement bodies. The Ministry of Labour had launched a huge project, the cost of which exceeded US\$26 million, for the development of such labour dispute settlement bodies. As regards domestic workers, the speaker highlighted that the Ministry of Labour had exerted efforts, in collaboration with the National Agency for Human Rights and the Shura Council, which had resulted in the adoption of a regulation on domestic workers, which took into account the principles enshrined in international labour standards and was currently before the high authorities for decision. Concerning the legal protection of all categories of migrant workers and the regulation of the labour market, he indicated that the Ministry of Labour had taken several measures, including the protection of wages system which monitored all financial entitlements to be paid to workers in the private sector, and the programme for insuring domestic workers which safeguarded the rights of domestic workers. In this regard, a regulation had also been adopted on the work of recruitment agencies, which were made subject to the monitoring of the Ministry of Labour in order to regulate the market of migrant workers so as to ensure the protection of their rights as well as the interests of employers. The Council of Ministers had, therefore, authorized the Minister of Labour to negotiate and sign bi-

lateral agreements with the countries of origin of domestic workers. A model for such a bilateral agreement inspired by international labour standards had been adopted. Its aim was to regulate the relationship between the domestic worker and the employer in order to safeguard the rights of both parties. Last month, the first of such agreements had been signed with the Government of the Philippines. Consultations were under way with other labour-supplying countries of origin for the conclusion of similar agreements.

With respect to the Committee of Experts' observation on the sponsorship issue, the speaker stated that sponsorship did not exist in Saudi Arabia and that the Labour Code had been amended to regulate the relationship between the employer and the worker, based on a contract. The Labour Code did not discriminate between men and women in rights and obligations nor as regards equal opportunity and treatment in employment and occupation. His Government objected to the Committee of Experts' comments concerning the term "specific nature of women's work". Section 149 of the Labour Code sought to prohibit employers from employing women in such occupations which jeopardized women's health, or were likely to expose them to specific risks; such work was prohibited or restricted under specific conditions. In this context, section 150 of the Labour Code regulated night work of women. Furthermore, several measures had been taken by the Ministries of Education, of Higher Education and of Labour, the Shura Council, the General Agency for Technical and Vocational Training, the Human Resources Development Fund and other bodies, to increase women's participation in higher-level and in non-traditional positions. Women also had the right to nomination and election for municipal councils. After the visit of the High-level mission, the Council of Ministers had promulgated Decision No. 158 of 18 June 2008 approving the national plan for training at the General Agency for Technical and Vocational Training. With respect to women's participation in committees and courts, a Royal Decree had been promulgated to set up women's units in courts under the supervision of an independent women's department in the main office of the judiciary. Furthermore, programmes aimed at women's employment had been launched with success. Thus, more than 180,000 women had been employed in the last two years, which was more than triple the number employed in three decades. A third social symposium on women's employment was scheduled to be held in the forthcoming months, in collaboration with the ILO. With regard to sexual harassment, the Government considered that this phenomenon did not exist in Saudi Arabia. However, the penalization of sexual harassment was currently being considered by the relevant bodies. In this regard, he underlined that the right to prosecute was guaranteed to all citizens and residents in the country. In practice, labour inspectors or the bodies in charge of labour dispute settlement had not received any cases related to discrimination in employment and occupation. His Government requested that the case be removed from the list of individual cases, and it continued to be committed to collaborating with the ILO and its bodies to ensure compliance with international labour standards.

The Worker members observed that, according to the Government's information, Saudi Arabia would appear to be an exemplary country in terms of discrimination. However, the Convention required countries to take specific action to fight all discrimination in law and in practice and to have a national policy to actively promote equal opportunities and treatment in employment and occupation. They recalled that in 2006 an ILO High-level mission had made proposals to the Government, including carrying out a national survey of the situation in the country, developing an action plan and putting together a

multi-stakeholder task force. With regard to legislation, the 2006 Labour Code still did not contain any specific provisions defining and prohibiting discrimination in employment and occupation. Concerning agricultural and domestic workers, according to the Government, the Ministry of Labour viewed it as a priority to draft regulations specifically for agricultural and rural workers. The Ministry had also prepared a document to ensure that domestic workers were paid their wages and had medical coverage, but this did not specifically provide for protection against discrimination. With regard to migrant workers, the Government had recognized that the recruitment system (sponsorship) could be open to exploitation and abuse and had undertaken to abolish it. Meanwhile, the Ministry of Labour had taken a number of steps to better protect migrant workers, such as: creating a department for the welfare of expatriate workers; adopting regulations on recruitment agencies; drafting a model agreement for employers and domestic workers; and authorizing the negotiation of bilateral agreements with countries of origin of migrant workers. Concerning women, occupational gender segregation remained a dominant characteristic of the country, with women being confined to jobs “suitable to their nature”. The Government did not consider this to be discrimination but was nevertheless examining the possibility of revoking it. Regarding sexual harassment, there was no legislation, but the Government had reported that it was considering prohibiting such acts. With regard to the application of legislation, the Government indicated that no complaints of discrimination in employment or occupation had been made. The Worker members considered that the absence of complaints could be the result of the lack of an appropriate legal framework, the absence of practical access to procedures, or even due to fear of reprisals. The Government had referred to a royal decree of 2008 that provided for the creation of women’s units in courts and justice departments, but had not given any specific information on the implementation of that decree.

The Employer members recalled that the issues under discussion were similar to those examined by the Committee in 2005, particularly the lack of specific provisions in national legislation, and not specific violations relating to discrimination. The Government had demonstrated progress, and the activities that had been undertaken in this regard could inform the situation, given the lack of specific provisions in legislation addressing discrimination. Turning to the issue of a national equality policy, the Employer members recalled that while Article 2 of the Convention required the adoption of such a policy, the Convention did not specify what this policy should contain. In this regard, it was necessary to examine what had been done practically. Particularly, as called for by the Committee of Experts, a tripartite process to develop an action plan was underway in which the employers in the country were actively involved. However, much work remained. Saudi Arabia was a complex country, comprising a large number of specific groups within the population, as well as 10 million temporary migrant workers. On the issue of segregation, the Employer members underlined that it was important to examine whether women were actively prohibited or discouraged from working, or whether the labour force participation statistics simply reflected the particular norms in the country. Particularly, it was important to examine whether such statistics were a reflection of what was viewed as appropriate in the country, instead of reflecting particular barriers to participation. No country was free of discrimination, but in Saudi Arabia, discrimination did not appear to be encouraged or systemic. Referring to agricultural workers, the Employer members recalled that these workers represented a small percentage of the population, and that the Government was taking measures to address their situation. Concern-

ing domestic workers, activities had been taken to protect this group in line with the spirit of the Domestic Workers Convention, 2011 (No. 189). These included the setting-up of banks accounts to ensure that domestic workers would be paid, measures against the confiscation of passports and access to dispute settlement procedures. While the Government needed to take further measures to ensure that migrant domestic workers were informed of their rights, countries of origin also had to take measures to raise awareness among migrant workers. The Committee of Experts’ observation referred to different facets of discrimination. In each instance, the Government had made it clear that it did not condone discrimination, and that it was working actively, albeit not legislatively, to address this. Specific legislative measures concerning discrimination could be beneficial, and the Government should be encouraged to take steps in this regard, as well as to continue to take practical measures.

The Worker member of the Philippines highlighted that Saudi Arabia was a country where 385,000 Filipino workers were deployed, 30 per cent of whom were low-skilled workers including domestic workers. Cases had been filed before the Philippine Overseas Employment Agency by domestic workers, in particular for maltreatment, abuse and violence against women. The Labour Code of 2006 excluded domestic workers from its coverage and draft regulations to cover domestic workers had not yet been adopted. He hoped that the bilateral agreements signed between Saudi Arabia and the Philippines on migrant domestic workers, as well as on a standard employment contract governing the employment of Filipino household service workers, would lead to the adoption of national legislation or regulations for domestic workers. In addition, over 9 million migrant workers constituted more than half the workforce in Saudi Arabia. Even though the Ministry of Labour had proposed to abolish the *kafala* system, the change had not taken effect so far. Moreover, Islamic law in the country did not guarantee equality for women. Information concerning the definition and prohibition of sexual harassment was not available. The biases built into law and practice therefore led to the differential treatment of foreign workers, including differences in pay, depending on their country of origin.

The Worker member of Indonesia highlighted that non-Arab persons of African and Asian origin were often victims of violence including at the workplace. She expressed serious concerns about the impact of the national “Saudization” policy, which aimed at reducing the number of migrants in favour of Saudi workers. Labour laws required a quota for Saudi employees in all businesses, and this was punishable with fines. As employers in small and medium-sized enterprises had largely refused to pay increased fees for work permits, which were aimed at creating jobs for Saudis, most migrant workers had become illegal, and lost their jobs and livelihoods. In 2013, foreign workers had stayed away en masse from their workplaces, as the Government had mounted a crackdown on illegal residents. Migrant workers had no basic political or democratic rights. As unions were illegal, the workers had recourse only in the labour court, but the possession of a foreign nationality could be a significant disadvantage in obtaining redress through the courts.

The Worker member of Canada highlighted that women accounted for only 4 per cent of the total workforce as well as 10.7 per cent of the national Saudi workforce, and that the labour market was segregated. Except four cases under new decrees, under the labour legislation, women must seek permission of their guardian in order to perform work that was not “suitable to their nature”. Women were not allowed to enrol in academic subjects such as legal services or engineering. The prohibition of driving

resulted in additional transportation costs for employers to employ female workers. There were no laws criminalizing violence against women nor prohibiting sexual harassment at the workplace. There was limited information on sexual harassment, since raising a complaint was also problematic. In rape cases, the courts routinely punished both the victim and the perpetrator. Concerning racial discrimination, among over 9 million migrant workers continued to suffer multiple abuses and labour exploitation, sometimes amounting to slavery-like conditions. The proposal to abolish the *kafala* system had not yet taken effect. The Shia minority also faced discrimination, including in employment. The speaker expressed serious concerns about the impact of the national "Saudization" policy which aimed at reducing the number of migrant workers in favour of Saudi workers. Labour laws required a quota for Saudi employees in all businesses, and this was punishable with sanctions of fines. Labour laws also tightened the requirement that foreign workers should not be employed by anyone except their original sponsor. He also referred to discrimination concerning lesbian, gay, bisexual and transgender workers, and workers with disabilities, as well as the law requiring the deportation of any migrant worker who was found to be HIV positive. The lack of effective enforcement was also an issue. He urged the Government to urgently: (i) install effective and accessible complaint mechanisms and grievance procedures; (ii) suppress the obstacles for the recruitment and employment of women; (iii) establish a multi-stakeholder task force to develop and implement a national equality policy; and (iv) adapt the Residency Law to lift the requirement of the sponsor's consent to change jobs or leave the country.

**The Employer member of Saudi Arabia** indicated that employers in the country had been invited on numerous occasions to discuss with the Ministry of Labour and the workers committees, amendments and additions to some of the labour laws and regulations, including those related to non-discrimination. They had also participated in drafting new regulations concerning domestic workers. New rules for migrant workers allowed such workers to transfer to new employers, and measures had been taken to ensure that such workers had recourse to exercise their rights. Several steps had also been taken concerning women's participation in the workplace, including the annulment of the legislation relating to segregation in the workplace, the annulment of the requirement of the consent of a woman's guardian for the issuing of a work permit, and the allocation of some jobs specifically for women to force more resistant private sector actors to employ them. Nonetheless the issue of discrimination remained, and further action by the society was needed to complement the action taken by the State. A recent survey had indicated that 54 per cent of women surveyed would only accept to work in a segregated environment and 80 per cent of women surveyed preferred to work from home. These figures were not presented as a defence of the situation, but to underline that realizing the goal of an integrated economy required a process that was inclusive, representative and respectful of differences. The situation in Saudi Arabia was complex, and therefore the employers in the country were examining methods appropriate to national conditions to address the participation of women in the workforce. This included highlighting and clarifying the true progressive nature of the role that Islam gave to women in society. Referring to several initiatives undertaken by employers in the country relating to women in the workforce, the speaker underlined that despite obvious limitations and challenges, progress in the country was clear.

**The Worker member of Libya** stressed that Islam drew no distinction between the rights and obligations of men

and women, but that was not necessarily the case in Saudi Arabia. In that regard, the speaker referred to discrimination against women in terms of transport and recalled that Saudi Arabia was the only country that prevented women from driving cars, despite promises to change the position. The cost of transport was therefore higher for women than for men as they had to pay a driver. Although there were opportunities for women to work in the country, the price of transport nevertheless presented an enormous obstacle, particularly if women wished to join the labour market.

**The Government representative** expressed appreciation for the observations made by the Employer and Worker members and indicated that all comments would be taken into consideration. The Government's policy of non-discrimination was based on principles enshrined in its national legislation. Moreover, migrant workers were an integral part of the process of sustainable development in the country and were treated on an equal footing with Saudi nationals. The Government would continue to work with its social partners so as to ensure better integration and a better working environment. Saudi Arabia hosted one of the largest numbers of migrant workers in the world. Thousands of cases of illicit workers had been resolved. Women, like men, had always been taken into consideration in the formulation of policy on education and vocational training. The Government representative emphasized that the Government attached great importance to its relationship with the ILO and would continue to collaborate with the ILO supervisory bodies to ensure the application of international labour standards.

**The Worker members** emphasized that the Convention was based on the theory that no society was free of discrimination and that all societies should therefore have an equality policy, not only to remove all discrimination from legislation and administrative practices but also to implement programmes to promote equality. They deplored the fact that the Government was making little effort to follow either the letter or the spirit of the Convention, despite the suggestions made by the ILO High-level mission in 2006. The Labour Code still did not formally prohibit either discrimination in employment and occupation or sexual harassment. Domestic workers enjoyed a certain degree of protection in terms of wages and medical care, but not against discrimination. Migrant workers were considered second-class workers and benefited only from certain specific provisions. Women were restricted to a limited number of occupations. The country had no judicial or administrative framework to identify or deal with discrimination in employment. As a result, the Worker members proposed that the Government accept an ILO direct contacts mission to identify exactly which legislation should be amended and to define what policies should be formulated to promote equality, 35 years after the Convention had been ratified.

**The Employer members** recalled the Worker members' statement that no society was completely free of discrimination and that all countries had occasional instances of discrimination, including Saudi Arabia. However, the Government was very clear that it was moving in a direction consistent with the Convention and its stated position was that it neither condoned nor accepted discrimination. While some aspects of life in Saudi Arabia might appear to reflect discrimination, the Employer members cautioned that this was not necessarily the whole picture. Particularly, segregation in the labour force could instead be a reflection of the personal preferences of women. However, any specific barriers or prohibitions that prevented the realization of aspirations were unacceptable and should be addressed. The Employer members indicated that while there might have been situations of migrant workers being treated less favourably, it was impor-

tant to understand the context. Particularly, migrant workers might not always be aware that they could have recourse to the court system, and this lack of knowledge needed to be addressed. The Employer members underlined that some measures had been taken thus far in a consultative tripartite manner, and that further measures in this regard were necessary. A direct contacts mission and the provision of expertise on a tripartite basis would be an important opportunity to ensure that the Government was aware of the various issues and provided with the necessary assistance. Such a mission could be very constructive, and should not be seen as a criticism.

### Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed.

The Committee noted that it had last examined this case in 2005, at which time it raised issues concerning the need to declare and pursue a national equality policy, to provide effective legislative protection for migrant workers against discrimination, in particular to deal with the problems of domestic workers and those who required special protection against the effects of the foreign sponsorship system. The Committee had also raised concerns that women continued to be excluded from certain jobs and occupations, and requested the Government to take effective measures to promote and ensure the equal access of women to employment and all occupations.

The Committee noted the information provided by the Government in relation to recent developments, including the increase in the number of women in employment and the establishment of the National Observatory for Labour and the Virtual Labour Market, which the Government considered would support strategies for decent work without discrimination, including for women, persons with disabilities and marginalized groups. Regarding the exclusion of domestic workers and agricultural workers from the Labour Code, the Government indicated that these workers could still bring cases before the courts, though none had been filed. The Committee also noted the Government's indication that there had been several initiatives to protect specifically migrant workers, including a programme for the protection of wages, new regulations for employment agencies, and negotiations on bilateral agreements with countries of origin, with an agreement having been concluded with the Philippines.

Acknowledging that no society is free of discrimination, the Committee noted that addressing discrimination was an ongoing process requiring regular action. The Committee noted that the national equality policy required under the Convention needed to be concrete, specific and effective. As the impact of the Government's efforts in this area remained unclear, it urged the Government to ensure it had a national policy designed to promote equality of opportunity and treatment in employment and occupation, for all workers, with a view to the elimination, in the very near future, of any discrimination on all the grounds set out in the Convention. Given the very high number of migrant workers, it asked the Government to give particular attention to ensuring that the rights of migrant workers, including domestic workers, were being effectively protected, and that they were aware of their rights, and able to obtain appropriate redress in cases of discrimination and abuse. It also encouraged the Government to continue to negotiate bilateral agreements with countries of origin, which would ensure the rights of migrant workers once they were in the country, and also oblige the countries of origin to take measures for their protection.

The Committee requested the Government to accept a direct contacts mission with a view to assessing the situation on the ground and assisting the Government and the social partners to continue to make tangible progress in the appli-

cation of the Convention. The Committee requested the Government to provide a report to the Committee of Experts, including detailed information regarding all issues raised by this Committee and the Committee of Experts, for examination at its next meeting.

The Government representative stated that the report and comments that the Government had provided to the Committee of Experts had been clear and comprehensive. There was strong technical cooperation with the ILO in different areas such as social dialogue and labour market policy. It would be important for the Committee to review the reports from other international organizations such as the Organisation for Economic Co-operation and Development (OECD) and the World Bank, which illustrated the manner in which his Government had taken the lead in many crucial areas. Although there was no reason to include the recommendation for a direct contacts mission into the Committee's conclusions, his Government would be pleased to invite an ILO mission headed by the Director-General to visit Saudi Arabia in order to enhance technical cooperation relating to the application of the Convention.

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### Employment Policy Convention, 1964 (No. 122)

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#### SPAIN (ratification: 1970)

The Government provided the following written information.

The Convention provided that each ILO Member shall pursue an active policy designed to promote full, productive and freely chosen employment, with the participation of the social partners. The Government's economic and employment strategy had been established in the context of the European Semester, and its actions correspond to the priority areas identified in the Annual Growth Forecast 2013. A particular objective is to tackle unemployment and the social consequences of the crisis and also achieve the objectives of the Europe 2020 strategy. The reform of the labour market had entered into force in February 2012, and had been adopted by Parliament in Act No. 3/2012 of 6 July 2012. The labour market reform established a new framework for labour relations with a view to modifying the dynamics and adjustment pattern of the Spanish labour market, thereby constituting a key aspect of preparing the way for jobs-oriented economic recovery. Its prime objective was to promote internal flexibility measures through instruments that enable enterprises to adapt to economic circumstances without causing massive job losses and to improve the employability of workers. Monitoring of the reform would continue in 2013 through the groups and committees established and an interim evaluation report on its outcome would be drawn up by an independent body, the Organisation for Economic Co-operation and Development (OECD) during the first year of implementation. It would be published once the data from the active population survey for the first quarter of 2013 had been analysed.

Active employment policies were a new strategy designed to improve employability, especially of the youngest workers. In Spain in 2012 they had followed, and would continue to follow in 2013, a new strategy based on the following five major areas of action, agreed upon with the autonomous communities at the Sectoral Employment Conference of 11 April 2013.

*Institutional aspects: Coordination, evaluation and efficiency.* The Annual Employment Policy Plan 2012 was a fundamental landmark for establishing proper coordination between the various competent administrations (Autonomous Communities and the state administration) and the progressive establishment of a culture of evaluation with regard to active employment policies. During

2012, the autonomous communities, in order to determine actions under the funds distributed by the Public State Employment Service, had to follow the six priority objectives of the Annual Employment Policy Plan, namely: reducing the youth unemployment rate; improving the employability of other groups affected by unemployment; supporting entrepreneurs through job-creation measures and sustaining them in the labour market; strengthening public-private partnerships to reinforce the search for jobs for unemployed persons; developing measures to promote employment for specific groups, with a special focus on persons with disabilities; and taking action against fraud. Moreover, the Plan incorporated, as an innovative element, indicators to show the degree of compliance with the objectives established and the evaluation of actions taken. In October 2012, through an agreement reached at the Sectoral Conference between the Ministry of Employment and Social Security and the autonomous communities, a working party had been set up to evaluate the active policies that had been implemented. During 2012, a total of 82 coordination meetings had been held. As a continuation of the 2012 strategy, the second quarter of 2013 of the Employment Policy Plan 2013 would be adopted, the main content of which had been discussed at the state-autonomous communities Sectoral Conference held in April 2013. The 2013 Plan would strengthen incentives to achieve improved efficiency through a results-based approach. The priority objectives and measures of the 2013 Plan, which would be adopted before the end of the first half of the year, would be established on the basis of the results of the evaluation which was currently in progress. Those results would determine the new distribution of funds among the autonomous communities for pursuing active employment policies, which this year amounted to €1.345 million, 15 per cent of which would be distributed among the Autonomous Communities according to the established objectives. The Autonomous Communities were collaborating in the formulation of the monitoring indicators which would determine this financing. The strategic objectives used to formulate the indicators were: improvement in the employability of young persons and support for entrepreneurship; improvement in the employability of other groups specially affected by unemployment (especially the long-term unemployed and workers over 55 years of age); improvement in the quality of vocational training for employment; and improvement in the linkage between active and passive employment policies.

*Linkage between active and passive employment policies (activation).* This was a question of reinforcing mechanisms designed to ensure that the recipients of unemployment benefits met their obligations relating to work and training in an appropriate and effective way. During 2012, the regulations on unemployment benefits and allowances were changed by introducing increased supervision of recipients' compliance with their obligations, accrediting active job seeking and action to improve employability. The year 2013 would also see the introduction of innovative IT methods and tools which had proved effective in other spheres (taxation, social security, finance, etc.), as well as identifying possible sources of additional information with databases enabling the expansion and optimization of current procedures and improved detection of non-compliance with active job seeking and training obligations by benefit recipients.

*Improvements in job placement services.* With the aim of better matching employment supply and demand and facilitating actuation of the unemployed, the focus was being placed on measures intended to improve the quality of information and draw on the experience of private employment agencies. During 2012, the development of the Single Employment Portal had begun. This initiative, to

be completed in 2013, consisted of the creation of a common database for the whole country which includes all training and employment offers managed by public, national and autonomous employment services, including European and international offers, those submitted directly by enterprises, public employment offers and those originating from other sources (such as employment agencies). Public-private partnership in the sphere of job placement services had been launched. A framework agreement had been established which had been adopted by the Autonomous Communities for the selection of job placement service providers. The aim was to ensure uniform conditions throughout the national territory to facilitate the coordination of the public-private partnership. Furthermore, the partnership will be results-based; in other words, private agencies would be remunerated according to the characteristics of the unemployed person and the duration of the employment provided. The Autonomous Communities (14 out of the 17) had expressed their willingness to adopt this public-private partnership model (Sectoral Conference of April 2013). The model was expected to be operational by the end of October 2013.

*Increasing employment opportunities through training.* In order to improve employability and integration into the employment markets, in particular for the youngest workers, the focus had been placed on training measures in 2012 and 2013. The objective was to provide training that facilitates access to the labour market, for which it was crucial for such training to be geared to the needs of the productive sectors. Moreover, it was important to promote training activities which also contained the possibility of gaining occupational experience. The labour market reform adopted in February 2012 had established a new training and apprenticeship contract leading to a vocational qualification. The regulations governing such contracts and their application had also been accompanied by the establishment of a dual system of vocational training, which was already operational, for which there would be a new development strategy for 2013-15. The strategy would be accompanied by a process for monitoring the quality and impact of dual vocational training, which would result in an intermediate evaluation (due in the second half of 2014) and a final evaluation (second half of 2015). In the context of social dialogue, the training round table was revising the training model for employed and unemployed workers, funded with public resources, which aimed to promote skills among training service providers and identify priorities in the productive sectors, so that more effective use was made of the public resources concerned. The new model had already become operational in 2012 and would continue in 2013. As part of the Youth Employment and Entrepreneurship Strategy 2013-16, negotiated with the social partners, measures had been adopted to improve the vocational qualifications and employability of young people: training programmes leading to certificates of vocational competence or promises of employment – at least 30 per cent of participants in such training programmes could qualify for such promises; incentives for unemployed persons to acquire compulsory secondary education; and a reform of the legislation relating to certificates of vocational competence would be conducted in 2013. In order to adapt these certificates to the new dual vocational training model, the basic legislation had already been amended and the National Directory of Vocational Competence Certificates would be published, and updated following the revision of 585 vocational competence certificates in 2012.

*Promotion of youth employment and entrepreneurship.* The Youth Employment and Entrepreneurship Strategy 2013-16, negotiated with the social partners, had been adopted and was being implemented. The objective was

to promote measures to reduce youth unemployment, promote youth employment/self-employment, and it was the result of a process of dialogue with the social partners. It met the recommendations of the European Commission and was geared to the objectives of the “Youth Guarantee” proposal. The Strategy contained 100 measures, of which the following short-term measures deserved particular mention: to stimulate youth employment, contingency measures were being adopted (until the unemployment rate fell below 15 per cent); incentives for part-time employment linked to training for persons under 30 years of age without previous work experience and originating from sectors with no employment or those who have been unemployed for more than six months, counting both employment and training. Employers’ social security contributions were reduced by 75 per cent for enterprises with more than 250 workers and by 100 per cent for the rest; for the initial youth employment contract, strong incentives would be provided for conversion into indefinite contracts (€500 per year for three years and €700 for contracts for women); incentives for work experience leading to a first job would include changes to the current work experience contract so that trained young people could obtain a first job; other measures to promote entrepreneurship and self-employment for young people under 30 years of age; fixed social security contributions, with a minimum rate (€50) for the first six months of self-employment; combining unemployment benefits with starting self-employment for a maximum of six months; increased possibilities for the capitalization of unemployment benefits to start up entrepreneurial activities, so that recipients of unemployment benefits could capitalize up to 100 per cent of their benefits to contribute to the capital assets of a commercial company employing up to 50 workers, provided that there was an employment or professional link with the company; improved protection for the self-employed to facilitate a second chance, under which unemployment benefit could be paid again after a period of self-employment which ended before the fifth year; and establishment of the generations contract to promote the hiring of experienced unemployed workers by self-employed young people. In the Autonomous Communities, administrations which engaged in skills sharing with regard to active employment policies had been taking important action in 2012 and 2013 to increase the efficiency of such policies. The following actions could be singled out: giving priority to young persons in the action and modernization relating to public employment services through the restructuring of offices; improving personalized itineraries to employment and introducing new computer applications for the provision of employment services, guidance and placement in jobs; and the reinforcement of actions designed to ensure that the recipients of unemployment benefit take part in vocational training and guidance activities, with increased linkage between active and passive employment policies.

*Education policies.* The school drop-out rate in Spain was twice the European Union average, with the 2011 figures being 26.5 per cent for Spain and 13.5 per cent for the European Union. The same situation had persisted throughout the last decade, although the drop-out rate fell from 31.9 per cent in 2008 to 26.5 per cent in 2011. For 2012, the latest data from the active population survey for the last quarter of 2012 gave a figure of 24.9 per cent. Nevertheless, the school drop-out data contrasted with the percentage of persons between 30 and 34 years of age who had completed tertiary-level studies. The latter figure stood at 40.6 per cent, thereby exceeding the European target of 40 per cent, and continued the progress towards the national objective of 44 per cent by 2020. The main objective of the reform of education laws, which would begin in 2014–15, was to reduce the school drop-out rate

to 15 per cent by 2020. This meant that 85 per cent of pupils were expected, under the proposed new education structure, to graduate from high school or complete intermediate or basic vocational training. The aim was for the educational reform to adopt measures, inter alia, to detect learning problems at an earlier stage and implement programmes for improvement, help pupils to follow the training path that best suited their profile, step up the volume of reading in key competencies for academic development and give greater autonomy to schools to develop educational projects geared to results. Furthermore, a new basic vocational training qualification would be created, which could be accessed without completion of compulsory secondary schooling, but which would continue to train the pupil concerned with a view to resuming such studies or moving on to intermediate vocational training. In addition, in 2012 two specific action plans for reducing the school drop-out rate had been launched. The first targeted the prevention of school drop outs and promoted a return to the school system, the second aimed to cater for the educational needs of the socio-cultural environment with an impact on school drop outs. Mention should also be made of: the assistance programme designed to allow unemployed young persons who dropped out of compulsory schooling to resume their studies; the new system of part-time work aimed at those who wish to combine work and training; the new training contract which makes it possible to obtain a vocational training qualification or a certificate of vocational competence; the improved access to vocational training studies through online learning; the revision of the content of various vocational training qualifications and certificates to adapt them to the new professional realities and needs of the productive sectors; the launching of a plan to boost lifelong learning; a policy of efficiency with regard to scholarships; and reform of university legislation to promote excellence, competitiveness and internationalization of the university system.

*Employment policy results.* According to data in the state employment service registers, the number of people unemployed at the end of May 2013 had fallen by 98,265 compared with the previous month. In relative terms, this was a 1.97 per cent decrease. In May 2012, the unemployment figure fell by 30,113 compared with the previous month. With this fall, the number of people who were registered as unemployed stands at 4,890,928, which was the biggest reduction in the registered unemployment figure in the month of May. In fact, the average drop in unemployment in the month of May since 1997 had been 54,450. This month, unemployment had therefore fallen by 43,815 more people than the average for the previous two months of May. These data clearly maintain the tendency towards a slowdown in the increase in registered unemployment, as since May 2012 the year-on-year rate had fallen by almost nine points, six this year, and now stood at 3.75 per cent. Thus, the increase in unemployment over the last 12 months has fallen below 180,000 (176,806), while in May the previous year, the year-on-year increase was over half a million (524,463).

*Unemployment falling in all sectors and among young people.* Among workers from the service sector, unemployment had fallen by 61,336 (1.97 per cent), among construction workers by 18,637 (-2.51 per cent), in agriculture by 9,405 (-4.56 per cent) and in industry by 8,851 (-1.61 per cent). Lastly, among persons who had not been employed previously it had dropped by 36 (0.01 per cent). Unemployment had fallen among men by 61,150 (-2.48 per cent) compared with the month of April and stood at 2,405,493. It had also fallen among women by 37,115 (-1.47 per cent) and stood at 2,485,435. It should also be emphasized that, among young people under the age of 25, unemployment has fallen by 16,735 (-3.53 per cent) compared with last month. Among those aged 25 and

over, it had dropped by 81,530 (-1.81 per cent). Registered unemployment among young people under the age of 25 over the past 12 months had dropped by more than 32,000 (32,317), which was a year-on-year fall of 6.59 per cent.

*Reduction in 16 autonomous communities.* Registered unemployment fell in 16 Autonomous Communities, including in particular Andalucía (26,529), Catalonia (-14,829) and the community of Valencia (-10,671). It rose, however, in the Canary Islands (538). As for data by province, unemployment fell in 47 provinces, and particularly Barcelona (-8,655), Madrid (-8,470) and the Balearic Islands (-7,917). It rose, by contrast, in five, headed by Las Palmas (309) and Tenerife (229).

*Recruitment on the rise.* In May, some 1,283,261 recruitments were registered, representing an increase of 36,160 (2.90 per cent) on May 2012. Cumulative recruitment in the first five months of 2013 reached 5,457,691, which was an increase of 85,079 (1.58 per cent) on the same period the previous year. Positive developments had been seen in the training and apprenticeship contracts, as there had been 67 per cent more persons recruited under those contracts in 2013 compared with the same period last year. In May, some 7,220 new “support for entrepreneurs” contracts had been reported to the public employment services, which represent 21.7 per cent of all the open-ended contracts of that type that had been reported.

*Unemployment benefits.* Some 871,504 cases of unemployment benefit were processed in April 2013, which was an increase of 4.2 per cent over April 2012. The total number of beneficiaries at the end of the month was 2,901,912, a reduction of 0.7 per cent on the same month the previous year. The unemployment protection system achieved coverage of 61.28 per cent, whereas the same indicator stood at 65.45 per cent in April 2012, which was a fall of 6.4 per cent. Total expenditure in April 2013 had been €2,556 million, which was 2.5 per cent less than in the same period the previous year.

In addition, before the Committee a **Government representative** said that the Government was jointly responsible for policies implemented by the European Union. In late 2011, the Government had found itself faced with an international crisis aggravated by the structural characteristics of the labour market and the national economy. The first measure taken was to begin labour reforms, with the aim of building flexible industrial relations to mitigate job losses and introducing new measures to promote the recruitment of people who had difficulties accessing the job market. The reform had three main components to promote sustained economic recovery and generate employment: fiscal consolidation; the achievement of deficit goals; and the restructuring of the financial system. As a result, the labour market and enterprises had become more flexible. In addition, the Government was according special importance to active employment policies that were managed in collaboration with the Autonomous Communities.

The Government was committed to laying the foundations for a solid economic recovery that would enable Spain to get back on the road to creating stable, quality employment. That was the country's key target and the main objective of the reform agenda. In conclusion, he said that the policies adopted would allow for sustained economic growth and employment generation, especially for young people, who were the Government's main concern.

The **Worker members** recalled the relevance of the Convention in the context of the crisis currently faced by Europe, where to cope with the situation many countries were pursuing policies of austerity, revising their labour legislation to make their labour markets more flexible or drastically reducing public expenditure so as to obtain

financial assistance from the “Troika” – the European Central Bank (ECB), the International Monetary Fund (IMF) and the European Commission. In the present case, the Committee was called upon to examine how Spain was reacting to the crisis in the light of ILO standards, and notably Convention No. 122. It highlighted the dilemma that existed between the commitments that States entered into vis-à-vis the ILO standards that they had ratified and the mechanisms that were in force in the European Union. In its report on its application of the Convention, the Government referred to the European Employment Strategy. Although the European Commission did not appear to take fundamental labour rights into account in its instructions to Eurozone countries, the ILO had nevertheless succeeded, in its contacts with the ministers of labour of the G20 countries, in gaining acceptance for the Global Jobs Pact and for the Decent Work Agenda as tools that could help countries overcome the crisis and create jobs. In analysing the case before the Committee, the conclusions adopted at the Regional Conference in Oslo, which had brought together European governments and the social partners, should be duly taken into account.

The **Worker members** criticized some of the measures taken by the Government to introduce more flexibility into the labour market and thus create a favourable climate for job creation, as they were not an adequate response to the crisis. They referred specifically to the adoption of a new type of contract comprising a one-year trial period during which the contract could be broken without payment of any compensation, the extension of grounds for dismissal, the suppression of administrative authorization for collective dismissals, the priority given to enterprise agreements over sectoral agreements and the greater facilities accorded to employers to modify employment contracts unilaterally. Those measures were accompanied by significant cutbacks in public expenditure, which had an impact on wages, social benefits and, in some sectors, employment. The trade union federations had denounced the absence of social dialogue and non-compliance with the agreements reached in the context of the Second Agreement on Employment and Collective Bargaining concluded in January 2012. All of those measures had been counter-productive in economic terms, as they had deepened the recession and increased the public deficit. In the first quarter of 2013, unemployment had risen to 27.1 per cent (compared with 26 per cent in the third quarter of 2012), while, among young people, it had reached 57.2 per cent and, among migrant workers, 39.1 per cent. Also in the first quarter of 2013, the share of temporary employment was 22 per cent (in 90 per cent of the cases concerned, that type of employment was by choice) and the number of people with no income from employment was 1.5 million, 800,000 more than in the first quarter of 2007. The figures showed that the steps taken had not resulted in the creation of productive and lasting employment and, consequently, did not meet the requirements of Articles 1 and 2 of the Convention. The **Worker members** also doubted the effectiveness of the measures adopted to combat precarious employment and unemployment and in relation to other aims of the Convention. They concluded by recalling that unemployment among young people affected a large number of highly skilled workers. It was therefore essential that the Government submit a report in 2013 on the application of the Human Resources Development Convention, 1975 (No. 142), with information on the steps taken in collaboration with the social partners to ensure that the vocational guidance system corresponded to the skills requirements of the most vulnerable workers and of the regions that had been hit hardest by the crisis.

The **Employer members** emphasized that Spain was the country that had ratified the largest number of Conven-



tions, which showed how ready and able it was to collaborate with the ILO. The Committee had twice analysed the situation in Spain as it related to the Convention which, as a governance Convention, was inter-related with many other instruments that aimed at ensuring that active employment policies were consistent with the full exercise of workers' rights. Moreover, the economic crisis in Spain was being analysed by various ILO supervisory mechanisms: a complaint before the Committee on Freedom of Association, a representation concerning non-compliance with the Termination of Employment Convention, 1982 (No.158), and the discussion in the Conference Committee. The situation should be examined from a single perspective. In the opinion of the Employer members, the Government had provided a clear explanation of the active employment policies which it was obliged to implement under the Convention. It should be emphasized that the Convention had been adopted at a time of economic growth with no consideration of times of crisis. However, the comments of the supervisory bodies, and notably the General Survey, had taken the situation into account and indicated that exceptions to social dialogue and collective bargaining were acceptable in times of grave economic crisis. In addition to active employment policies, monetary and fiscal measures had to be adopted to generate employment and the necessary climate of confidence for investment. Moreover, the Convention had been adopted at a time when the taking of decisions was the prerogative of each State, whereas today the world was divided into blocs. Spain was part of the European Union, and therefore the measures it took had to conform to its obligations vis-à-vis the Union. They concluded that, from the information supplied by the Government, Spain's implementation of the provisions of Article 3 of the Convention was satisfactory.

**A Worker member of Spain** emphasized that the country was going through one of the worst situations since the establishment of democracy, a situation that the trade unions had described as a "national emergency". In addition to the dramatic data, what was surprising was the Government's attitude of insisting on the same policies that had brought about this social disaster. Far from resolving the crisis, austerity policies and cuts had made it worse. Although the Government was stating that labour reform provided a framework that was conducive to the creation and maintenance of jobs, the data showed that the reform, in one year of operation, had caused job losses and increased precariousness. In bailing out the financial institutions, the Government was using resources that would be much better employed for protecting the people who had been impoverished by its social and economic policy. Nor were the prospects very optimistic since the OECD was expecting the unemployment rate to rise to 28 per cent in 2014. Moreover, the latest reforms had been accompanied by a disregard for democratic procedures. Neither in the labour reform nor in other economic measures adopted with a major impact on employment had the Government left the trade unions space for negotiation, breaking with a rich tradition of social dialogue which had made Spain a model of dialogue. The Convention imposed on States the legal obligation to pursue an active policy designed to promote full employment, to consult the social partners and to periodically review and evaluate the effectiveness of the measures taken. None of those obligations had been met. The sole priority for the Government was to reduce the deficit, ignoring the ILO's recommendations. Workers regretted that the Government had not asked the Office for technical assistance. It was to be hoped that it would not take another year for measures to be adopted.

**Another Worker member of Spain** said that, according to a survey, 27.16 per cent of the active population, and over 57 per cent of workers under 25 years of age, were cur-

rently unemployed. That was the net result of the first year of labour reform imposed by the Government in 2012 without any negotiation or consultation with the social partners. The reform had two objectives: first, to facilitate the dismissal of workers and reduce labour costs and, second, to undermine collective bargaining and the legal force by collective agreements. Inevitably, the outcome was to cause a further increase in unemployment and to accentuate the impact of the recession, since both factors tended to reduce domestic demand. Austerity policies and structural reform were simply a means of taking away people's rights and social benefits and had failed to help the most indebted countries to reduce their deficits to any significant degree. On the contrary, they had generated a profound political crisis in the European Union that was developing into a crisis of legitimacy of its institutions, since governments were being obliged to take decisions through undemocratic procedures on vital issues that were not within the purview of the Union. That was what the 2012 labour reform had done in Spain, when by legislative decree the Government had allowed for employers to amend a collective agreement unilaterally which had been negotiated with its social partners. The ILO's fundamental Conventions were no longer being respected and the policies pursued were destroying jobs. Employment could only grow and jobs be created, especially for young people, by means of investment, the financing of enterprises and families, and the stimulation of demand. The workers wanted democratic policies and institutions to which everyone contributed, in order to enhance the well-being of the immense majority who needed economic growth, employment, equality, social justice and the redistribution of wealth.

**The Employer member of Spain** emphasized that companies and business organizations had been demanding reform of the labour legislation long before the economic crisis had hit. Spanish companies had already been experiencing lower levels of productivity and competitiveness than neighbouring countries, in particular owing to the very rigid labour legislation, as demonstrated in the recruitment and dismissal system, and to an inflexible collective bargaining regime. Alongside the enormous problem of unemployment, hundreds of thousands of businesses had closed and disappeared. Although social dialogue was the best way to achieve agreement between all relevant parties, it was not always essential and was not necessarily the only solution. She made reference to the Agreement on Employment and Collective Bargaining that had been signed by entrepreneurs and trade unions in January 2012, and the approval shortly afterwards of labour market reform measures that had failed to take the Agreement into consideration. Since the democratically elected Government was always ultimately responsible for the country's economic policy, it was understandable that, given the circumstances, the Government was forced to treat labour market reform measures as an urgent matter. In order to ensure positive results, the new regulations should go hand in hand with additional measures in the area of employment and other structural reforms that would, inter alia, facilitate the balancing of public accounts and improve the business environment. In the years prior to the crisis, the budget to fund active employment policies had been increased, but the desired results had not been achieved, and business organizations had constantly demanded a rigorous assessment of their effectiveness. She added that a process of dialogue on vocational training for employment was under way and emphasized that it was one of the basic pillars for the competitiveness of businesses, for maintaining and creating jobs and for the employability of workers. Given the short time that had passed since the introduction of the measures that had been adopted, the results could not yet

## Employment Policy Convention, 1964 (No. 122)

Spain (ratification: 1970)

be evaluated as regarded a consolidated positive tendency. Nonetheless, encouraging signs were beginning to show. While even business organizations had indicated that it was necessary to continue moving forward through dialogue and consultation, that was not an attempt to diminish the Government's political legitimacy to fully exercise its legislative powers. No Government should be limited, or politically conditioned, by social dialogue. There was no doubt that social dialogue processes and the main stakeholders needed to adapt to the new requirements imposed by the realities of the ongoing crisis. The important role played by social dialogue during the decades in which numerous rights had been granted should mean that there was a greater requirement for responsibility when joining efforts to overcome difficulties.

**The Worker member of Germany**, also speaking on behalf of the Worker member of France, expressed great concern at the reforms pursued by the Government under the aegis of the European austerity policy, considering that these reforms in particular, and the European austerity policy in general, constituted a serious attack on social Europe. With reference to Article 1 of the Convention, which provided that each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment, he emphasized that in Spain employment was not being promoted, but rather destroyed. The rise in unemployment, particularly youth unemployment, had led to a substantial weakening of workers and unions, and was being used to implement a radical restructuring of European labour market institutions at the national level, a development that he firmly condemned. The tough cost-saving policy intended to overcome the crisis had plunged Europe back into recession in 2012. The austerity policy pursued in Spain had entailed far-reaching changes in collective bargaining, as ever more radical neoliberal labour market reforms had been calling into question sectoral and national collective agreements. For example, Decree No. 3/2012 established that collective agreements at the enterprise level took precedence over sectoral collective agreements. He expressed concerns about the fact that the Decree weakened sectoral collective agreements, and thereby trade unions. In Spain, the high unemployment rates and Government-enforced pay cuts had resulted in a decline in consumption. The consequences of the reforms in Spain and the European austerity policy had had devastating consequences in Spain and other countries, including Germany and France. He emphasized that the crisis could not be overcome by neoliberal reforms pushed through by the State, but rather through social dialogue and the increased involvement of trade unions. Growth could only be created by strengthening social cohesion.

**The Government member of France**, speaking also on behalf of the Government members of Cyprus, Germany, Greece, Italy and Portugal, stated that these Governments had embarked upon a joint coordinated effort to combat unemployment, especially among the young, and wished to express their solidarity with the Government of Spain in all it was doing to that end. He drew the Committee's attention to the exceptional situation of Spain and to the determination of the Governments to combat the effects of the crisis. He reaffirmed the attachment of the Governments to social dialogue and to active policies for productive and freely chosen employment and was confident that the Government of Spain would pursue its efforts in keeping with the values and principles of the ILO.

**An observer representing the International Trade Union Confederation (ITUC)** said that, on the basis of data provided by the Government, 1,800,000 jobs had been destroyed in just two years. On the one hand, the Government had indicated to the ILO that it was expecting the GDP to rise by 4.5 per cent and unemployment to fall by

3.2 per cent. However, the Government's own data, supplied by the Council of Ministers, predicted a 25.9 per cent unemployment rate by the end of 2015. This meant that, even in the best case scenario, the Government's policies presumed that Spain would have around 6 million unemployed workers within the next 30 months. He believed that the Government's employment policy was the product of its obsession with budgetary consolidation, while completely overlooking the most elementary principles of social justice, and that its labour reform would go down in history as the labour relations measure that had destroyed the largest number of jobs. He compared the situation of the hundreds of thousands of young people who had already emigrated or would soon have to do so with that of those who had done so in the post-war era.

**Another observer representing the ITUC** said that many States, and in particular international credit agencies, insisted on saying that reforms were necessary to return to the path of growth and employment creation. However, the experience of Latin American countries indicated precisely the opposite: adjustment policies magnified pro-cyclical effects, deepened the recession and hampered any recovery in employment. The similarity between what was currently being imposed on countries such as Spain and what had been implemented in Latin America was alarming. Spain's labour reforms showed utter disregard for democratic mechanisms and broke with the commitments that had established close ties of communication and social dialogue. He recalled that the Committee would soon discuss the case of progress of Iceland, where the financial sector had not been the primary recipient of rescue packages. Lastly, he considered that what was being witnessed was the exhaustion of the credibility of the adjustment discourse, and that workers were no longer willing to continue paying the price for a speculative feast divorced from the real economy.

**The Worker member of Brazil** considered that what was happening in Spain constituted a significant step backwards in both political and social terms. There had been a huge decrease in the number of jobs and the unemployment rate had reached record levels, principally affecting young people and immigrants. While the Convention was general in nature, there could be no doubt about the meaning of its provisions. The policies of member States needed to promote full, productive and freely chosen employment. Moreover, the social partners had to be involved in developing and implementing such policies. Workers had not been responsible for causing the crisis, but they were the ones who were paying for it, while entrepreneurs were reaping the benefits. The question arose as to whether fiscal austerity and greater flexibility of rights had ever lifted a country out of crisis; on the contrary, such policies were leading to a greater concentration of wealth. He questioned the Government's position, stressing that the worker's interests should also be taken into account. He considered that only counter-cyclical policies could mitigate the social effects of the crisis and create the space in which to overcome it, giving the example of the policies in Brazil under the Lula administration. He maintained that Spanish trade union federations should be an integral part of the search for solutions, and should not be excluded from the negotiations on reforms and employment policies.

**The Worker member of the Bolivarian Republic of Venezuela** referred to the considerable loss of purchasing power, which had been a result of reductions in wages and the increase in the cost of living. Labour reforms had used the situation of austerity as an excuse to reduce severance pay, make dismissals and unilateral amendments to working conditions by the enterprise even easier, and distort collective bargaining by allowing for the non-application of collective agreements. Income from capital

had, for the first time, exceeded that from labour. She expressed concern at the situation in Spain, which amounted to a violation of the Convention, particularly as regards the participation of employers' and workers' representatives in formulating employment promotion policies. Labour reforms had transformed labour into a commodity by imposing reductions in wages, changes in working conditions with little reason or need, and quick low-cost dismissal procedures. She requested the adoption of the measures requested by the Worker members.

**The Government representative** welcomed all the comments made, especially the words of support from the Government member of France on behalf of a large number of European Union Member States. He reiterated his Government's stance in defence of its reforms, which were essential to return to employment generation. He particularly emphasized the effectiveness of the labour reform which had been adopted by Royal Decree, in view of its urgency, and later ratified by Act of Parliament. Encouraging the internal flexibility of enterprises would help to generate employment. The structural problems that had characterized the Spanish economy in the past, such as an unemployment rate far exceeding the European average at a time of economic growth, were unsustainable. Structural unemployment was the product of an inflexible labour market. The labour reform would push the GDP growth threshold down to 0.7 per cent to generate employment. He recalled that, although huge amounts had been allocated to employment policies in the previous decade, unemployment had not only not stabilized but had actually increased, as there had been no incentive for those policies to be effective. He believed that the way ahead lay in introducing rationalization criteria and evaluating the results. He added that it was important to pursue the reforms as the only way to generate stable and sustained employment. The reform process should be underpinned by social dialogue, a key tool for achieving the objective. He referred to the initiatives in 2013, such as the signing of an agreement resulting in the Youth Employment and Entrepreneurship Strategy and the establishment of a round table for a new agreement on vocational training for employment. Recalling that participation by the social partners in employment policy-making bodies was institutionalized, he reiterated the commitment of Spain, which had ratified more Conventions than any other country, to the ILO supervisory mechanisms for international labour standards.

**The Employer members** had noted the information provided by the Government and of the ensuing debate. They felt that the obligation imposed by the Convention should be understood as corresponding to the level of economic development of each State and of the relationship between its employment goals and the other economic and social objectives. They believed that the content of a Government's active employment policies depended on the specific characteristics of each State. They therefore considered that it was not for the Committee to decide on the content and implementation of those policies. According to the Convention, consultations on those policies should be conducted with the social partners so as to benefit from their experience and views and to reach agreement on policy changes. Recognizing that broad consultation on active employment policies was normal, they considered that, when faced with the serious and insurmountable problem of having to save jobs, enterprises and institutions, as was the case in Spain, it was acceptable to adopt exceptional measures, within the context of social dialogue and existing domestic legislation. They agreed with the requests made by the Committee of Experts for information from the Government.

**The Worker members** emphasized that the ILO could not turn a blind eye to the dramatic situation affecting

Spanish workers and threatening European workers in general. Waiting another year or two to act would merely aggravate matters. In the context of the Convention, examining data on unemployment fell well within the competence of the ILO supervisory bodies. The Committee of Experts should also assess the impact of macro-economic policies in order to ensure that they met the requirements of the Convention, and particularly Article 1(3). In that regard, they urged the Government to provide relevant and up-to-date information in light of the aims of the Convention so that its employment policy could be examined, taking into account the application of its economic and budgetary policies. Furthermore, the Government, in conjunction with the social partners, should evaluate the results of its employment policy and amendments already made to labour market legislation and seek the widest possible consensus with the social partners to prepare an ambitious employment plan. Deploring the total breakdown in social dialogue, they also urged the Government to re-establish constructive dialogue with the social partners, in accordance with Article 3 of the Convention, and proposed a high-level technical mission to assist in implementing these requests.

### Conclusions

**The Committee took note of the detailed written and oral information provided by the Government representative and the discussion that followed.**

**The Committee noted that the issues concerned the deterioration of the labour market situation in the context of the adjustment measures implemented to deal with the debt crisis in the Eurozone, the difficulties with respect to social dialogue, the increasing youth unemployment and long-term unemployment and the need to ensure that educational policies met employment needs and the needs of the workers affected by the crisis.**

**The Committee noted the comprehensive information provided by the Government on the active labour market measures it was implementing on the economic and employment strategy adopted in the context of the European Union to tackle unemployment and the social consequences of the crisis. The Government stressed its commitment to social dialogue in order to overcome the crisis. The 2012 labour reform provided for internal flexibility measures to enable enterprises to adapt to the current economic circumstances. The new strategy also included specific measures to reduce the youth unemployment rate, strengthen public employment services and the intervention of private placement agencies, and further coordinate between the national and regional authorities to attain a better balance in the labour market.**

**The Committee noted that the Preamble of the Convention stated that, under the terms of the Declaration of Philadelphia, it was the responsibility of the International Labour Organization to examine and consider the bearing of economic and financial policies upon employment policy in the light of the fundamental objective that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity".**

**The Committee considered that the outcome of the Ninth ILO European Regional Meeting was relevant to this case. It noted that the Oslo Declaration "Restoring confidence in jobs and growth" stated in particular that fiscal consolidation, structural reform and competitiveness, on the one hand, and stimulus packages, investment in the real economy, quality jobs, increased credit for enterprises, on the other, should not be competing paradigms.**

**The Committee expressed its concern at the persistent deterioration of the labour market and urged the Government to continue evaluating, with the participation of the social**

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partners, the impact of the employment measures adopted to overcome the current job crisis. The Committee requested the Government to pursue, as a major goal, an active policy designed to generate sustainable employment opportunities, particularly for youth and other categories of workers affected by the crisis. The Committee requested the Government to increase its efforts to strengthen social dialogue with a view to maintaining a favourable climate for employment creation and achieving better results in the labour market. The Committee noted that the Office could contribute, through technical assistance, to promoting a sincere and constructive social dialogue among all the parties concerned to address the labour market situation in the context of Convention No. 122.

The Committee requested the Government to provide a report for the next meeting of the Committee of Experts with updated information regarding the application of the Convention.

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A Government representative recalled that when the present case had first been considered by the Committee in 2006, the only concern had been the delay in enacting the draft labour legislation. The Employer, Worker and Government members had acknowledged that the draft texts developed during the labour law reform in 2004 would adequately address the concerns raised by the Committee of Experts under Articles 2(1) and 7(1) of the Convention. The labour law reform had been completed in 2007 with the enactment of five texts, which aligned Kenyan labour legislation with international labour standards. The new laws, which had been developed through a tripartite consultative and participatory process, ensured that the principles of the Convention were well articulated in the Employment Act, Chapter VII of which was devoted to the prohibition of child employment, the extension of the minimum age to all types of work, including industrial work, the regulation of light work and the prohibition of the worst forms of child labour. Between 2007 and 2009, subsidiary rules and regulations derived from the main legislation had been developed through a tripartite process. They included a list of hazardous work, rules prescribing light work in which children between 13 and 16 years could be employed and the terms and conditions of that employment. Those texts had been forwarded to the Attorney-General for alignment with other laws before publication. The principles and requirements of the Convention were therefore fully provided for in national law.

Since 2007, other legislative, administrative, institutional and constitutional measures had been taken to ensure the protection of children against child labour. The new Constitution, promulgated in 2010, established specific rights for children, youth, persons with disabilities, minorities and marginalized groups and older members of society. Under article 53(1)(b) of the Constitution, every child had the right to free and compulsory basic education, while article 43(f) set out the right to education. In accordance with the Constitution, section 7(2) of the Children's Act set out the right of every child to free basic education, which was compulsory. In 2010–11, the draft National Child Labour Policy had been implemented through the National Steering Committee, district child labour committees (now known as county child labour committees) and locational child labour committees, with child labour programmes and activities being carried out under the supervision of the Child Labour Division. The National Child Labour Policy was now before Cabinet for approval. The same period had seen the development and adoption of the Integrated National Social Protection Pol-

icy, under which priority was given to the social protection of orphans and vulnerable children, and the Employment Policy, under which measures were fast-tracked for the creation of employment and the promotion of the participation of women and youth to assist in combating child labour. The Basic Education Act 2013, guaranteed the right of every child to free and compulsory basic education and penalized parents who failed to ensure the school attendance of their children. The Ministry of Labour had now for the first time been allocated a budget for child labour activities, both centrally and throughout the country. Child labour had been identified as one of the priorities of the Decent Work Country Programme (DWCP) 2012–15, and was covered by the Medium-Term Plan (2013–17) and the Strategic Plan.

With regard to the specific issues raised by the Committee of Experts, she stated that Kenya had continued its efforts to improve the child labour situation through legislative and constitutional reforms, technical assistance and relevant projects and programmes. These were assisted by continued support from ILO–IPEC, and more recent programmes, including the Strengthening of the National Action Plan (SNAP), Tackling Child Labour Through Education (TACKLE) and Youth Entrepreneurship Facility (YEF). It was the Government's responsibility to provide free education to all Kenyan children and the Basic Education Act guaranteed free day secondary schooling, free primary education and free early childhood development and education. The rapid assessment survey of child labour in salt mines in Coast Province, conducted by the ILO–IPEC TACKLE programme, had found that child labour had been prevalent prior to 2006, but that children no longer worked in the salt mines. The Ministry of Labour had strengthened labour inspection to capture any child labour activities, not just in Magarini, but nationally. The Government recognized the need, identified in the rapid assessment survey, to carry out a national child labour survey; the intention was to conduct a comprehensive labour force survey with a module on child labour, although it would only be carried out once funds were available. With regard to the age of completion of compulsory schooling, under the Basic Education Act 2013, the education system included eight years of primary education, four years of secondary education and four years of university. Under section 33 of the Act, no child could be denied basic education for lack of proof of age, and discrimination against children seeking admission on any ground including age and the employment of children of compulsory school age in any labour or occupation that prevented them from attending school was prohibited. The Basic Education Act therefore sought to capture the requirements of the Convention and the concerns of the Government that all children, including those who commenced school after the required age or dropped in and out of school, were able to gain access to free and compulsory education, as guaranteed by the Constitution, and were at the same time protected against child labour. The efforts made emphasized the Government's recognition that compulsory education was one of the most effective means of combating and preventing child labour.

With reference to the determination of hazardous types of work, she indicated that the first list of hazardous work had been finalized in consultation with the social partners in 2008 and forwarded to the Office of the Attorney-General. Soon after that, the new Constitution had resulted in a priority legislative agenda and the requirement for all laws and subsidiary legislation to be aligned with the Constitution. The process of the alignment of labour laws with the Constitution was under way, and it would subsequently be necessary to align the subsidiary regulations. A copy of the list of hazardous work, once adopted, would be forwarded to the ILO. She added that once the

regulations to the Employment Act had been adopted, in accordance with the process outlined above, the concerns raised in relation to the admission to hazardous work from the age of 16 and the determination of light work would be addressed. A consultation process was being carried out on the question of granting permits for artistic performances, which would also be covered by regulations. In addition, the Government acknowledged the need for an amendment to address the conflicting age provision of the term “minor” in section 8 of the Industrial Training (Amendment) Act 2011. She reaffirmed the commitment and support of her Government for the application of the standards system to ensure the promotion and achievement of social justice. Within the priorities schedule provided for under the national Constitution, the Government undertook to fully align labour laws and subsidiary regulations with the requirements of the Convention and would provide the necessary texts to the Office. In view of the above, she called her Government for further consideration of the present case by the Committee of Experts to be discontinued.

**The Employer members** stated that the case concerned a fundamental Convention, ratified long ago (1979), that had been the subject of numerous comments over many years (1995, 1997, 1998, 2001, 2003, 2004, 2006, 2008, 2009, 2010, 2012 and 2013). In recent years, the Government had tried to find solutions, with support from IPEC. Despite that, in its last observation the Committee of Experts had referred to many issues that remained outstanding. With regard to Article 1 of the Convention, it had noted that 1,050 children had been withdrawn from child labour and 350 had been kept in school. The enrolment rate in primary school had risen to 92.5 per cent in 2009. Nevertheless, children were failing to complete the school year and, according to the 2009 census, 4 million children of school age had dropped out of school. With regard to Article 2(3) of the Convention, the Employer members indicated that there had been no progress in its application. There was still a gap between the minimum age for admission to employment (16 years) and the age of completion of compulsory schooling (14 years). No clear solution to the problem had been found. With regard to Article 3(2), concerning the determination of hazardous work for children under 18, although a list had been approved by the National Labour Board, it had yet to be published, despite the technical assistance provided by the Office. Referring to Article 3(3) of the Convention, they pointed out that no progress had been made in issuing regulations in respect of the hours of work and establishments in which children aged at least 16 years could work, including certain types of hazardous work. The light work covered by Article 7 of the Convention had also yet to be determined. Recalling that the Convention was a fundamental one, they urged the Government to bring its legislation into line with the Convention and to request ILO technical assistance if necessary.

**The Worker members** noted that, once again, the Committee of Experts had found that several provisions of the Convention were not being respected. Firstly, there was a notable lack of reliable data on the number of children enrolled in school, those in a situation of child labour or children who combined school and work. The data that were available were confusing and at times, even contradictory. A 2008 report had put the number of children in work at 756,000, whereas the 2009 national census had shown that nearly 4 million children of school age were not attending school. The net enrolment rates at the primary level had been 83.2 per cent in 2005, 92.5 per cent in 2008 and 96 per cent in 2011, while at the same time other statistics indicated that about 20 per cent of all primary school children did not complete primary school. According to UNESCO data for 2011, among children

aged between 5 and 14 years, three out of four attended school, and a third of them were working. While those figures appeared contradictory, they were explained by the fact that one child out of every three combined school and work. Furthermore, university research revealed that 45 per cent of children combined school and work in 2010. In addition, there were no reliable data on child labour by gender or sector, particularly in plantations, domestic work, salt mines, the sale of illegal substances on the streets, and prostitution. In 2012, in Busia County, over 29,000 children were working, nearly half of them in sugar or tea plantations, almost all of whom were AIDS orphans or from broken homes; about 30 per cent were in domestic work; and the rest were street vendors or engaged in drug or arms trafficking. At times, children had even been recruited during elections to disrupt the campaigns of political opponents. The country needed reliable data in order to be able to take useful and effective action against the large number of children who were not enrolled in school. In that regard, it should be noted that the Government had not provided the specific information requested from an October 2012 child labour survey, or the rapid assessment survey on child labour in salt mines in Coast Province. While it was still necessary to analyse the reasons why children were not enrolled in school and ended up in child labour, some of the relevant factors were parental poverty, family situation (deceased or separated parents), and also certainly the cost of education.

Secondly, the Government did not appear to be making efforts to remedy the legal situation. There was a legislative gap between the age of completion of compulsory schooling (14 years) and the minimum age for admission to employment (16 years). The Government planned to remedy the situation by waiving tuition fees for the first two years of secondary school and proposing to extend the age of compulsory school to an age higher than the minimum age for admission to employment (18 years), but neither of those measures had been adopted, despite the fact that the Convention specified that the minimum age for admission to employment should not be lower than the age of compulsory schooling. Moreover, the Government had not yet definitively established the list of types of hazardous work prohibited for children under 18 years, or the regulations concerning the hours of work and establishments in which children aged at least 16 years could work. In addition, the list of light work on which children of 13 years could be employed and the procedure for granting permits allowing children below 16 years of age to take part in artistic activities had not yet been adopted. The Worker members emphasized that the situation had gone on too long, was unacceptable and had fully warranted a double footnote so that it could be discussed by the Conference.

**The Worker member of Kenya** recalled that although the Government had ratified the Convention voluntarily in 1979, over 30 years later it still had to comply fully with its principles in both law and practice. When the case was last discussed in 2006, the Committee’s conclusions had emphasized the Government’s promises that the concerns raised by the Committee of Experts would be addressed through the adoption of the newly drafted labour laws. The Committee had identified the need for ILO technical assistance, which had been provided. However, eight years later, the Committee of Experts was still raising the same concerns. These concerned, in particular, the high number of children who were not attending school and were involved or at risk of being involved in child labour, with the Government being urged to undertake a child labour survey. In 2006, the Government had undertaken to address the problem of the gap of two years between the age of 14, when free compulsory primary education ended, and the minimum age for admission to employ-

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ment, which was 16 years. However, seven years later the Government was still making the same promise. Although a list of hazardous work for children under 18 years of age, covering 18 types of hazardous employment, had been determined in 2008 by the Government, the Central Organization of Trade Unions and the Federation of Kenya Employers, it was unacceptable for the Government to now advance the excuse that the list was currently being reviewed. Even though the Government had informed the Committee in 2006 that the Minister responsible for the Children's Act had issued regulations respecting the hours of work and establishments in which children under the age of 16 years could work, including hazardous types of work, it was once again indicating that the relevant regulations were being reviewed and that a copy would be supplied once they had been adopted. Similarly, despite the promise made in 2006 to issue rules and regulations on light work and hours of work for children under 13 years of age, the Government had now indicated that those rules and regulations were yet to be completed and that the texts on light work in which a child of 13 years and above could be employed were still in the Office of the Attorney-General pending adoption. With regard to measures requiring permits to be issued for children participating in cultural and artistic activities, the Government had once again made its usual statement that the matter had been taken up with the relevant ministries and that the Office would soon be informed of the outcome of the discussions. He therefore called for the Government to be asked to supply full particulars in response to all the points raised by the Committee of Experts. He regretted the Government's continued inactivity. If the issues were not addressed urgently and decisively, the future of the country could be compromised irreparably through the destruction of future generations. The Government should establish clear short-term deadlines and a roadmap for addressing all the concerns now and in the years to come. Technical assistance would be useful and the Government, in conjunction with the social partners, should also explore the feasibility of opening village polytechnics for primary school pupils who did not go on to secondary school, with the provision of soft loans to help them remain in school until the age of 16, which would also help to address youth employment. These were the issues that the newly elected Government had undertaken to deliver as flagship promises. He therefore called for practical steps to be taken for the elimination of child labour in collaboration with the social partners, instead of the production of statistics as an end in itself.

**The Employer member of Kenya** observed that since the ratification of the Convention in 1979 many efforts had been made to eliminate child labour, especially in the institutional context, and that the Committee of Experts had noted certain progress. The Government had taken initiatives and there had been a net increase in the number of children attending primary education. However, 20 per cent of all children failed to complete primary education. The Government needed to address that problem rapidly, particularly since access to free and compulsory education was now a constitutional right. The efforts made had been slowed down by the reform process, but she urged the Government to expedite its action on the issue. There had been inordinate delays in addressing the problems identified by the Committee of Experts, including the gap between the ending of compulsory primary education at 14 years and the minimum age for admission to employment at 16 years. She agreed that the minimum age of completion of compulsory schooling should not be lower than the age at which young persons were allowed to start working. She also called on the Government to rapidly complete the process of the adoption of the list of hazardous types of work prohibited for young workers, on which

tripartite agreement had been reached, and concerning which the delay was unwarranted. The same applied to the list of light work allowed for young workers, as well as the regulations under the Education Act, which had already been prepared in 2005, according to the Government. The Ministry of Labour should urge those responsible to act quickly. She also supported the idea of issuing permits for children wishing to participate in artistic performances, establishing their hours and conditions of work. She called on the Government to request ILO technical assistance where necessary and indicated that Kenyan employers were willing to work with the Government to address the issue conclusively.

**The Worker member of Swaziland** stated that over 30 years after the ratification of the Convention, the Government had failed to address the issue adequately, resulting in the worsening and growing incidence of child labour. It was particularly disturbing that since 2005 the only response by the Government to the calls made by the Committee of Experts had been limited to promises, while children continue to be abused and exploited. Although the policy measures adopted seemed impressive, putting them into practice had proved to be a challenge. Serious gaps in implementation remained, which required rapid responses if any meaningful results and changes were to be seen in the near future. There was even a temptation to question the political willingness of the Government to enforce the legal framework. Recalling that the Government had ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), he emphasized the need for the collaboration and engagement of all the social partners for the achievement of the total eradication of child labour in the country. Although the trade unions had repeatedly identified and fought child labour practices, the active and effective participation of the trade unions had largely been excluded from Government responses. The spirit of social dialogue ensured collective responsibility and ownership, not only in policy formulation, but also implementation and enforcement. The Government's past efforts had failed and there was therefore a need for a new approach to deal with the problem. Each day that passed without clear action to combat the challenge not only diluted the Government's efforts, but had a residual effect for the future. The social impact of child labour had not only worsened the present fiscal situation, but also the country's capacity for economic transformation in future. He therefore called for technical support to be provided to the Government within a tripartite framework as a means of finding a lasting solution to the current challenge.

**The Government member of Uzbekistan** stated that the Government had completed the labour law reform process in 2007 and that five texts had been adopted aligning the labour legislation with international labour standards. The Employment Act contained a chapter on the prohibition of child labour which extended the minimum age provisions to industrial work, regulated light work and prohibited the worst forms of child labour. The 2010 Constitution set out specific rights for children and other vulnerable groups, including the disabled. Over the period 2010–11, the draft National Child Labour Policy had been applied and had been sent to Cabinet for approval. Initiatives had been taken to combat child labour and an institutional framework had been established under the National Steering Committee, including local child labour committees. Efforts had continued to align laws and regulations with the provisions set out in the new Constitution and reform measures were being adopted to ensure that all children up to the age of 18 would have access to free education. The rapid assessment survey of child labour in the salt mines in Coast Province had shown that children had worked in the mines up to 2006, but that was no longer

the case. Improvements had also been made in the labour inspection system to detect cases of child labour and it was planned to include a module on child labour in the labour force survey. All of those actions emphasized the Government's commitment to take action to eliminate child labour. The Committee should take into account the Government's resolve to comply with the Convention and should call for further consideration of the case by the Committee of Experts to be discontinued.

**The Government member of Zimbabwe** expressed appreciation for the efforts made by the Government of Kenya to align the national legislation with the Convention, as well as the inclusion in the new Constitution of issues related to child labour and the employment of young persons. Those were positive developments which would help the Government and the social partners to address any remaining child labour issues.

**The Worker member of Nigeria**, recalling that child labour was a threat to society, observed that in Kenya many urban and rural children were not in classrooms, but rather working under harsh conditions. In the context of the lack of relevant legislation, the incidence of under-age persons engaged in paid employment continued to rise. In essence, legal and policy gaps and inadequate administrative action, especially enforcement measures, had exacerbated the plight of child workers. The duty to stand up and act for the protection of children, their development and future was a collective one, and it was therefore particularly regrettable to see child prostitution in Nairobi, Kisumu and coastal areas, in the context of increased tourism. Although the Government had ratified the United Nations Convention on the Rights of the Child (CRC) 23 years ago, the Education For All (EFA) objective had not yet been met and a report of a non-governmental organization concerning the application of the CRC showed that 46 per cent of school children (5–14 years) were out of school, largely due to the 65 per cent contribution that parents had to make to school costs. Although the report of the Committee of Experts noted the indication by the ILO-IPEC TACKLE project that net enrolment rates at the primary level had increased from 83.2 per cent in 2005 to 92.5 per cent in 2008, those percentages clouded the urgency of the situation. The Government bore the responsibility to drive effective social dialogue at the national level, and needed to mobilize and engage the other social partners, as well as other segments of civil society in the fight to eliminate child labour. He therefore urged the Government to enact the Children's Bill and implement the Education Act effectively, while also addressing the enforcement of regulations aggressively.

**The Government member of Zambia** welcomed the efforts made by the Government to address the outstanding issues relating to the minimum age and the right to education. Noting the legislative reforms and the legal framework developed to address those challenges; the Government was wished success with their effective implementation.

**The Government representative** thanked all those who had contributed to the discussion and who had recognized the efforts made in her country to combat child labour, with particular reference to the comprehensive legislative and constitutional reform measures. The Government was seeking to increase the enrolment and retention of children in primary and secondary school, for which purpose constitutional and legislative measures had been adopted, free primary and secondary education was being provided and initiatives were being taken to combat child labour. The Government also reiterated its recognition of the need for high-quality data on the child labour situation in the country and its commitment to including a child labour module in the labour force survey, subject to the availability of resources. It also reaffirmed that copies of the list of

hazardous types of work would be provided to the Office once it had been reviewed and adopted, as would the other subsidiary regulations that were currently being reviewed. The delay in the adoption process had been due to the need to give priority to the constitutional reforms and to the other legislation required to address issues arising in relation to the violence that had followed the 2008 election. The Government was committed to aligning the legislation and the subsidiary regulations with the Constitution before their final adoption. With regard to the gap between the age of completion of compulsory primary school and the age of admission to employment, she emphasized that the Government was grappling with the need to ensure free and compulsory schooling for all children under 18 years of age, while also complying with the requirements of the Convention. It would request technical assistance to address the related issues. With regard to artistic performances, the Government would continue the consultation process with a view to achieving an amicable settlement on the issue, which would then be included in the regulations to be adopted in accordance with the procedure under the national Constitution. She reaffirmed the Government's commitment to combat child labour and to comply with the requirements of the Convention.

**The Worker members** noted that child labour was a major challenge for development in Kenya, where an estimated 4 million children of school age were not in school, many of whom continued to work despite the hazardous conditions. Some progress had been made in education and literacy and the Government had made an effort to ensure access to free primary schooling; however, a million children were still outside the education system. The county programmes and IPEC had managed to remove a limited number of children from work and prevent others from dropping out of school in order to work. In light of this progress, modest though it was, the question arose as to why the Government had not accompanied this progress by bringing the national legislation into line with the Convention. The Government needed to have a credible plan for the progressive elimination of child labour. For that, it needed to: (i) establish a reliable database on children in school and/or at work; (ii) undertake a detailed analysis of the reasons why so many children worked when they should be enrolled in school; (iii) bring the legislation without delay into line with the provisions of the Convention respecting the minimum age for admission to work, the age of completion of compulsory education and the list of hazardous types of work prohibited for children under 18 years of age; and (iv) with the full involvement of the workers' organizations, establish and adopt a five-year plan of action including targeted annual objectives, a school enrolment policy and measures, including dissuasive sanctions, to guarantee the effective application of the Convention. They urged the Government to specify its intentions as soon as possible and to accept a direct contacts mission on these matters.

**The Employer members** reiterated that it was now some 30 years since the Convention had been ratified, during which time the Committee of Experts had made numerous comments. The time had come for concrete results in terms of legislation, and surveys should be conducted in order to ascertain the magnitude of the problem in practice. The forthcoming session of this Committee needed to be in a position to examine updated information on specific legislative measures. The Employer members were not opposed to a direct contacts mission, as requested by the Worker members.

### **Conclusions**

**The Committee took note of the oral information provided by the Government representative and the discussion that followed relating to various issues, including the high num-**

ber of children who were not attending school and who were involved in child labour, the age of completion of compulsory schooling, and the lack of legislation determining hazardous work, and regulating light work and artistic performances.

The Committee noted the Government's indication that it was taking several measures to keep children in school and that it was committed to the elimination of child labour in the country. The Committee further took note of the Government's commitment to implement the Convention through various measures, including the ILO-IPEC project to tackle child labour through education (TACKLE) and the ILO-IPEC project to support the implementation of the National Action Plan (SNAP). The Committee also noted the Government's indication that it intended to conduct a comprehensive labour force survey with a module on child labour.

The Committee noted that several draft laws referred to by the Committee of Experts in its observations were still due for submission to Parliament for debate and adoption. While noting the various measures taken by the Government to combat child labour, the Committee expressed its deep concern regarding the high number of children who were not attending school and were involved in child labour, including hazardous work, in Kenya. It urged the Government to strengthen its efforts to combat child labour in the country with a view to eliminating it progressively within a defined time frame. Moreover, in light of the contradictory data on the number of children working under the minimum age, the Committee urged the Government to undertake a national child labour survey in the very near future.

Noting that the Education Act, which was adopted in January 2013, extended the compulsory schooling age up to 18 years, which was higher than the minimum age for admission to work (16 years), the Committee recalled that the Convention required member States to set a minimum age for work that was not less than the age of completion of compulsory schooling, and further emphasized the desirability of linking these two ages, as advocated by Minimum Age Recommendation, 1973 (No. 146).

The Committee noted the Government's indication that it intended to prioritize and expedite the adoption of the necessary legislation to address the existing discrepancies with the provisions of the Convention. It recalled that this Convention had been ratified more than 30 years ago, that this case had been discussed by the Conference at its 95th Session in June 2006, and that the Government had expressed its intention to adopt the necessary legislation on children and child labour to conform to the provisions of the Convention. The Committee shared the serious concern expressed by several speakers that the review of the draft laws in question, which had been undertaken in consultation with the social partners and with ILO technical assistance, was completed in April 2004, but had yet to be adopted by Parliament. The Committee strongly urged the Government to ensure the adoption, in the very near future, of the necessary provisions to address all the issues of non-compliance with the Convention, including the determination of the types of hazardous work to be prohibited for children under 18 years of age, the regulation of periods of work and establishments where children aged at least 16 years may perform hazardous work, and the regulation of light work activities and of artistic performances.

The Committee requested the Government to accept a direct contacts mission to ensure the full and effective application of this fundamental Convention including the adoption of a time-bound action plan in this regard. It requested the Government to include in its report to the Committee of Experts, for examination at its next session in 2013, complete information regarding all issues raised by this Committee and the Committee of Experts. The Committee expressed the

hope that it would be able to note tangible progress in the very near future.

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**Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)**

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**CHAD (ratification: 1998)**

A Government representative emphasized that the Republic of Chad fully supported the Convention, which had led to the creation of tripartite bodies, as was the case of the Higher Committee for Labour and Social Security, which dealt with all matters relating to action for the application of labour standards. Reference should also be made to the National Social Dialogue Committee, which had contributed to resolving the social crisis that the country had experienced. Tripartite consultation was therefore not ignored, and the Government hoped that the Committee would take that into account.

The Worker members emphasized that, since 2000, the Committee of Experts had regularly asked the Government to provide the necessary information to enable it to fully assess the effect given to the Convention. In 2013, the Committee of Experts had again noted with regret that the Government had still not met its obligations under the Convention and, in the absence of a report, had had to reiterate its 2006 observation, which referred to a national plan for the implementation of the African Union Plan of Action for the promotion of employment and poverty alleviation. One of the objectives of the national plan was to promote social dialogue and tripartism by giving social dialogue institutions the means to operate and by strengthening the capacities of the social partners through training and information. In October 2009, a very brief report had been provided, merely stating that information on each of the matters covered by Article 5(1) of the Convention was not available. The Government had just submitted a two-page report during the current session of the Conference, providing little more information than the previous one, which dated from 2009. It appeared from the report that there was some confusion regarding the scope of certain provisions of the Convention, in particular Articles 4 and Article 5(1)(a) to (e). The consultations provided for in Article 5 were also intended to help governments when taking decisions on specific issues. What was important was for all the views to be heard, but without the Convention imposing an obligation to reach consensus, however desirable that might be. The Convention was therefore fairly flexible, leaving it to each country to determine the most appropriate form of consultation from among the many options available: advisory committees, economic and social councils, labour councils or tripartite commissions directly inspired by the Convention. The 2006, 2009 and 2013 reports mentioned the existence of a Higher Committee for Labour, Employment and Social Security, which was described as being responsible for the tripartite consultations required under the Convention. The Convention, however, did not require consultations on economic and social policy issues, so the question arose as to why efforts had not been pursued to put appropriate mechanisms in place for tripartite consultations on ILO Conventions. For several years, the Committee of Experts had been referring to the 2008 Declaration on Social Justice for a Fair Globalization, which considered social dialogue and the practice of tripartism within and across borders to be more relevant than ever to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards. In the same way as the Labour Inspection Convention, 1947 (No. 81), Convention No. 144 was a so-called "governance" Convention, the aim of which was to promote tripartism and social dialogue at the national



level by ensuring that employers' and workers' organizations were involved in all stages of ILO standard-setting activities. It was difficult to understand the Government's continued failure to follow up the comments made by the Committee of Experts as anything other than a lack of understanding of the Convention. In conclusion, the Worker members said that that should be reflected in the conclusions on the case, which should identify means of assisting the Government in that regard.

The Employer members noted that, although the Committee of Experts had continued to request reports on the application of the Convention, there had been no response from the Government. They recalled that Chad was classified as a low-income country. From what the workers said, it was not clear whether social dialogue existed in the country and was not reported, or whether it did not exist. There was also clearly a lack of understanding of the reporting system. With regard to social dialogue, it should be recalled that the 2008 ILO Declaration on Social Justice for a Fair Globalization indicated that "social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards". Emphasis should also be placed on the importance of the reporting requirements. It was to be hoped that the reports supplied would enable the Committee to note tangible efforts to strengthen social dialogue with the representatives of employers and workers.

The Worker member of Chad recalled that social dialogue and tripartism were the form of governance that was most conducive to social justice and to equitable and harmonious labour relations, presupposing as they did the right to participate in decision-making. Collective bargaining was therefore at the very heart of social dialogue. However, even though social dialogue did exist in Chad, it did not function according to the principles defined by the ILO, as it did not encompass all the forms of negotiation, consultation and exchange of information on the country's economic and social policies between the three parties. At best, social dialogue in Chad was sporadic and incapable of getting to the root of problems. Workers' organizations, and the Trade Union Federation of Chad (UST) in particular, had always called for permanent dialogue to forestall collective and individual disputes before they became too difficult to solve. Harsh reality had shown that there was no such dialogue in practice, as was seen in the 2012 strike that was called to demand the implementation of an agreement signed by the trade unions and the Government. The authorities' failure to react with regard to the one-month period of notice had led to its extension and to a succession of three-day strikes pending negotiations. The strike had lasted for two months, during which mock negotiations interspersed with threats and anti-union attacks had been the order of the day. As positions had hardened on both sides, the movement had spread, and had paralysed the entire public administration for six months, when dialogue could have avoided both the economic costs and the loss of lives. The Government's refusal to make any concessions had resulted in the adoption, at a general assembly held on 1 September 2012, of a petition denouncing the poor governance of the country's resources, which the Government had described as a political act that went beyond the competence of a trade union. The UST's Secretary-General had been the victim of harassment by the political and judicial authorities, and the religious authorities were granted a one-month truce and made an offer of mediation to overcome the crisis, which had unfortunately failed. In September 2012, the federation's three senior officers only just

avoided being kidnapped, and their lawyers had had to pressure the Public Prosecutor to follow the proper procedure and order the judicial police to take appropriate action and decide to bring criminal charges to those responsible for defamation and incitement to racial hatred. The courts had handed down an 18-month suspended sentence and fined each person 1 million CFA francs after a trial that had merely lasted half an hour. An activist who had been present in the courtroom and who had smiled at the harshness of the sentence had been charged with contempt of court and sentenced to three months in prison and a heavy fine. He had subsequently died in October 2012, while still in prison, as a result of a degenerative disease, the cause of which was as yet unknown. Eventually, an ad hoc negotiating committee set up by a decree issued by the Prime Minister had managed to restore social peace through an agreement signed in March 2013. On 4 June, after a series of postponed hearings, the judicial authorities had finally annulled the initial ruling handed down by the court of first instance. He considered that it was important to indicate that, even though the institutions and structures for dialogue existed, they did not always function and the representativeness criteria were not respected. Blackleg unions created for the occasion received favourable treatment, in violation of the Labour Code and in the absence of trade union elections. Thus, the Basic Act establishing the Economic, Social and Cultural Council gave preference to occupational unions rather than union federations, as a result of which the UST, which represented over 80 per cent of all trade unionists, refused to participate. As the lack of prior consultation on the follow-up to certain Conventions and Recommendations and on the items on the Conference agenda showed, there was no proper social dialogue. The Government should therefore be asked to resolve the flagrant violation of ILO Conventions and to create a climate that was conducive to frank social dialogue with a view to achieving social and economic progress.

The Worker member of France emphasized that Chad was the fourth least-developed country in the world, with a human development index of 0.340. Effective tripartite social dialogue was essential for the pursuit of the objectives of social justice, the fight against inequality and respect for fundamental principles and rights at work. It required a climate of freedom of expression in a democratic framework which did not exist in practice in Chad. Journalists were intimidated and harassed by the Government, which was prejudicial to their independence. Trade unionists were also exposed to harassment and many were penalized for taking part in strikes. Fearing for their safety, human rights defenders and members of the political opposition had been driven into exile. The "Workers' tribunal" radio programme presented by a trade unionist to inform workers of their labour rights and obligations had been discontinued. Today the Government was referring to the Higher Committee for Labour and Social Security, set up in 2002, but it had never replied to the repeated requests of the Committee to supply information on the agreements reached in the Higher Committee. Moreover, even though the functions of that body included the application of the laws and regulations in force, the regulations adopted by the President following a strike for the purpose of substantially adjusting wage and minimum wage levels up to 2014, in line with an agreement with the Union of Trade Unions of Chad (UST) and the Free Confederation of Workers of Chad (CLTT), had never been adopted by the ministries concerned. That confirmed that freedom of expression was non-existent and that the process of conducting balanced tripartite social dialogue was being undermined for lack of political will.

**The Worker member of New Zealand**, noting the weakness of tripartite consultation in the country, drew attention to more recent breaches of ILO Conventions since the preparation of the report by the Committee of Experts. In December 2013, following a strike in the public sector, three trade union leaders, including Michel Barka, the head of the UST, had been given 18 month suspended jail sentences for “defamation” and “incitement to hatred”. The strike had been called following the unilateral repudiation by the Government of a national minimum wage award. The charges against the union leaders had been condemned by human rights and international union groups. The strike, which had begun in July, had been suspended in September to allow for negotiations. The sentences had been accompanied by fines equivalent to over a whole year’s full wages. The complaints of the workers concerned poverty, the high cost of living and corruption. There had also been a tragic aspect to the events. When being sentenced, one union leader had apparently smiled, for which he had been held in contempt of court and sentenced to three months’ imprisonment, during which he had fallen ill and died. It was clear that compliance with the Convention required respect for the actions of independent trade unions. She therefore called on the Committee to take action to ensure an improvement in the situation in the country.

**The Worker member of Senegal** recalled that, although Chad had ratified the Convention in 1998, it had not yet succeeded in applying it in either law or practice. The report of the Committee of Experts highlighted the persistent failures, along with the lack of any real will by the Government to establish procedures to ensure effective tripartite consultations. He recalled the provisions of Article 5(1)(a) concerning the circumstances in which consultations were compulsory, including government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference. The absence of reports or replies to the questions raised by the Committee of Experts revealed the Government’s desire to mask the reality. Unless it had denounced them, which was not the case, the Government was bound to respect ratified Conventions, particularly by sending detailed information on the consultations required on the issues covered by Article 5 of the Convention. Instead of engaging in consultation, the Government had decided to bring trade union officials before the courts and sentence them to penalties which, although suspended, still amounted to a significant financial burden. Such acts should be condemned. Under the Convention, consultations should be undertaken at appropriate intervals fixed by agreement, at least once a year. In a national context in which the national plan had been left devoid of all content, the Government should be invited to request technical assistance from the Office.

**The Government representative** emphasized that the current situation was the result of a lack of communication between the Government and the ILO. The Government stressed that it had not neglected its obligation to submit reports, as illustrated by the fact that all the reports due in 2013 had been sent, which was why Chad was no longer on the list of cases of serious failure. The national employment policy had been approved and submitted to the Government for adoption. The Government reaffirmed that tripartite consultations had been held within the National Social Dialogue Committee, which had enabled a solution to be found to the social crisis experienced by the country. The misunderstanding between the Government and the social partners was regrettable, but it should be noted that the case mentioned by the previous speaker had been dismissed on appeal. The Government welcomed the

proposal to provide it with technical assistance on the issues under consideration.

**The Worker members** recalled that the Governing Body had adopted a plan of action for the period 2010–16 for the widespread ratification and effective implementation of the governance Conventions, which demonstrated that those Conventions played an essential role in promoting full, productive and freely chosen employment, strengthening social cohesion through social dialogue and maintaining decent working conditions. Although the outline for an institutional framework to implement the Convention existed in Chad, it was important to provide the Government with technical assistance and to envisage technical cooperation for that purpose. A cooperation project would need to be established to encourage the exchange of good practices between the Higher Commission for Labour and Social Security and advisory committees in ILO member States that had useful experience on the subject of implementing the Convention.

**The Employer members** stated that it was important to focus on the weaknesses identified in the implementation of the Convention. It would appear that there were shortcomings in social dialogue in the country. The Government should therefore be encouraged to strengthen its capacity and its interaction with the representatives of employers and workers. It would also be important to improve its compliance with its reporting obligations so that there could be a better understanding of the national situation by the Office. They therefore encouraged the Government to take decisive measures to improve social dialogue and bring the tripartite partners together.

### **Conclusions**

**The Committee took note of the information provided by the Government and the discussion that ensued.**

**The Committee noted that the outstanding issues concerned the operation of consultation mechanisms and the lack of information on the effective tripartite consultations required by the Convention.**

**The Committee noted the Government’s indication of the establishment of the Higher Committee for Labour and Social Security in April 2003 and the National Committee on Social Dialogue in November 2009, as well as some discussions that took place between the Government and the trade unions. The Committee noted that the Government did not provide the information on the consultations held between representatives of the Government, employers’ and workers’ organizations on the issues provided for in the Convention related to international labour standards.**

**The Committee regretted the absence of reports by the Government since 2009 and stressed the importance of social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers as provided for by this Convention. The Committee invited the Government to take all appropriate measures to ensure effective functioning of the procedures required by this governance Convention. The Committee also invited the Government to seek ILO technical assistance including an exchange of good practices with other member States in order to strengthen social dialogue and to build an effective national mechanism in order to support tripartite consultation required by Convention No. 144.**

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### **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)**

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**ICELAND (ratification: 1990)**

**A Government representative** gave a brief description of the two main legislative instruments that implemented the Convention, that is the Disabled Persons Act that took effect on 1 January 2011 and aimed to guarantee people

with disabilities equality and quality of life comparable to that of other citizens, and Act No. 60/2012 on Employment-Related Vocational Rehabilitation and the Operation of Vocational Rehabilitation Funds, which was adopted on 12 June 2012 with a view to ensuring that individuals with reduced working capacity had access to vocational rehabilitation and that as many people as possible remained active in the labour market. Under section 4 of the Act, all wage-earners and employers or self-employed individuals aged 16–70 were guaranteed the right to vocational rehabilitation through the payment of a premium to a vocational rehabilitation fund. The speaker emphasized the importance of social dialogue and tripartite commitment in the preparation of the Act as its origins went back to the collective agreements of 2008 which included provisions on the development of new rehabilitation arrangements designed to provide remedies for workers who fell ill for long periods or suffered accidents resulting in a reduction of their working capacity. The social partners had also reached an agreement on the imposition of a special premium on employers as from 1 June 2008 to be paid to a special fund operated for this purpose. The fund was established by the social partners on 19 May 2008 to give effect to the provisions of the collective agreement. The Government subsequently announced that legislative provisions would be made for the imposition of a new wage-based fee of 0.13 per cent on employers as well as a corresponding contribution by the pension funds and the State Treasury to allow for an equal three-way division of the costs of the Vocational Rehabilitation Fund (VIRK). This legislation had now been passed and work was under way on the details of the system in practice.

**The Worker members** referred to the general economic context and, in particular, the results achieved from measures taken to emerge from the crisis. Despite that context, Iceland had an ambitious employment policy for persons with disabilities, with the general aim of guaranteeing them equality and the same quality of life as other citizens. The national plan that had been adopted to that end was also ambitious, as its goal was to ensure that, by the end of 2014, some 85 per cent of persons with disabilities of working age had a job. In addition, a fund for vocational rehabilitation had been set up for people who were disabled as the result of an accident or illness. Moreover, satisfaction could be drawn from the fact that all the new legislation that had been adopted on persons with disabilities was based on collective agreements that had been reached between the social partners; that policy was exemplary in that it was the epitome of tripartism.

**The Employer members** welcomed the possibility to address a case of progress after having examined 25 cases of non-compliance and failure to implement the provisions of ratified Conventions. They joined the Worker members in praising the Government's steps to recover from the 2008 financial crisis, while maintaining the social dialogue which concluded in a collective agreement providing for the establishment of a vocational rehabilitation fund.

**The Worker member of Iceland** highlighted that the foundations of VIRK had been laid in a collective agreement reached between the social partners at the national level, which demonstrated that, when it came to matters of national interest to all workers and employers concerning the labour market, the employers' and workers' organizations at the national, and not the enterprise, level were best placed to identify and address important problems and opportunities. The Government had seized this opportunity and transformed the results of the collective agreement into law so that the entire labour market, employers and workers would be bound by it and could reap the results. Social dialogue, with collective bargaining at its heart, was a vehicle of progress, and presupposed

strong unions and employers' associations and Governments committed to international labour standards.

**The Employer member of Iceland** stated that VIRK, which had been founded by the social partners in 2008, was an excellent example of successful social dialogue and that the cooperation between the social partners had been very effective since the beginning of that process.

**The Government representative** thanked the Committee for highlighting recent developments in Iceland concerning the vocational rehabilitation of persons with disabilities as a case of progress and for praising the Government's approach to economic recovery. He recalled that when the crisis hit in 2008, in one week, 90 per cent of the banking system had collapsed and, within a year, unemployment had risen from 1 to 10 per cent. The Government, however, managed to take care of disadvantaged persons, while addressing at the same time economic restructuring, which was also a good example of how social dialogue and tripartism could produce positive results. His Government fully supported the ILO supervisory system, including the work of the Committee of Experts and the Office.

**The Worker members** said that they had appreciated the opportunity to discuss that case in which progress had been made. That experience should be repeated in the future in order to ensure that the Committee not only examined difficult cases, but was also able to report on cases in which positive measures had been taken to improve workers' and citizens' lives.

**The Employer members** stated that they were pleased to conclude the Committee's discussions with a case of progress, which permitted a somewhat difficult year to end on a very positive note. They hoped that the practice of including cases of progress in the Committee's list of cases would continue for future sessions of the Conference.

### Conclusions

**The Committee welcomed the discussion of this case of progress and the exchange that took place on the application by Iceland of Convention No. 159. The Committee praised the Government's ambitious approach to promote employment opportunities for persons with disabilities. This approach involved the social partners who had established the Vocational Rehabilitation Fund (VIRK) to give effect to the provisions of a collective agreement adopted at the national level in 2008.**

**The Committee considered this case as an example of good practice. It commended the Government for its comprehensive efforts to improve access to the labour market for persons with disabilities. The Committee invited the Government to continue to report on progress made in the implementation of the Convention.**

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### Worst Forms of Child Labour Convention, 1999 (No. 182)

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#### SENEGAL (ratification: 2000)

**A Government representative** recalled the international Conventions ratified by Senegal concerning the protection of children's rights and also recalled the existing national framework in that regard. Referring to the request of the Committee of Experts regarding the steps taken against begging and the trafficking of persons, she emphasized the adoption by the Council of Ministers on 29 November 2012 of the National Framework Plan for the Prevention and Elimination of Child Labour (PCNPETE), together with an action plan up to 2016 for combating child labour; and the holding of an inter-ministerial council on 8 February 2013, chaired by the Prime Minister, on the ways and means of eradicating the practice of begging. The Steering Committee responsible for the follow-up and

implementation of recommendations from the inter-ministerial council had drawn up a National Framework Plan for the Eradication of Begging (PNEMI) 2013–15. The Plan, adopted in April 2013, contained a set of short-term measures involving, inter alia, the following priority areas of action: provision of care for children; the eligibility of Koranic schools that followed norms and standards; the return of foreign children to their families; and an information campaign for both the public and the authorities. During his address to the nation on 3 April 2013, the President of the Republic had announced important measures for basic education, including some specifically for pupils in Koranic schools. Regarding the application of Articles 3(a) and 7(1) of the Convention, the Government representative referred to the report of 28 December 2010 submitted to the Human Rights Council further to the mission to Senegal, and indicated that her Government had presented further information at the 16th session of the Human Rights Council in February–March 2011 to clarify the inconsistency noted between the provisions of section 245 of the Penal Code and those of Act No. 2005-06. She reiterated the remarks made by her Government at the 16th session of the Human Rights Council, explaining that section 3 of the aforementioned Act penalized all forms of exploitation of begging undertaken by others, and section 245 of the Penal Code made the distinction between prohibited begging, which was punished, and tolerated begging, namely begging undertaken on days and in places established by religious traditions. Both Acts coincided in condemning persons who allowed begging by young people under their authority. Consequently, her Government considered that there was no ambiguity between the provisions of section 245 of the Penal Code and those of Act No. 2005–06. Furthermore, the Government was contemplating strengthening the child protection system by establishing a children's code, which was being finalized. Describing the existing legal framework, she stated that the statistics compiled from the prosecution services showed many prosecutions and convictions of perpetrators of trafficking. The Ministry of Justice had addressed Circular No. 4131 in August 2010 to the authorities responsible for prosecution and judgment, requesting them to be rigorous in handling cases relating to the trafficking of persons in general and the economic exploitation of children through begging in particular.

With regard to the application of Article 7(2) of the Convention, the Government representative reported on government action in the context of the partnership for the removal and reintegration of street children (PARRER), namely: the identification of 1,129 families likely to entrust their children to Koranic teachers in at-risk regions; the identification of 5,160 children thus entrusted; the identification of 759 *daaras* (Koranic schools) in 200 villages in Senegal; the establishment of 146 committees for the protection of *talibé* children; the drawing up and provision to the Ministry of Education of a harmonized curriculum for Koranic teaching, and also of quality standards for Koranic teaching; and the national campaign for the application of a law developed in 2010 by PARRER and the child protection support unit (CAPE). Moreover, the Care, Information and Counselling Centre for Children in Difficulties (the GINDDI centre), under the Ministry of Family Affairs, had a free 24-hour helpline for children in distress. A total of 13,521 calls had been recorded by the helpline in 2011 and 2012. In accordance with the Government's policy of pursuing the *daara* programme, the Government representative also highlighted the signature of a framework agreement between the Ministry of Education and the federations of Koranic schools in Senegal. In this agreement, accredited *daaras* undertook to refrain from any form of begging. Furthermore, in

partnership with the Islamic Development Bank for the next four years, a pilot project had been set up to support the modernization of *daaras* which would make for significant improvements in living and learning conditions in 64 *daaras*. The Government representative indicated that with the emergence of modern *daaras*, Senegal was acquiring the means to stimulate the gross enrolment rate with a view to achieving education for all by 2015.

The Worker members recalled that in August 2009 and 2013, following the painful events that had taken place in March, and after a fire in which students at a Koranic school had burnt to death, the Government had planned to implement the national plan to eradicate child begging in the streets. Article 3 of Act No. 2005-06 prohibited organizing the begging activities of others with a view to profiting therefrom and recruiting, coercing or misleading another person with a view to forcing them into begging or exerting pressure on them to beg or continue doing so. Those measures were currently suspended owing to pressure from lobby groups that encouraged illegal and dangerous practices to the detriment of society. Those lobby groups exploited vulnerable children and women in conditions that were degrading and morally depraved. The Worker members underlined the fact that the Government had delayed the strict application of enforcement measures that were grounded in the existing legal instruments, particularly Act No. 2005–06. The report of the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, submitted to the Human Rights Council on 28 December 2010, noted with concern that more than half of the children who were forced to beg in the Dakar region came from neighbouring countries. If begging was a cultural and educational practice that aimed at the outset to foster humanity and compassion in adults, it had to be acknowledged that the situation of street children was more worrying than ever given that it was on the increase, and becoming particularly widespread throughout the country.

The Worker members also indicated that the measures the Government had taken were not effective and that all the work mentioned in Article 3(d) of the Convention should be prohibited under Article 4(1), by domestic legislation or the competent authority, after consultation with the relevant employers' and workers' organizations, taking account of the relevant international standards, particularly Paragraphs 3 and 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). The social partners should be more involved in finding solutions to problems arising, particularly in the field of education. Begging could never be eradicated without universal education, and, conversely, the aim of universal education would never be achieved if child labour was not eliminated. Education must be made a public priority even in countries that were not rich. The impact of programmes implemented by the Government with support from technical and financial partners had been felt to a small extent in the Saint Louis, Tambacounda, Matam, Kaffrine, Kolda and Louga regions. The programmes were based on sectoral policies in the following areas: bringing social protection for vulnerable groups into line with the minimum social protection floor; and education policy that included universal education and eradicating illiteracy. A survey carried out in 2010 by ILO–IPEC and the United Nations Children's Fund (UNICEF) had revealed that 50,000 children aged between 4 and 12 lived on the streets. In a 2010 report, the Government had pointed to 9,269 children who had been withdrawn from the worst forms of child labour, on the one hand, and 1,020 vulnerable children who had benefited from social assistance, on the other. Although the Government had made efforts to improve the situation, it must do more, and quickly. The Worker members said that it was necessary, first and

foremost, to punish violations of the Convention by using all the means provided for in criminal law. There was a wide disparity between the Act on protecting the rights of the child and effective application thereof in the country. They also emphasized that the key provision of the Convention, Article 8, was unique in stipulating that member States should take appropriate steps to assist one another in giving effect to the provisions of the Convention through enhanced international cooperation and/or assistance.

The Employer members declared that the Convention, adopted in 1999 and ratified by Senegal in 2000, was one of the last generation of fundamental Conventions. The *marabouts'* practice of using *talibé* children in Koranic schools to make money, by sending them out to work in the fields or beg in the streets or to engage in other lucrative forms of illegal work was a major cause for concern, as it denied them access to health, education and decent living conditions. ILO-IPEC's effort to eradicate child labour in Africa was also directed at combating the worst forms of child labour such as these. A few *marabouts* had been arrested in 2010, but none of them had been convicted. Member States should take all necessary steps to guarantee the application of the Convention and respect for its provisions, including the establishment and imposition of sufficiently effective and dissuasive sanctions. There were serious doubts that people in Senegal were taken to court for such crimes as well as for trafficking. Given the seriousness of the problem, the coverage of PARRER that was set up in February 2007 to save children from the streets and return them to society was insufficient. What was needed to eradicate poverty was to implement programmes that were wider in scope.

The Worker member of Senegal recalled that the Committee of Experts had expressed its concern at the large number of working children under 15 years of age in Senegal and at their long working hours. The Committee had also noted with regret that the amendment of section L.145 of the Labour Code, which permitted the Ministry of Labour to issue decrees derogating from the minimum age for admission to employment, was still being examined and strongly urged the Government to amend its legislation. The Committee had requested the Government to ensure that, both in law and in practice, children under the age of 16 could not be employed in underground mines and quarries, given that order No. 3750/MFPTEOP/DTSS of 6 June 2003, determining the nature of dangerous work that children were prohibited from engaging in, stated that male children under the age of 16 were authorized to accept light jobs in underground mines and quarries. Notwithstanding that section 2 of the Act of 2005, to combat the trafficking of persons and similar practices and to protect victims, provided for the maximum penalty to be imposed in the case of violations involving minors, the Committee of Experts had observed that in practice the trafficking of children was still a cause for concern. The Committee had also expressed its profound concern at the failure to apply the Act of 2005, and especially at the allegations of impunity of certain traffickers. The Committee of Experts had made a special point of voicing its profound concern at the exploitation of *talibé* children. In 2010 there were an estimated 50,000 of these children. Virtually all *talibé* children were boys attending Koranic schools (*daaras*) and living under the authority of their Koranic teachers, or *marabouts*. Although generally speaking the students did not have to pay for their studies, their meals or their lodging, they were obliged to beg for five hours a day on average to earn money. Children who were unable to earn money were physically abused, tied up or chained. Those who tried to escape were severely punished. The children were very vulnerable as they were entirely dependent on *daaras* and their Koranic teachers.

And although most urban *daaras* had sufficient resources, the *marabouts* tended to neglect the children's vital needs – for food, housing and health. For example, nine children died in a *daara* fire in Dakar in March 2013 and around 45 *talibés* were unable to escape from a small wooden room in Dakar's medina. Ninety per cent of beggar children in Dakar were *talibés*, and 95 per cent of these were from outside the capital; over half came from other parts of Senegal and the remainder from Guinea-Bissau, Guinea, Mali and the Gambia. The employment of a large number of children in agriculture and fishing inevitably exposed them to occupational hazards in the use of machines and dangerous tools. In fishing especially, children had to handle explosives that were used to kill large quantities of fish. Children employed as domestic help (some of them girls as young as 6 years old) worked long hours and were vulnerable to physical and sexual aggression by their employers.

The speaker emphasized the State's lack of commitment of adequate resources. Although under the 2005 Act to combat the trafficking of persons and similar practices and to protect victims, forcing children to beg was a criminal offence incurring the maximum penalty, section 245 of the Penal Code unfortunately provided that "begging on the days, in the places and in circumstances consecrated by religious tradition" did not constitute begging. The police brigade for minors attached to the Ministry of the Interior and the local and national police were mandated to prevent sexual tourism, but the minors' brigade only existed in the capital whereas the sexual exploitation of children was particularly prevalent in tourist areas outside Dakar. The labour inspectorate did not have enough transport resources to carry out its inspections, and only rarely were violators of the law sanctioned for a first offence. Consequently, employers were never really dissuaded from employing children. Apart from a few modern *daaras*, the school curricula of Koranic schools in Senegal, the living conditions and health of the children and the qualifications of the teachers were not subject to any kind of regulation. Although a *daara* inspectorate had been set up in the Ministry of Labour to implement the *daara* modernization programme and to integrate the *talibé* schools into the State education system, it did not cover all the *daaras*, which continued to proliferate without any kind of supervision. Finally, it was unfortunate that legal proceedings against forced begging had been initiated only in a few rare instances in recent years and that the *marabouts* involved had not been convicted. Senegal's legislation provided for compulsory schooling up to the age of 12, while according to the Labour Code, the minimum age for employment was 15. Consequently, because they were not in school and were not legally old enough to work, children aged from 13 to 15 years of age were particularly vulnerable to the worst forms of child labour.

The Worker member of France recalled that the Government had ratified the Forced Labour Convention, 1930 (No. 29), Convention No. 182 of the ILO, the United Nations (UN) 1989 Convention on the Rights of the Child, the UN Protocol on Trafficking, as well as the 1990 African Charter on the Rights of the Child. Yet the Government appeared on the list of double footnoted cases, meaning an obvious failure to apply the ratified Conventions and Charters. The Government bore a heavy responsibility for child victims and the problem was even more worrying that Senegal was not the poorest country on the continent. *Talibé* children, some of whom were just 5 years old, were part of the urban landscape tourism. Only boys studied in koranic schools under the authority of Koranic teachers or *marabouts*. In exchange for free education, food and housing these children spent five hours a day begging. Meeting their own needs, enhancing the

ability to cope independently contributed to the solidarity of the village community and was not in itself reprehensible and was part of the value of humility that the cultural context wanted to pass on to the children; many parents were attached to these values. However in this case, it was no longer a question of cultural tradition, but of manipulation of this tradition for profit. It was no longer a cultural context in question but a mafia exploitation of children subjected to brutal slavery that could leave almost irreparable consequences. The fact that those responsible could hide behind values of a cultural heritage and continue to allow such horrors was becoming unbearable. The impact on health and the physical and mental integrity of these children was enormous. Child beggars were undernourished for most. Fever, fatigue, abdominal pain, diarrhoea, dermatitis, and periodically malaria were the most frequently reported diseases. The Government must take measures to eradicate such practices, work to provide a controlled education system, ensure an active fight against poverty through allocation programmes that would allow poor families, even those in extreme poverty, not to use their children to meet their own needs. Senegal had national policies and a comprehensive legal framework needed to halt child begging; the use of these instruments needed to be intensified in order to achieve the desired results.

**The Worker member of the United Kingdom** stated that *talibé* children suffered gross exploitation by being forced into begging for the benefit of their *marabouts* through extreme psychological and physical abuse. Boys who were sent to *daara* residential schools in urban centres far from home became victim to the most cynical distortion of the religious duty to offer alms. The practice was a long-standing one and twisted and contorted into a false justification for a widespread abuse of the vulnerable. This abuse continued despite legislative provisions which could be invoked to stop it. The 2005 Act to combat the trafficking of persons and similar practices and to protect victims, criminalized forced begging and provided for sentences of fines and imprisonment. This should have been used to tackle the practice, but this legislation was undermined by another legal provision about the collection of religious alms. Those who forced children into begging had used this law as a screen to hide behind. As a result, very few prosecutions had been brought. Figures were unclear, but Anti-Slavery International reported that there had been only two arrests for physical abuse in 2005 and three in 2006. The speaker recalled that an estimated 50,000 *talibé* lived in a situation of daily beatings and punishments and this was widespread and openly known. In 2007, a *marabout* who had beaten a *talibé* child to death had been sentenced to a mere four years in prison. In August 2010, the Prime Minister's announcement of a decree to clarify the prohibition of begging in public places was immediately undermined. Sentences which had been imposed on seven *marabouts* had not been enforced and they had walked free. The President had bowed to pressure from branch associations of Koranic teachers to reverse the small steps that had been taken towards the criminal enforcement. The Government had failed to provide any further information to support its assertion that the Penal Code would be enforced through the investigation, arrest and conviction of *marabouts* involved in forced begging. She called for an integrated programme which would require the Government to enforce the Penal Code to protect *talibé* children and include other means to tackle poverty and barriers to access state education.

**The Government member of Kenya** noted the progress made by Senegal in domesticating the principles enshrined in the Convention and the Government's commitment and willingness to eradicate child labour. The

Government had developed a National Plan of Action and a number of prosecutions had taken place. This indicated that the Government was playing a leading role in addressing the matters by punishing those responsible. A sustained technical cooperation was needed. His Government urged the Government to continue implementing measures aimed at eliminating the worst forms of child labour in particular, through the labour inspectorate in collaboration with the judicial and extra-judicial bodies.

**The Worker member of Swaziland** stated that, as serious violations of human dignity and personal development, forced labour and child labour contributed to the persistence of the cycle of poverty. Child labour could have severe consequences on the education, health and the development of its victims. The harmful effects of child labour prejudiced the opportunities for children, seriously arrested their social and psychological development and eroded their chance to a better future. In Senegal, child begging was a threat. Empirical evidence showed that forced labour, child labour and discrimination were major obstacles to economic development and contributed to the persistence of poverty. In 2004, the ILO-IPEC study had demonstrated that the economic benefits of eliminating child labour would be nearly seven times higher than the costs required for its elimination. The Senegalese authorities had largely failed to enforce the existing regulations prohibiting the engagement of underaged persons to work. This failure was responsible in part for the ever growing numbers of street child beggars and their abuses. Only a few isolated cases of extreme violence and abuses perpetrated against *talibés* had been prosecuted under the Penal Code. Until 2010, no *marabout* had been arrested, prosecuted or convicted expressly for forcing *talibés* to beg. In Senegal, it was not a question of the absence of the legislation, but rather of the failure to enforce it. The Government had demonstrated fable political commitment to protect and promote the rights of these children. It was paramount to ensure that there were specific bodies responsible and capable of addressing the issue. The current legislation relating to forced child begging should be brought in full compliance with the Convention and labour inspection would need to be involved. Social partners had a collective duty to end the worst forms of child labour whereas the Government should develop programmes, in consultation with the social partners and civil society organizations, to address the plight of the *talibés*.

**The Government member of Morocco** thanked the Government for the rich and exhaustive information on the application of the Convention provided to the Committee. The Government's commitment appeared to be ensured by both normative and social policies and by adherence to international instruments relating to child labour. The Government's action was not limited to the adoption of legislation but also to its implementation and the creation of important social infrastructure which aimed at reducing child begging. However, there could have been a gap between available resources and the social reality, because the practice of *talibés* concerned many people. Strengthening the programmes put in place by the Office and the contribution by the national non-governmental organizations would support the Government in its efforts to protect a particularly vulnerable category of children and help to meet the expectations of the international community.

**The Government representative** expressed her Government's appreciation for the contributions during the discussion of the case and the interventions which had highlighted the efforts of the Government. The question of the rights of children, particularly of those in Koranic schools, was a concern for the highest authorities of the State. While the legal framework provided basic protection against begging by children and trafficking in per-

sons, the Government recognized that eradicating child begging was a huge undertaking, and action from governmental bodies together with support from civil society was therefore vital. National action needed to be matched with subregional action given the trans-border nature of the problem. Bilateral cooperation was essential and, in that respect, the National Action Plan, signed in April 2013, provided for the signing of an agreement with border countries in order to help child victims of trafficking return to their country of origin. Furthermore, the project for the modernization of Koranic schools and the involvement of Koranic teachers should help to better meet children's health and food needs. The Government wished to reiterate that prosecutions had been effectively initiated and penalties imposed against Koranic teachers for reported incidents that had caused the death of *talibé* children. The Government was also keen to specify that only voluntary begging by adults in religious places at certain times was tolerated, but that in all cases begging by children was prohibited and punished by the Penal Code. Government action included a framework plan to combat trafficking in persons which had just been approved by the Council of Ministers and would shortly be implemented; and the Inter-ministerial Council of February 2013, which had called upon all stakeholders, had adopted a plan to eradicate child begging by 2015. However, in order to ensure that those plans produced results, decisions had to be made jointly with all stakeholders. Education, including in *daaras*, was a priority action to which the Government allocated 40 per cent of its budget.

The Worker members took note of the explanations provided by the Government as well as its indicated willingness to fight the worst forms of child labour. They asked the Government to take the following actions needed to achieve its stated intention: to implement the plan of action approved in July 2012; to reactivate the regional committees to fight against child labour; to establish a system of labour inspection and effective enforcement mechanisms; to strengthen the monitoring and evaluation; to adopt concrete measures to put an end to regional child trafficking; to apply the Convention both in law and in practice, and in particular its Article 1 on the immediate measures to secure the prohibition and elimination of begging as a worst form of child labour; to adopt concrete measures to bring to an end to trafficking in the region for the purpose of begging; to engage in tripartite collaboration to identify and implement concrete measures; to seek technical assistance of the Office to establish a roadmap; and finally, to give prominence to the social partners and not just to the partnership for the removal and reintegration of street children (PARRER).

The Employer members appreciated that the Government had recognized the difficulties in implementing the Convention and was committed to finding solutions. They considered that tripartite dialogue was essential. In this regard, they submitted that there was no evidence that the social partners had been consulted with regard to the programme of action to eliminate the worst forms of child labour and therefore suggested that the programme be reviewed in consultation with the Senegalese employers and workers. The implementation of the programme and monitoring mechanisms should also be carried out in consultation with the social partners, in accordance with the provisions of the Convention. The Government should seek international assistance to progress in the eradication of practices contrary to the Convention. Education also played a role and the Government had made progress in this regard. It needed to take further measures to eradicate poverty. The Government should complete the initiated survey to determine the extent of the problem in the country.

## Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed concerning the use of children in begging for purely economic ends, as well as the trafficking of children for this purpose.

The Committee noted the Government's statement that continuous begging in the streets of the city was a penal offence under Senegalese law, while asking for alms was tolerated in light of socio-cultural beliefs. The Committee noted the several measures adopted by the Government in the framework of the partnership for the removal and reintegration of street children (PARRER), including advocacy visits to major religious leaders and Koranic masters, measures of prevention and of removal of children from the streets, and the development of broad awareness-raising campaigns. The Committee also noted the Government's indication that it had adopted action plans to combat trafficking and child begging, and that, in the context of the modernization of the *daaras* system, it had taken a number of measures to train Koranic masters and *talibé* children on the rights of children and their protection, and to improve the living conditions and education of child *talibés* in *daaras*.

While noting the policies and programmes adopted by the Government to address begging by *talibé* children, the Committee shared the deep concern expressed by several speakers regarding the persistence of the economic exploitation of a large number of children in begging, and at the fact that children continued to be trafficked for this purpose, especially from neighbouring countries. The Committee reminded the Government that, while the issue of seeking alms as an educational tool fell outside the scope of the Committee's mandate, it was clear that the use of children for begging for purely economic ends could not be accepted under the Convention. The Committee emphasized the seriousness of such violations of Convention No. 182. It urged the Government to take immediate and effective measures to eliminate, as a matter of urgency, the use of children in begging for purely economic ends, as well as trafficking of children for this purpose. In this regard, the Committee encouraged the Government to ensure the implementation of the recently validated Framework Plan to combat trafficking, and of the National Plan of Action adopted in February 2013 to eradicate child begging by 2015.

The Committee noted that, although Law No. 2005-06 of 29 April 2005 prohibited the organization of begging for economic gains, the Penal Code appeared to permit the organization of begging by *talibé* children. Moreover, the Committee expressed its serious concern that Law No. 2005-06 was not applied in practice. In this regard, the Committee deeply regretted that a very low number of *marabouts* had been prosecuted and given prison sentences, which amounted in practice to a climate of impunity. The Committee therefore strongly urged the Government to take the necessary measures to harmonize the national legislation so as to guarantee that the use of begging by *talibé* children for economic exploitation was clearly prohibited, and to ensure that this legislation was applied in practice. In this regard, the Committee strongly urged the Government to take immediate and effective measures to strengthen the capacity of the relevant public authorities, in particular the labour inspectorate which would be dedicated to identifying *talibé* children with a view to removing them from their situation of exploitation. It also urged the Government to strengthen the capacity of law enforcement officials, particularly the police and the judiciary, in order to ensure that the perpetrators were prosecuted and that sufficiently effective and dissuasive sanctions were imposed.

Noting the information highlighted by several speakers that the worst forms of child labour were the result of poverty and underdevelopment in Senegal, the Committee welcomed the decision of the Government to continue to avail

itself of ILO technical assistance in order to achieve tangible progress in the application of the Convention, and requested the Office to provide such assistance.

Finally, the Committee requested the Government to provide a detailed report to the Committee of Experts addressing all the issues raised by this Committee and the Committee of Experts for examination at its next meeting.

#### UZBEKISTAN (ratification: 2008)

The Government provided the following written information.

Having ratified the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), the Government had consistently been implementing the National Plan of Action in this area. For example, the Labour Code provided the minimum age for employment – 16, in exceptional cases, with the permission of parents or persons replacing them – 15. For workers below 18 years, employers are obliged to provide necessary conditions for a combination of work with study and privileged terms for work and rest, to ensure the observance of the labour safety norms, including prevention from dangerous types of labour. Moreover, on 26 March 2012, the Cabinet of Ministers adopted the decision “About additional measures for the realization in 2012–13 of the Forced Labour Convention and the Convention concerning prohibition and immediate action for the elimination of the worst forms of child labour, ratified by the Republic of Uzbekistan”. In addition, the system of state institutions for the elimination of the worst forms of child labour was created. The special Commission on Affairs of Minors of the Cabinet of Ministers, headed by the General Public Prosecutor had been functioning, whose competence included deciding practically all questions concerning the elimination of the worst forms of child labour. With the decision of the Cabinet of Ministers on 24 March 2011, the inter-institutional Working Group on the preparation and presentation of the information on the implementation of the ratified ILO Conventions was formed.

With a view to eliminating forced labour and the worst forms of child labour, comprehensive measures were developed, connected with the creation of about 1 million jobs annually, by ensuring the employment of not less than 500,000 graduates of the vocational colleges that were for the first time entering the labour market. On 29 July 2009, the Ministry of Justice registered the new edition of the list of jobs with adverse working conditions, forbidden for workers below 18 years (No. 1990), that was developed by the Ministry of Labour and Social Protection and the Ministry of Health, according to the Labour Code and the decision of the Cabinet of Ministers, No. 207 of 12 September 2008. In addition, with the joint decision of the Ministry of Labour and Social Protection and the Ministry of Health of 21 January 2010, “The regulation about the requirement for elimination of the use of labour of youth” was confirmed, according to which the use of youth labour in the following jobs is prohibited: (a) underground, underwater, at dangerous heights or in closed spaces; (b) with dangerous mechanisms and in unhealthy conditions at which the minor can be exposed to the influence of dangerous substances or the processes harming his or her health; (c) the jobs carried out in especially difficult conditions (work at night, etc.); (d) which by its character can damage the morals of this category of workers; and (e) connected with lifting and moving the weights exceeding the established limits. The State Labour Inspectorate of the Ministry of Labour and Social Protection carried out regular monitoring with respect to compliance with the labour legislation regarding minors.

In 2012, during monitoring by the State Labour Inspectorate, 448 cases of violations of the labour legislation concerning minors were revealed, 432 instructions were given out, 36 officials were charged with administrative responsibility and fined more than 13.1 million Uzbec soms (UMS). Violations of the labour legislation with respect to minors typically concerned the following: guarantees of employment of persons below 18 (section 239 of the Labour Code); rights in the field of occupational safety and health; working hours; granting of holidays (section 240); labour record books (section 81); termination of the labour contract (sections 97, 99 and 100); and registration of the contract (section 107).

The major factors in the fight against the worst forms of child labour were the measures adopted for the creation of jobs and youth employment. These measures included graduates of educational institutions, the reformation of the education system providing 12 years’ compulsory education for all children, the vast system of social protection, including the developed infrastructure, the mechanisms of material aid for families, and custody and guardianship. There was no mass spread of the antisocial phenomenon such as “neglect of children” which was the major factor of generating the worst forms of child labour in many countries; there was no child slavery and recruitment of children in armed conflicts. Thus there was an artificial inflation of the issue about “as if mass, long-lasting forced labour of children on the cotton fields of Uzbekistan”. The use of child labour as a method of unfair economic competition was unacceptable, and Uzbek cotton took the leading position in the world market due to its quality.

The world community had developed concrete norms defining the admissibility of child labour, including in agriculture. ILO Convention No. 138 does not limit the possibility of the involvement of children in feasible labour activities in domestic work or in family businesses as “helping” members of a family. ILO Convention No. 182 specifically defined the kinds of activities which are certainly unacceptable. From this it followed that a selective approach, both to the Convention and its implementation in the individual countries was inadmissible. The Government had presented information on the implementation of this Convention (and others) in due time. However, for the last four years the Committee of Experts, not properly estimating the official information provided by the Government, had been referring to the unconfirmed data of the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC), that the Government forced schoolchildren (estimated at half a million to 1.5 million children of school age) to work in a national campaign for the cotton harvest for a period of about three months every year. The Committee of Experts had also been referring to unfounded statements of the ITUC that about half of all harvested cotton in Uzbekistan was grown by forced child labour, that while gathering cotton there were accidents leading to injuries and deaths of schoolchildren, that they were not allowed to go to the doctor even if they were sick, that for each region quotas on gathering of cotton were established and that the governors of the regions (*hokims*) were assigned to ensure the implementation of these quotas.

It had called on the Government to adopt immediate and effective measures to eliminate forced labour and hazardous work of children up to 18 in cotton production. The following concrete facts showed the inconsistency of these conclusions: all cotton, for example, in 2012, more than 3.4 million tonnes, in Uzbekistan was gathered by private commodity producers – farmers (there were about 70,000 farms and more than 1.4 million people occupied them) within 30–40 days, according to concluded contracts in advance, and these farmers had no economic



interest in attracting additional workers; the representative office of the United Nations Children's Fund (UNICEF) in Uzbekistan, on the basis of data of the monitoring carried out in 2012, ascertained that pupils of schools were not involved in cotton harvesting; and according to the Ministry of Health in 2012, during the cotton harvest in 6,161 places measures were taken to ensure the delivery and storage of drinking water; and 6,583 toilets were installed; 7,902 kilograms of antiseptics were distributed; and 7,700 canteens were set up.

Thus it was necessary to distinguish between child labour and its worst forms which involved infringements of the rights of the child and demanded elimination. With a view to implementing effective measures on the elimination of forced labour and the worst forms of child labour, the practice of parliamentary hearings on labour and social development had been introduced. In 2011 and 2012, the members of Parliament heard the reports of the Ministries of Labour and Social Protection, and of Higher and Secondary Special Education concerning the implementation of programmes for the establishment of workplaces and the maintenance of employment including for graduates of educational institutions. Concrete work was done to bring to the attention of concerned ministries, agencies and public organizations, and also the international organizations, such as the ILO, the United Nations Development Programme (UNDP), and UNICEF, the measures adopted by the Government to implement the ratified Conventions of the ILO. For this purpose, the Ministry of Labour and Social Protection held a seminar in Tashkent City in May 2012 on the theme "Realization of substantive provisions of the ILO Conventions ratified by the Republic of Uzbekistan" and meetings in the corresponding ministries and agencies were held. The ILO participated in both the seminar and bilateral meetings. The participants of the seminar and the organized meetings recommended developing cooperation with the ILO by drafting and undertaking concrete programmes; informing the ILO and other international organizations about the measures adopted on the implementation of the ILO Conventions; and carrying out monitoring of observance of requirements of the ratified ILO Conventions, including concerning forced labour and the worst forms of child labour.

The information set forth above, and also materials requested by the Committee of Experts concerning the implementation of the Convention, as well as the Forty-Hour Week Convention, 1935 (No. 47), the Holidays with Pay Convention, 1936 (No. 52), the Abolition of Forced Labour Convention, 1957 (No. 105) and the Employment Policy Convention, 1964 (No. 122), were officially presented to the ILO secretariat, and on the eve of the present session of the International Labour Conference, the positive reply from the International Labour Standards Department of the International Labour Office was received. If the results of the abovementioned measures on implementation of the ratified Conventions on the elimination of forced labour and the worst forms of child labour were recognized, it would be necessary to reflect them appropriately in the decisions of this Committee. With a view to increasing awareness on measures carried out in Uzbekistan on the implementation of the ratified Conventions, including concerning forced labour and the worst forms of child labour, it has been considered possible, in the context of discussions concerning cooperation with the ILO and the European Union (EU), the Ministry of Labour and Social Protection, the Council of the Federation of Trade Unions, the Chamber of Commerce and Industry, and the National Centre of Uzbekistan for Human Rights to carry out, in November–December 2013 in Tashkent City, a round table on "the prospects of technical cooperation on the implementation of the international

obligations of Uzbekistan in the ILO framework". Representatives of the ILO and its Moscow Office, the European Commission, the international organizations accredited in Uzbekistan (UNDP, UNICEF, UzbyuroKES, etc.), and also foreign representatives of workers and employers, with the participation of representatives of the interested ministries and agencies, members of Parliament and the representatives of non-governmental organizations of Uzbekistan, would be invited. During the round table and bilateral meetings, consideration of the following basic questions would be proposed: cooperation with the ILO on the implementation of the national plan of action on the realization of the Convention, including concerning the organization and carrying out of monitoring of the worst forms of child labour; participation of trade unions, as representative bodies of workers, in practical realization of ILO Conventions on forced labour and the worst forms of child labour, the rights of representatives of workers at the enterprises and to collective bargaining; participation of employers (the Chamber of Commerce and Industry, the Council of Farmers) in the realization of the ratified Conventions on forced labour and the worst forms of child labour, and also the state policy of the development of businesses and ensuring access to employment by the population; prospects of ratification of various Conventions and Recommendations of the ILO, presentation of country reports to the ILO; protection of the social and labour rights of citizens in the light of the ratified Conventions of the United Nations and the ILO; implementation of the international social and labour standards through the national legislation, etc.

In addition, before the Committee a **Government representative** stated that the protection of children's rights was one of the priorities of the country, which was implemented through coherent and systemic policies including: (i) the adoption of legislation and the further improvement of existing legislation on children's rights; (ii) the strengthening of supervisory mechanisms; (iii) the assistance to non-governmental organizations, the media and civil society organizations; and (iv) international cooperation with the relevant United Nations specialized agencies related to the rights of the child. In the context of the economic crisis, the Government was pursuing a policy aimed at preventing the worsening of living conditions, particularly of children, and significant progress had been made in the areas of education, health, and gender equality. All these policies aimed at giving full effect to the provisions of ILO Conventions, including Convention No. 182.

The Government had adopted a national plan of action under which specific measures to eliminate the worst forms of child labour had been implemented, including the adoption of a legislative framework, provisions in the national legislation on the minimum age for admission to employment or work and on the worst forms of child labour, as well as special protection measures for children under 18 years of age. In addition to the written information provided to this Committee on the issues to be discussed during the round table in November–December 2013 which has been proposed, as well as in bilateral meetings, he mentioned the issue of capacity building of the tripartite partners through training and international reporting on future legislation. In addition, during the Universal Periodic Review of the second report submitted to the United Nations Human Rights Council, the Government accepted 101 recommendations, 23 of which related to the protection and guarantee of children's rights. He affirmed his Government's willingness to implement a tripartite Memorandum of Understanding on cooperation with the UNDP and UNICEF covering 2013–16 which included a package of measures. The recent visit of the United Nations Assistant Secretary-General on

Human Rights to Uzbekistan on 27–28 May 2013 also demonstrated the willingness to cooperate on the recommendations made by the Office of the High Commissioner for Human Rights and UNDP. In May 2013, a mid-term report related to cooperation between the Government and UNICEF was also discussed and made a recommendation on monitoring and protection of children's rights. The discussion on the Government's third and fourth periodic reports had also taken place in the Committee on the Rights of the Child, and reports had been submitted on a range of issues, including trafficking, prostitution and armed conflict. Further, there had been discussions with the European Commission and bilateral discussions with a number of countries, including the United States.

Turning to some of the constraints in implementing the provisions of the Convention, he stated that these were related to the global economic recession and its impact on vulnerable groups and communities, and stressed that the aggregate effect on the quality and means to implement the Convention had to be taken into account. This also included the serious ecological situation and the water issue in Central Asia which had an impact on food security and access to water. Central Asia had great difficulties with ensuring peace and stability, which had a bearing on trafficking in children. Religious extremism and terrorism also undermined stability. Overall, further strengthening of the organizational and legal mechanisms was needed to ensure respect for the rule of law in the country and respect of children's rights. His Government fully supported ILO action in this area and was committed to an impartial, open and constructive form of cooperation to improve the situation with respect to the rights set out in the Convention. It was committed to fulfilling its international obligations and to implement the recommendations of the Committee of Experts, in cooperation with the ILO.

**The Worker members** noted that the Committee was yet again discussing the forced participation of children in cotton production in Uzbekistan, often in hazardous conditions. They also noted the conflicting statements on the subject. On the one hand, the Government claimed that now that the law prohibited children from working, that monitoring arrangements were effective, that the economy had developed and that the private sector was responsible for the harvesting, there was no longer any forced child labour in the sector. On the other hand, the ILO social partners (the ITUC and the IOE) presented figures and reports showing that forced labour of children still existed during the cotton harvests. Moreover, several international bodies, including UNICEF, had observed first-hand in the autumn of 2011 that children between 11 and 17 years of age were working full-time in the cotton plantations, that their mobilization was organized by the public authorities and that, in some cases, the plantation owners themselves had made private arrangements with schools. The central authorities set quotas for the regional governments, and these in turn set quotas for the schools.

The Worker members emphasized that there had recently been a change in the time-honoured practice. Although the work was now for shorter periods in the more densely populated areas and fewer of the working children were under the minimum age, that this was done at the expense of students between 16 and 18 years of age who were taken on under particularly harsh conditions. As to monitoring the implementation of the Convention on the ground – another point raised by the Committee of Experts – the Worker members noted the Government's claim that all the necessary arrangements had been made to prevent forced labour among children. The Worker members would like to see for themselves just how such a deeply rooted practice had been done away with so quickly, especially as the Government had not provided

any specific information on the number of offences recorded and the number of people prosecuted for mobilizing child workers for the cotton harvest. Since the Government maintained that children were no longer involved in the cotton harvest, there was no reason why it should not allow independent monitors to verify the situation in the country itself.

**The Employer members** indicated that there was broad consensus among the social partners concerning the matter at hand. Since the ratification of the Convention in 2008, the Committee of Experts had commented every year on the Government's failure to comply with its obligations under the Convention, and this was the fourth year in a row that the issue of children being forced to work in the cotton harvest had been taken up by this Committee. The Employer members reiterated their concern about the systematic and persistent use of children in the cotton harvest for up to three months in a year and the negative impact of this practice on the health and education of children, as previously discussed. The social partners, together with other non-governmental organizations had provided information that children continued to be pulled out of school for the harvest. Despite improvements made in one region, it did not appear that the situation described in the 2011 UNICEF report, and noted by the Committee of Experts in its last report, had substantially changed from 2011 to 2012. The only difference appeared to be a reduction in the number of children under the age of 16 forced to work in the harvest, while the number of children between 16 and 18 years of age who were being forced to work during this period, instead of attending school, had increased. The Employer members emphasized that the Convention defined children as being under the age of 18, and that moving the problem from one group of children (under 16 years of age) to another group of children (under 18 years of age) did not cure the lack of compliance, but created another compliance issue.

While the Employer members appreciated the ratification of fundamental Conventions by member States, including Convention No. 182, such ratification was meaningless if it was not accompanied by effective implementation and a demonstrated commitment to live up to international obligations. They further expressed concern that this Committee still had to deal with this long-standing problem and that the Government had provided a similar response in each of the years that the Committee had dealt with the case. Moreover, it was particularly worrying when a member State ignored the conclusions of the Conference Committee, including the request in 2010 and 2011 to accept a high-level mission to allow for the effective monitoring during the harvest season. The Employer members emphasized that, as a minimum, the Government had to allow ILO monitoring during this year's harvest period with full access to all regions of the country. They expressed the hope that such monitoring would show that the Government's actions matched its words.

**The Worker member of Uzbekistan** indicated that the Ministry of Labour and Social Protection, the Chamber of Commerce and the trade unions in the country were working together for the effective implementation of international labour Conventions. She particularly emphasized the role of trade unions and their participation in various activities in this regard. The implementation of the Convention was being ensured through a relevant tripartite agreement, as well as standards related to the prohibition of child labour in a great number of agreements at the sectoral, regional and enterprise level. On the basis of the recommendations made by this Committee, working groups for the monitoring of child labour and combating its worst forms had been set up, working together with the trade unions at all levels within an agreed framework. These activities had shown that there had been no use of

child labour or lack of school attendance. Only in one region two high-school students were found to be working with their parents after school, which had resulted in the release from duty of the headmaster of the relevant school. In her view, the social monitoring of legislation by trade unions would guarantee social and economic protection, including of those working in the cotton harvest. She further highlighted awareness raising and educational measures on child labour and forced labour during harvest among farmers, parents and teachers disseminated through publications, media programmes and education centres. Annual round tables, particularly relating to forced labour, were also being organized with the Government and the social partners, and annual training courses were being held on the rights of children for regional authorities with the participation of trade unions. Furthermore, they were also aiming at eradicating child labour through leisure activities particularly for disadvantaged children up to the age of 14 years, and work and cultural activities for children above the age of 14 years. Furthermore, promotional activities were aimed at encouraging children to go into higher education. Considering the measures taken, she requested that Uzbekistan be removed from the list of individual cases of this Committee, and expressed interest in ongoing technical cooperation on the basis of mutually accepted standards for the enhancement of the rights enshrined in the Convention.

**The Employer member of Uzbekistan** elaborated on the various activities which the Chamber of Commerce had carried out since its creation in 2004, namely its participation in the plan of action to implement ILO Conventions, including the Convention, its programme to create new jobs, especially in the rural areas, the seminars to identify relevant legal provisions and the dissemination of brochures regarding legal provisions on minimum age and the Convention. He pointed out that with agriculture being exclusively a private sector activity with high dynamic growth, the Government needed to create the necessary conditions for business; a dialogue was already ongoing in this respect. Historically, his country had always given great importance to education and science, and the Chamber of Commerce was working hard to cooperate with educational institutions in this regard. While social dialogue had been established only very recently in the country, he considered this a success as this had led to legislation on minimum age and a national monitoring mechanism, although this mechanism could be improved to take into account ILO standards. He affirmed the commitment of the employers of Uzbekistan to cooperate with the ILO and the EU to implement programmes, and considered that technical cooperation could improve competitiveness based on shared experience. It was necessary to further improve the national monitoring system to implement and apply ILO Conventions, in cooperation with the ILO Offices in Geneva and Moscow and the workers' and employers' representatives. It was difficult to achieve results in a short time and he expressed the hope that the ILO would provide the support needed and assist workers and employers.

**The Government member of Switzerland** noted that the question of forced labour for picking cotton among children in Uzbekistan was still being raised by international bodies and civil society. It was unfortunate that the Committee should once again have to examine this case and that so little progress had been made since 2011. The disparity between the country's legislation and the facts on the ground was flagrant. Her Government therefore called on the Government to take urgent steps to bring the actual situation into line with the law. She emphasized that it was very difficult for people in the cotton supply chain to comply with legal requirements if the Government itself forced children to take part in the harvesting. The fact that

legal action had been taken against several national contact points regarding their compliance with the Organisation for Economic Cooperation and Development's (OECD) Guidelines for Multinational Enterprises in their dealings with Uzbek cotton merchants spoke for itself. The Government was strongly urged to accept a tripartite observation mission in the near future and was encouraged to issue a general authorization for all competent actors involved to conduct checks on the cotton harvest.

**The Worker member of Turkmenistan** referred to close cooperation with Uzbekistan and indicated that a package of measures had been applied to ensure the elimination of the worst forms of child labour. The national legislation prohibited forced labour, and all collective agreements contained chapters on minimum age and the prohibition of the worst forms of child labour. In order to ensure fully the effective monitoring and application of standards, it was necessary to have in place a mechanism of social monitoring by trade unions. Since the trade unions in Uzbekistan were very active at the local, national and central levels, they could provide assistance in this regard. Considering all of the above, it was thus justified to remove Uzbekistan from the list of individual cases to be discussed by the Committee.

**The Government member of Turkmenistan** welcomed the efforts made by the Government to apply the Convention, as evidenced by the fact that its legislation was fully in line with the Convention and that a national mechanism for monitoring compliance with legislation on child labour had been introduced. The Government had taken effective steps to eliminate the worst forms of child labour, not only in the cotton sector but also with respect to a wide range of illicit activities. In addition, the 12 years of compulsory schooling provided by the country's education system represented another major success in avoiding the use of child labour. His Government further welcomed the increased cooperation between the Government and the ILO. Joint seminars had been held, and technical assistance provided, to incorporate ILO Conventions into domestic legislation. He also observed that the activities of workers' and employers' representative organizations to safeguard the rights of workers and children had intensified. Based on the above, he requested that the Committee should not continue its consideration of the application of the Convention by Uzbekistan at its current session.

**A representative of the European Union**, speaking on behalf of the European Union (EU) and its Member States, as well as Croatia, Iceland, Montenegro, Serbia, The former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina and Norway, reiterated their strong condemnation of the use of forced child labour and asked governments to make all efforts to eliminate such phenomenon. While having noted the Order issued by the Prime Minister in August 2012, and the concrete progress registered last year as regards the use of child labour during the cotton harvest, they called on the Government to firmly lock in and build upon this progress this year and in the years ahead. They remained seriously concerned with the persistent use of child labour among children above 15 years of age, often in conditions that could be hazardous work, and with the continued failure by the Government to fully implement the Convention. They urged the Government to resolutely step up its efforts towards implementing the Convention by re-engaging with the ILO on a broad-based, time-bound and long-term cooperation programme with a view to eradicating child labour in the cotton sector. The Government should take all appropriate measures for its cooperation agenda with the ILO to be set up in good time for the forthcoming cotton harvest. A sustainable solution to the child labour issue was essential if the efforts that the Government was

putting in its health and education sector were to be really successful.

**The Employer member of Turkmenistan** expressed the view that the Government had implemented a broad package of measures to combat the worst forms of child labour, including legislative measures which were implemented in the framework of a plan of action actively involving workers and employers, and the establishment of an educational system with 12 years of compulsory education, covering all children up to 18 years of age. She considered that the Government was willing and ready to fulfil its obligations, which was further confirmed by the technical seminars that had been held with the participation of the social partners and the technical assistance that had been received, including by organizations specializing in the protection of the rights of the child. It was therefore necessary to discontinue the consideration of the application of the Convention by the Government in the Committee.

**The Worker member of the Russian Federation**, taking note of the Government's willingness to engage in dialogue, considered that the discrepancy in the information available was a source of concern, the violations of the Convention were unacceptable and that the Government should put an immediate stop to them. As for the information the Government had recently submitted, he said that the existence of numerous measures aimed at eliminating the worst forms of child labour constituted a de facto recognition of the phenomenon. The measures taken by the trade unions for monitoring and follow-up should be backed up by experts in order to increase their effectiveness. Further, he recalled that Uzbekistan was one of the few countries of the region that had not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In this regard, the willingness expressed by the Government to cooperate with the ILO should cover a wide range of questions including the said Convention. In the area of the eradication of child labour, the cooperation with the ILO should not be limited to strengthening capacities, but should equally allow for the monitoring by the ILO itself, as well as the involvement of the social partners in a more active manner. He further deplored that the activities of the IPEC programme had to be interrupted and considered that the ILO should be involved at the local level in the preparation of scheduled meetings and activities in the country relating to child labour. Deeply regretting that the ILO had not received the authorization to undertake a visit in the country during the cotton harvest, he expressed the hope that a technical mission would take place in the near future, allowing for the preparation of a tripartite high-level mission.

**The Government member of Azerbaijan** stated that his Government noted with satisfaction the measures taken by the Government to address the issues regarding the application of the Convention. The national plans and programmes that had been adopted were steps in the right direction, including the National Action Plan adopted in 2008, the resolution of the Cabinet of Ministers adopted in 2012 "On additional measures for implementation in 2012–13 of the Convention concerning forced or compulsory labour and the Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour", and the monitoring exercises conducted in 2012. Since the Government had taken all necessary measures for complying with the requirements of the Convention, the examination of this case by the Committee should be discontinued.

**The Worker member of Belarus**, while noting the concern expressed by the workers' representatives of several countries, wished to highlight the positive aspects of the case. Firstly, the Government was continuing its dialogue

with the international organizations, such as the ILO and UNICEF, and was committed to finding a solution to the problem and, secondly, the country's unions were making considerable efforts to combat child labour and to follow up measures in that area. During a visit to Uzbekistan, the trade unions of Belarus had been able to observe the steps taken by the social partners to end child labour. If the Government continued its efforts, especially in sectors other than family enterprises, it was moving in the right direction and the positive measures it had already taken should be noted.

**The Government member of Sri Lanka** stated that, since ratifying the Convention in 2008, the Government of Uzbekistan had taken remedial measures and effective initiatives to implement the provisions of the Convention in law and in practice, including adopting regulations in 2009 on hazardous forms of employment specifying the conditions for the employment of minors which took into account the requirements of the Convention; establishing a special working group; and adopting a programme for local monitoring of the prohibition of forcing students to take part in the cotton harvest. A number of programmes had also been implemented to raise awareness among stakeholders. Her Government appreciated these initiatives, which indicated that the Government was fully committed and willing to achieve the objectives of the Convention. She called upon the Government to continue such initiatives with the close collaboration of the employers and the trade unions and requested the ILO to extend its fullest cooperation and support in terms of technical assistance to the Government.

**The Employer member of Belarus** emphasized that numerous measures had been taken by the Government. Child labour was prohibited by law and in the Constitution. Moreover, due to ILO technical assistance, a monitoring system had been introduced, and, in 2012, no cases of child labour had been identified. Furthermore, the best means of solving the problem of child labour in the agricultural sector would be to increase mechanization in that sector. He considered that the case should no longer appear in the list of cases discussed by the Committee.

**The Worker member of Brazil** stated that, even though the legislation prohibited the use of children in hazardous activities, UNICEF had observed that children between 11 and 17 years of age, and even some under 10 years of age, were used in the cotton harvest – a harvest that was planned by the public authorities and employers. Children were withdrawn from the education system as a result, and their work constituted a violation of the Convention and impacted their childhood. The situation should also be examined in the context of the application of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibited the imposition of work to which no consent had been given. Despite the gravity of the situation, the Government systematically refused to avail itself of ILO technical assistance or to accept the participation of trade unions in the process of combating child labour. Progress had been made in Brazil in combating child labour where, between 2004 and 2009, 1 million children and young persons had been removed from labour. Such progress had been possible due to joint action by the Government and workers, and with the technical assistance of the Office. A high-level mission should be set up to investigate this deplorable situation.

**The Government member of the Russian Federation** recalled that the concern of the international community regarding recourse to child labour in Uzbekistan had not been reduced and that the solution to such a problem could only be found through continued dialogue. His Government was appreciative of the Government of Uzbekistan's readiness to pursue its efforts. A certain

amount of progress had been achieved, including the inter-ministerial working group, and a series of seminars and awareness-raising events organized with the participation of the ILO. However, he called attention to the fact that the written information, as well as the statement by the Government representative, did not answer the questions raised by the Committee of Experts or the Worker and Employer members. The data that had just been provided by the Worker and Employer members contradicted the information provided by the Government. The Government should, therefore, cooperate more closely in order to improve compliance with the Convention and to detect illegal employment of children, particularly in the most hazardous occupations. The Government should provide more information which would help allay the concerns of the international competent bodies, and the situation concerning child labour in the country should continue to be monitored by the ILO supervisory machinery in the context of the existing procedures.

**The Government member of the Bolivarian Republic of Venezuela** welcomed the measures taken by the Government, which his Government considered represented progress in the area of child labour. Furthermore, the country had various legislative and constitutional provisions prohibiting forced labour and the employment of children under 18 in hazardous work, including provisions expressly prohibiting children from being employed in work connected with the cotton harvest. His Government was confident that all of the measures taken were having, and would continue to have, a positive effect on the total eradication of all those practices that had been denounced as violating the Convention. The Government had committed itself to that aim and had satisfied its commitment with the participation of the ILO in a seminar held in May 2012 and the organization of a round table planned for the end of 2013. The Committee's conclusions should highlight the progress that the Government had made and encourage it to continue down that path.

**The Government member of Canada** indicated that his Government shared the concerns of the Committee of Experts regarding the continued use of forced labour and of children for hazardous work in the cotton harvest in Uzbekistan. Even though the Government reported that no child labour was used in the cotton harvest, the awareness-raising and preventive measures it had reportedly undertaken tacitly pointed to a recognition that this practice continued. There was a lack of transparency and information available on the impact of measures taken towards the prohibition of forced and hazardous child labour, and persons seeking to monitor the harvest had found the fields patrolled by police and experienced harassment and intimidation. While noting reports that the Government had scaled back the forced labour of younger children during the most recent harvest, he recalled that the Convention was applicable to all children under the age of 18, while the continued forced use of youths and public servants in the harvest was also a serious issue. The speaker added that, despite reassuring statements, it had still not been clearly demonstrated that policy and legislative measures had been fully implemented or had had concrete effects on the eradication of the worst forms of child labour. The Government was therefore asked to comply with the requests of the Committee of Experts for information on the concrete impact of the measures taken to monitor the prohibition of forced and hazardous child labour, and on the number and nature of violations detected specifically in regard to the mobilization of children under 18 to work in the cotton harvest. The policies and laws which had been put into place by the Government constituted progress, but momentum towards the full implementation of these measures should continue. The Government was urged to accept the ILO's recom-

mendation for a high-level tripartite mission to observe the cotton harvest and to work with the ILO to strengthen the enforcement of forced labour and child labour laws to fully meet the requirements of the Convention.

**The Government member of Thailand** observed that the Government had cooperated fully with the Committee on child labour issues and expressed his Government's satisfaction with the country's consistent implementation of, and commitment to, the National Plan of Action in this area. The Government was to be commended for the creation of state institutions, mechanisms and regulations to eliminate the worst forms of child labour, including the Special Commission on Affairs of Minors, parliamentary hearings, Cabinet resolutions, state inspection of violations, ministerial regulations prohibiting dangerous and difficult working conditions, and related social programmes implemented nationwide. The speaker indicated that the Joint Statement issued by the Association of Farmers of Uzbekistan, the Council of the Federation of Trade Unions and the Ministry of Labour and Social Protection, that virtually all cotton was harvested by farm owners who had no interest in making extensive use of children for the harvesting of cotton, was a further positive sign. His Government called upon the Government to pursue its efforts for the eradication of hazardous working conditions for children under 18 years of age and reiterated the readiness of his Government to lend support to ensure the protection of the rights of the child in Uzbekistan in accordance with international human rights obligations.

**An observer representing Education International (EI)** stated that the information collected independently by international and local non-governmental organizations showed that State-sponsored forced labour remained serious, systematic and continuous. Children, mostly aged 15 to 17 but some as young as 10, were forced to pick cotton under threat of punishment, including expulsion from school. Teachers were forced to pick cotton and supervise the quotas. Conservative figures estimated that up to half a million middle- and high school students were involved in the 2012 cotton harvest. This 2012 involvement of schoolchildren in the cotton harvesting was witnessed in at least three regions: Kashkadarya, Samarkand and Andijan. As in previous years, by November, most middle- and high school students had begun studying, although the academic year started in September. With an estimated 60 per cent of teachers forced to pick cotton, pupils received partial lessons for two months, and the remaining teachers, not in the fields themselves, had to manage combined classes of 50 to 60 children. Teachers were required to produce false documentation of subjects covered that were not actually dealt with, and to assess the students on them. EI was of the view that the Committee should request the Government to adopt a time-bound programme to end the practice of forced labour in accordance with the Convention and Conventions Nos 29 and 105 on forced labour, and to invite a high-level ILO tripartite observation mission to conduct unrestrained monitoring during the 2013 cotton harvest. The Committee's conclusions should appear in a special paragraph of its report given the serious and systematic nature of the violations.

**The Government member of Belarus** noted the responsible approach of the Government to ensure compliance with its international obligations and drew particular attention to the adoption of the national action plan, the strengthening of the legislative framework – especially the increase in the minimum age for employment to 16 and the introduction of sanctions – and the regular submission of reports on the measures in place. The Government should be encouraged and supported in its efforts, and international dialogue and cooperation should be al-

lowed to continue without further intervention on the part of the ILO's supervisory bodies.

**The Worker member of Indonesia** expressed deep concern about the situation of child labour in Uzbekistan. In a country which figured as third in the world in terms of cotton exports, and among the most important producers of cotton in the world, a state-run system of child labour was a major violation of the Convention. The issue of child labour could not be considered only as a national problem in view of increasing globalization and international supply chains in the textile industry. Consumer countries should also be concerned about the massive abuse of children in the cotton fields of Uzbekistan, since children who were forced to work during the cotton harvest were the beginning of the supply chain leading to other countries and consumers all over the world. The speaker referred to Indonesia's experience with regard to technical cooperation received in the area of freedom of association and the elimination of the worst forms of child labour and expressed the view that, with ILO assistance, effective programmes could be set up and the eradication of the worst forms of child labour was possible. A high-level tripartite mission with ILO-IPEC involvement would be an important first step towards a successful solution and should be the starting point for further technical assistance.

**The Government member of the United States** stated that her Government remained seriously concerned about the systematic and persistent use of forced labour and the worst forms of child labour in cotton production in Uzbekistan. Referring to the Prime Minister's decree of July 2012 barring participation of children under 15 in the harvest, she noted that there had been a decline in the number of children under the age of 15 who were compelled to work in the 2012 cotton harvest, but children between 15 and 18 years of age continued to be forced to work in cotton production. There were also credible reports that children were compelled to work under conditions that endangered their safety and health. The speaker further noted that the mass mobilization of labour for the annual cotton harvest also included adult forced labour, which gave rise to serious concern not only about the application of the Convention, but also Convention No. 105, which prohibited the use of forced or compulsory labour for purposes of economic development. Her Government deeply regretted that the Government had resisted accepting ILO assistance in determining on the ground whether the cotton harvest was conducted in compliance with international labour standards. Referring to the Committee of Experts' comment that there was an "evident contradiction" between the Government's position that children were not compelled to work in the cotton harvest, and the concerns expressed by numerous UN bodies, employers' and workers' organizations, and non-governmental organizations, she noted that there were justifiable reasons for concern and that the stated legal and policy situation did not match actual practice. The ILO was uniquely qualified, and the only international organization with the specific mandate, to judge the facts and analyse the concrete impact of the measures indicated by the Government. The Government could be confident that ILO monitoring activities would be transparent and objective, and would provide the Government with an opportunity to work collaboratively with the ILO to verify facts and resolve implementation gaps. Her Government called for urgency and a serious approach to address the practical implementation of ILO Conventions, and strongly urged the Government to respond positively to the call for ILO monitoring of the 2013 cotton harvest, and to ensure that those involved in the monitoring had full freedom of movement and timely access to all situations and all relevant parties.

**The Worker member of Germany** expressed serious concern about the violations of the Convention in Uzbekistan. Approximately 1.5 million children under the age of 18 were forced to work in cotton plantations. There was still a State-controlled system of child labour under which children, who were the most vulnerable, were coerced into the fields because principals, teachers and public officials had to meet harvest quotas. In a most worrying development, the annual cotton harvest from September to November used not only children but also, according to reports from non-governmental organizations, adult teachers, doctors, nurses and other public servants. A system of State-organized child labour could, under no circumstances, be replaced by a national system of forced labour. A situation of schools without school children should not lead to a situation of schools without teachers or hospitals without doctors and nurses. These abusive practices in connection with the cotton harvest often led to the tragic death of young persons. The speaker appealed to the Government to accept an ILO high-level tripartite mission which, along with an effective monitoring of compliance with the Convention, would help to build confidence and lay the foundations for further technical cooperation.

**The Government member of China** highlighted that the Government had taken effective measures to apply the Convention, in particular by setting the compulsory schooling age at 12 years, increasing the minimum age for work, setting up an inter-ministerial working group, sentencing offenders and participating in ILO technical assistance activities. These positive achievements should be recognized by the Committee, and the international community should continue to cooperate with it in its fight against poverty and in its efforts to strengthen national capacity so as to ensure the effective application of the Convention.

**The Government member of Kenya** noted the Government's commitments to review labour legislation concerning child labour, as well as the fact that the Government cooperated with the social partners in this endeavour. He further noted the monitoring mechanisms in place and the training and advocacy initiatives that the Government had undertaken. There had been progress and the Government should be encouraged to continue its efforts to further improve compliance.

**The Government member of Cuba** referring to the National Plan for the implementation of the Convention and Convention No. 138, stated that the Government had spared no effort to prevent child labour. The Constitution contained a provision prohibiting child labour and criminal legislation made it an offence for people to involve minors in illegal activities. There was also a list of occupations that children under 18 were prohibited from undertaking. Furthermore, the Government participated in activities and mechanisms to monitor child labour, along with seminars and campaigns to raise awareness among the social partners, local administrations and international organizations. The speaker underlined the Government's readiness to engage in dialogue with all interested parties and her Government called for further technical cooperation between the Government and the ILO to ensure effective application of the Convention.

**The Government member of Indonesia** took note of the positive developments in the implementation of the Convention, including putting into place a national monitoring mechanism to prevent illegal child labour, as well as programmes to eliminate the worst forms of child labour. The challenge to eliminate child labour could not be denied, and his Government hoped that the Government would continue to take the necessary steps including technical cooperation with the ILO, which was necessary in this matter.

**The Government member of the Islamic Republic of Iran** welcomed the positive developments to ensure the full application of the Convention, as well as a new series of constructive initiatives adopted by the Government towards eliminating the worst forms of child labour and the constant monitoring of child labour. The constructive and well-targeted collaboration with UNICEF had enabled the strengthening of child education capacities and helped implement the provisions of the Convention. His Government urged the ILO to collaborate fully with the Government and ensure it received full technical cooperation necessary for the fair and final elimination of all forms of child labour.

**The Government member of India** appreciated the efforts made by the Government to eliminate child labour. Among the positive steps, he noted the plan of additional measures for the implementation of Conventions Nos 29 and 182 for the period 2012–13, the 2011 “Joint Statement concerning the inadmissibility of using forced child labour in agricultural works” adopted by the Association of Farmers of Uzbekistan, the Council of the Federation of Trade Unions and the Ministry of Labour and Social Protection as well as the operationalization of the hotline on child labour issues throughout the country. He also noted the establishment of an inter-ministerial working group which was headed by the First Deputy Minister of Labour and Social Protection, and was made up of representatives of the Council of the Federation of Trade Unions, the Chamber of Commerce and Industry and key ministries. The resolution adopted by the Cabinet of Ministers on additional measures in 2012–13 for implementation of the Convention indicated the good intent of the Government. His Government firmly believed that the dialogue and cooperation alone would help in resolving the outstanding issues. His Government considered that the examination of this case by the Committee should be discontinued.

**The Government member of Egypt** commended the Government on its efforts, especially its reinforcement of the legislative framework and its development of the education and training system, which had done much to eliminate the worst forms of child labour. The Government should also be commended on the steps it had taken to ensure the sustainable development of the economy. It should be encouraged to continue along that path and to take advantage of the assistance that the ILO could provide in the area of job creation and social welfare. His Government requested that the case no longer be placed on the Committee’s agenda.

**The Government representative** referred to the manner in which his opening statement had been interpreted, including one paragraph which had not been translated into English that had included among the Government’s priorities cooperation with the ILO concerning the implementation of the Convention, which involved the question of monitoring the cotton harvest in the forthcoming autumn. However, the Worker and Employer members continued to see everything painted in black. The speaker quoted a passage from a UNICEF report, which took into account the outcome of monitoring exercises carried out by UNICEF in 2012, in which investigations confirmed that in all 13 regions none of the 3.5 million pupils were obliged to participate in the harvest. His Government did not understand why this UNICEF report was never sent to the ILO or to the Committee of Experts. Referring to the conclusions of the UNICEF report, he stated that progress was recognized, both in the report and by several Government members who had participated in the discussion, but neither the Committee of Experts nor the Worker and Employer members took note of that progress. The World Bank had commented on the extremely high level of literacy in Uzbekistan, and the Director of the World Health

Organization had praised the results of reforms in the health sector and the decreasing child mortality rate. As regards the cooperation with the ILO, his Government had proposed a round table to clarify the situation, but this proposal had not been accepted. His Government further suggested that a long-term cooperation plan could include monitoring the cotton harvest. Those Governments that were prepared to support Uzbekistan’s efforts were thanked because children were their greatest treasure.

**The Worker members** emphasized that the Government had carried out many awareness-raising and prevention activities, which suggested that it acknowledged, at least implicitly, that the mobilization of children for the cotton harvest was a reality in the country. However, the Government did not supply any information on the specific results of monitoring activities. The Worker members considered that the Government’s proposal to set up a round table was not sufficient inasmuch as it did not provide for the possibility of observing the situation on the ground. Hence, the Government should agree to receive a high-level monitoring mission which would evaluate the manner in which the Convention was applied, particularly in cotton plantations at harvest time. Pending a positive reply from the Government, the case should be included once again in a special paragraph of the Committee’s report.

**The Employer members** noted all of the steps the Government had taken and continued to take with a view to meeting its obligations under the Convention, including the legal provisions, government orders, seminars and penalties. The Employer members did not disagree with the view that the Government was on the right path – as one Government member had put it – but being on a path meant that the Government had not yet reached the goal of full compliance with the Convention. It was clear that, while the Government might be making progress, forced labour was still occurring. In addition to a lack of openness, the Government had not produced any factual data but made only statements. The Employer members were under the impression that the Government was willing to allow the ILO to observe the 2013 harvest, which, if confirmed, would be a positive development. Echoing the statement of the Worker members, the Employer members agreed that the Government should accept a high-level monitoring mission and also that the Committee’s conclusions should be placed in a special paragraph of its report.

### **Conclusions**

**The Committee took note of the oral and written information provided by the Government representative and the discussion that followed.**

**The Committee noted the issues raised by the IOE and the ITUC relating to the systematic mobilization of children by the State in the cotton harvest, including the extensive use of labour of teenagers, young persons and adults in all regions of the country, as well as the substantial negative impact of this practice on the health and education of school-aged children obliged to participate in the cotton harvest.**

**The Committee noted the information provided by the Government outlining the laws and policies put in place to combat the forced labour of, and hazardous work by, children. This included the order issued by the Prime Minister in August 2012 banning the use of children under 15 and the adoption of a plan of additional measures for the implementation of Conventions Nos 29 and 182 in 2012, including measures to maintain monitoring for the prevention of forced child labour. The Committee also noted the Government’s statement that it had established a tripartite Inter-Ministerial Working Group with a view to developing specific programmes and actions aimed at fulfilling Uzbekistan’s obligations under ILO Conventions. Lastly, the**

Committee noted the Government's statement that the use of compulsory labour was punishable with penal and administrative sanctions and that, in this regard, concrete measures were being taken by the Labour Inspectorate officials to prosecute persons for violations of labour legislation.

The Committee noted the information from the Government, as well as other sources, that as a result of the measures taken, school children under 15 years of age had not been mobilized during the cotton harvest in 2012. It nevertheless observed with serious concern information provided by several speakers, including representatives of governments and the social partners, that school children between the ages of 16 and 18 continued to be mobilized for work during the cotton harvest. The Committee reminded the Government that the forced labour of, or hazardous work by, all children under 18 constituted one of the worst forms of child labour. It therefore urged the Government to take the necessary measures, as a matter of urgency, to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for all children below the age of 18.

The Committee noted the Government's indication that it was willing to engage in broad technical cooperation with the ILO, which would consist of awareness-raising measures and capacity building of the national social partners and various stakeholders, and would also include monitoring of the 2013 cotton harvest with ILO-IPEC technical assistance. In this regard, the Committee requested the Government to accept an ILO high-level monitoring mission during the 2013 cotton harvest, that would have full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to enable the Committee of Experts to assess the implementation of the Convention at its 2013 Session. Noting the Government's statement that it would be amenable to the terms of reference put forward by the ILO in this respect, the Committee urged the Government to pursue its efforts to undertake, in the very near future, a round-table discussion with the ILO, UNDP, UNICEF, the European Commission and the representatives of national and international organizations of workers and employers.

The Committee requested the Government to include in its report to the Committee of Experts, due in 2013, comprehensive information on the manner in which the Convention was applied in practice, including, in particular, enhanced statistical data on the number of children working in agriculture, their age, gender, and information on the number and nature of contraventions reported and penalties applied. The Committee expressed the hope that it would be able to note tangible progress in the very near future.

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

The Government representative stated that this Committee was starting to get used to the discussions on this case and he therefore wished to raise some points with regard to the conclusions that had been adopted. While acknowledging the importance of broad technical cooperation to implement fundamental ILO Conventions, he recalled the organization of a forthcoming round table on the "Prospects of technical cooperation on the implementation of international obligations of Uzbekistan within the ILO framework" this year in Tashkent. On this occasion, representatives would be invited from the ILO Office in Moscow and Geneva, the European Commission, international organizations such as UNICEF and the UNDP, and foreign representatives of workers and employers, as well as interested national ministries and members of Parliament and representatives of non-governmental organizations of Uzbekistan. The round table would review all aspects of broad-based technical cooperation on the Convention, including the issue of monitoring during the cotton harvest period, and would be based on tripartite consultation and dialogue. It would also focus on enhancing the capacity to protect social and labour rights and prospects of ratification of ILO Conventions. However, he expressed his Government's disagreement with the issues raised by the IOE and the ITUC regarding the systematic mobilization of children by the State in the cotton harvest, including the extensive use of labour of teenagers. His Government also disagreed with the decision to include the conclusions on this case in a special paragraph of the report of this Committee.



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

**Observations and information**

*(a) Failure to submit instruments to the competent authorities*

A Government representative of Bangladesh explained that the submission of Conventions and Recommendations adopted by the International Labour Conference to the competent authority was in progress, and that his Government had already completed the initial task of translating the instruments into Bangla, which was a mandatory and lengthy process and which also involved tripartite consultations. He recalled that the ILO Office in Bangladesh had extended support in that regard, and expressed the hope that the process would be completed in the shortest time possible.

A Government representative of Angola indicated that the situation was carefully considered by the responsible services of the Ministry of Labour which took all measures in order to rapidly meet the obligation to submit instruments to the competent authorities. In this respect, ILO technical assistance with a view to training the relevant officials in this area would be appropriate.

The Government representative of Seychelles indicated that the failure to submit instruments to the competent authority remained a challenge for the Government, given the number of outstanding instruments to be submitted to the National Assembly. The Government strongly anticipated submitting the adopted instruments to the competent authority as soon as possible. The Ministry of Labour and Human Resources Development had recruited additional personnel to assist in fulfilling the Government's obligations and it had recently completed an online training on international labour standards and reporting. With ILO technical assistance, through a national tripartite workshop on international labour standards in 2012, the Government had been advised on relevant approaches to show progress and ensure timely submission. The Ministry of Labour and Human Resources Development was exploring the possibility of submitting to the National Assembly six instruments every year to clear the backlog, and the focus had been placed on the MLC, 2006, the Work in Fishing Convention, 2007 (No. 188) and the HIV and AIDS Recommendation, 2010 (No. 200). Importantly, the MLC, 2006, had been submitted to the Cabinet

of Ministers for ratification, following which it would be submitted to the National Assembly for endorsement.

The Committee took note of the information provided and of the explanations of the Government representatives who had taken the floor. The Committee took note of the specific difficulties mentioned by certain delegates and the commitments to submit shortly to the competent authorities the instruments adopted by the International Labour Conference.

The Committee pointed out that a particularly high number of governments had been invited to provide explanations on the important delay in meeting their constitutional obligation of submission. As had been done by the Committee of Experts, the Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to the competent authorities. Compliance with the obligation to submit meant the submission of the instruments adopted by the Conference to national parliaments and was a requirement of the highest importance in ensuring the effectiveness of the Organization's standards-related activities. The Committee recalled in this regard that the Office could provide technical assistance to support compliance with this obligation.

The Committee expressed the firm hope that the 33 countries mentioned, namely Angola, Bahrain, Bangladesh, Belize, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, El Salvador, Equatorial Guinea, Fiji, Guinea, Haiti, Iraq, Kyrgyzstan, Libya, Mozambique, Papua New Guinea, Peru, Rwanda, Saint Lucia, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Tajikistan and Uganda, would transmit in the near future information on the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee decided to mention these cases in the corresponding paragraph of the General Report.

*(b) Information received*

Ukraine. Since the meeting of the Committee of Experts, the Government indicated that the instruments adopted at the 91st, 92nd, 94th, 95th, 96th and 101st Sessions of the Conference were submitted to the Supreme Rada in May 2013.

**III. REPORTS ON UNRATIFIED CONVENTIONS AND RECOMMENDATIONS**  
**(ARTICLE 19 OF THE CONSTITUTION)**

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

The Committee took note of the information provided.

The Committee stressed the importance it attached to the constitutional obligation to transmit reports on unratified Conventions and Recommendations. These reports permitted a better evaluation of the situation in the context of General Surveys of the Committee of Experts. In this respect, the Committee recalled that the ILO could provide technical assistance to support compliance with this obligation.

The Committee insisted that all member States should fulfil their obligations in this respect and expressed the firm hope that the Governments of Brunei Darussalam, Democratic Republic of the Congo, Equatorial Guinea, Guinea, Guinea Bissau, Ireland, Libya, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan and Vanuatu, would comply with their future obligations under article 19 of the ILO Constitution. The Committee decided

**to mention these cases in the corresponding paragraph of the General Report.**

*(b) Information received*

Since the meeting of the Committee of Experts, reports on unratified Conventions and Recommendations have subsequently been received from the following countries: **Afghanistan, Cambodia, Central African Republic, Niger and Samoa.**

*(c) Reports received on Conventions Nos 151 and 154 and Recommendations Nos 159 and 163*

In addition to the reports listed in Appendix IV on page 239 of the Report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following countries: **Afghanistan, Central African Republic and Trinidad and Tobago.**

## Appendix I. Table of Reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

Reports received as of 20 June 2013

The table published in the Report of the Committee of Experts, page 862, 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.

<b>Algeria</b>	<b>18 reports requested</b>
<hr/>	
<i>(Paragraph 60)</i>	
· 17 reports received: Conventions Nos. 17, 19, 24, 29, 32, 42, 44, 77, 78, 87, 97, 100, 111, 119, 120, 127, 155	
· 1 report not received: Convention No. 81	
<b>Angola</b>	<b>11 reports requested</b>
<hr/>	
<i>(Paragraph 60)</i>	
· All reports received: Conventions Nos. 12, 17, 18, 19, 27, 29, 81, 88, 100, 105, 111	
<b>Barbados</b>	<b>22 reports requested</b>
<hr/>	
<i>(Paragraph 60)</i>	
· 11 reports received: Conventions Nos. 26, 81, 90, 94, 95, 97, 98, 105, 111, 115, 144	
· 11 reports not received: Conventions Nos. 12, 17, 19, 42, 87, 100, 102, 108, 118, 128, 147	
<b>Bolivia, Plurinational State of</b>	<b>10 reports requested</b>
<hr/>	
· All reports received: Conventions Nos. 19, 81, 100, 102, 111, 118, 121, 128, 129, 130	
<b>Bulgaria</b>	<b>29 reports requested</b>
<hr/>	
· 28 reports received: Conventions Nos. 6, 11, 12, 17, 19, 24, 25, 26, 27, 32, 42, 44, 77, 78, 79, 81, 87, 94, 98, 100, 102, 111, 113, 124, 144, 156, 173, (177)	
· 1 report not received: Convention No. 95	
<b>Central African Republic</b>	<b>8 reports requested</b>
<hr/>	
<i>(Paragraph 60)</i>	
· All reports received: Conventions Nos. 17, 18, 19, 81, 100, 111, 118, (169)	
<b>Chad</b>	<b>16 reports requested</b>
<hr/>	
<i>(Paragraphs 51 and 60)</i>	
· All reports received: Conventions Nos. 6, 11, 13, 26, 29, 81, 87, 95, 98, 100, 105, 111, 138, 144, 173, 182	
<b>Denmark - Greenland</b>	<b>7 reports requested</b>
<hr/>	
· All reports received: Conventions Nos. 5, 6, 11, 19, 87, 122, 126	
<b>Djibouti</b>	<b>48 reports requested</b>
<hr/>	
<i>(Paragraph 51)</i>	
· 9 reports received: Conventions Nos. 29, 81, 87, 98, 100, 111, 138, 144, 182	
· 39 reports not received: Conventions Nos. 1, 9, 11, 12, 13, 16, 17, 18, 19, 22, 23, 24, 26, 37, 38, 53, 55, 56, 63, 69, 71, 73, 77, 78, 88, 94, 95, 96, 99, 101, 105, 106, 108, 115, 120, 122, 124, 125, 126	
<b>Ecuador</b>	<b>11 reports requested</b>
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<i>(Paragraph 60)</i>	
· 10 reports received: Conventions Nos. 81, 97, 100, 111, 118, 121, 123, 128, 130, 152	
· 1 report not received: Convention No. 102	

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**France** **12 reports requested**

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- 11 reports received: Conventions Nos. 27, 81, 97, 100, 111, 113, 114, 125, 126, 129, 137
- 1 report not received: Convention No. 152

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**France - New Caledonia** **12 reports requested**

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**(Paragraph 60)**

- All reports received: Conventions Nos. 12, 17, 19, 24, 42, 44, 81, 100, 111, 115, 120, 129

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**Ghana** **17 reports requested**

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**(Paragraph 60)**

- 10 reports received: Conventions Nos. 11, 26, 74, 81, 87, 90, 92, 98, 100, 111
- 7 reports not received: Conventions Nos. 19, 29, 94, 105, 115, 119, 182

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**Iceland** **16 reports requested**

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- 15 reports received: Conventions Nos. 11, 29, (81), 87, 98, 100, 105, 111, 122, (129), 138, 144, 156, 159, 182
- 1 report not received: Convention No. 102

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**Ireland** **37 reports requested**

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- All reports received: Conventions Nos. 6, 11, 12, 14, 19, 26, 27, 29, 32, 62, 81, 87, 88, 96, 98, 99, 100, 102, 105, 111, 118, 121, 122, 124, 132, 138, 139, 142, 144, 155, 159, 160, 176, 177, 179, 180, 182

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**Italy** **10 reports requested**

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- All reports received: Conventions Nos. 27, 29, 97, 105, 137, 138, 143, 144, 152, 182

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**Kiribati** **8 reports requested**

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**(Paragraphs 51 and 57)**

- 4 reports received: Conventions Nos. (100), (111), (138), (182)
- 4 reports not received: Conventions Nos. 29, 87, 98, 105

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**Lao People's Democratic Republic** **5 reports requested**

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**(Paragraph 60)**

- 4 reports received: Conventions Nos. 6, 29, 138, (144)
- 1 report not received: Convention No. 182

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**Lebanon** **16 reports requested**

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**(Paragraph 60)**

- All reports received: Conventions Nos. 17, 19, 29, 59, 71, 77, 78, 81, 90, 95, 105, 122, 131, 138, 152, 182

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**Lesotho** **7 reports requested**

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**(Paragraph 60)**

- All reports received: Conventions Nos. 11, 26, 29, 105, 138, 144, 182

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**Libya** **15 reports requested**

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**(Paragraph 51)**

- 8 reports received: Conventions Nos. 29, 81, 88, 102, 105, 118, 121, 138
- 7 reports not received: Conventions Nos. 53, 95, 122, 128, 130, 131, 182

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**Malawi** **14 reports requested**

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**(Paragraph 60)**

- 9 reports received: Conventions Nos. 19, 26, 81, 97, 129, 138, 144, 150, 182
- 5 reports not received: Conventions Nos. 29, 98, 99, 105, 159

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**Malaysia** **6 reports requested**

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- All reports received: Conventions Nos. 29, 95, 123, 138, 144, 182

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**Malaysia - Sarawak** **2 reports requested**

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- All reports received: Conventions Nos. 19, 94

<b>Malta</b>	<b>20 reports requested</b>
<i>(Paragraph 60)</i>	
· All reports received: Conventions Nos. 11, 12, 19, 29, 32, 42, 77, 78, 81, 95, 96, 98, 105, 124, 129, 131, 138, 141, 148, 182	
<b>Mauritius</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos. 19, 26, 29, 32, 94, 95, 97, 99, 105, 137, 138, 144, 160, 182	
<b>Nicaragua</b>	<b>14 reports requested</b>
· All reports received: Conventions Nos. 6, 27, 29, 77, 78, 95, 105, 111, 131, 137, 138, 144, (169), 182	
<b>Niger</b>	<b>9 reports requested</b>
<i>(Paragraph 60)</i>	
· All reports received: Conventions Nos. 6, 29, 81, 95, 105, 131, 138, 148, 182	
<b>Nigeria</b>	<b>30 reports requested</b>
<i>(Paragraph 57)</i>	
· 26 reports received: Conventions Nos. 19, 26, 29, 32, 45, 87, 88, 94, 95, 97, 98, 100, 105, 111, 123, 133, 134, 137, 138, 144, 155, (159), 178, 179, 182, (185)	
· 4 reports not received: Conventions Nos. 8, 11, 16, 81	
<b>Panama</b>	<b>15 reports requested</b>
· All reports received: Conventions Nos. 26, 27, 32, 42, 77, 78, 81, 87, 88, 94, 95, 98, 122, 124, 182	
<b>Portugal</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos. 6, 27, 77, 78, 87, 95, 97, 98, 122, 124, 131, 137, 143	
<b>Rwanda</b>	<b>20 reports requested</b>
· All reports received: Conventions Nos. 11, 12, 17, 19, 26, 29, 42, 62, 81, 87, 94, 98, 100, 105, 111, 118, (122), 123, 138, 182	
<b>Sao Tome and Principe</b>	<b>17 reports requested</b>
<i>(Paragraph 51)</i>	
· 3 reports received: Conventions Nos. 81, 88, 159	
· 14 reports not received: Conventions Nos. 17, 18, 19, 29, 87, 98, 100, 105, 106, 111, 138, 144, 182, (184)	
<b>Slovakia</b>	<b>39 reports requested</b>
· 33 reports received: Conventions Nos. 11, 12, 17, 19, 26, 29, 42, 77, 78, 87, 90, 95, 99, 102, 105, 120, 122, 124, 128, 130, 138, 139, 148, (151), (158), 161, 163, 164, 167, 173, 176, (181), (187)	
· 6 reports not received: Conventions Nos. 27, 98, 123, 156, 159, 182	
<b>Slovenia</b>	<b>27 reports requested</b>
· All reports received: Conventions Nos. 12, 19, 24, 25, 27, 29, 32, 81, 87, 90, (95), 97, 98, 105, 113, 114, 121, 122, 126, 131, 143, (151), 158, 173, (174), 182, (183)	
<b>Sudan</b>	<b>4 reports requested</b>
<i>(Paragraph 60)</i>	
· All reports received: Conventions Nos. 26, 95, 98, 122	
<b>Thailand</b>	<b>6 reports requested</b>
· 3 reports received: Conventions Nos. 29, 105, 138	
· 3 reports not received: Conventions Nos. 19, 122, 182	
<b>Tunisia</b>	<b>13 reports requested</b>
· All reports received: Conventions Nos. 26, 29, 77, 87, 88, 90, 95, 98, 99, 122, 124, 138, 182	
<b>Turkey</b>	<b>10 reports requested</b>
<i>(Paragraph 60)</i>	
· All reports received: Conventions Nos. 26, 77, 87, 94, 95, 98, 99, 122, 123, 152	

## Uganda

22 reports requested

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### *(Paragraph 60)*

- 18 reports received: Conventions Nos. 17, 26, 29, 81, 87, 94, 95, 98, 100, 105, 111, 122, 123, 124, 143, 144, 154, 158
- 4 reports not received: Conventions Nos. 12, 19, 45, 182

## Yemen

21 reports requested

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- 16 reports received: Conventions Nos. 16, 19, 29, 58, 59, 81, 87, 98, 100, 105, 111, 122, 138, 144, 182, (185)
  - 5 reports not received: Conventions Nos. 94, 95, 131, 156, 158
- 

## Grand Total

A total of 2,206 reports (article 22) were requested,  
of which 1,742 reports (78.97 per cent) were received.

A total of 186 reports (article 35) were requested,  
of which 181 reports (97.31 per cent) were received.

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**Appendix II. Statistical table of reports received on ratified Conventions**  
(article 22 of the Constitution)

**Reports received as of 20 June 2013**

Year of the session of the Committee of Experts	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%
<b>As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.</b>							
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%

Year of the session of the Committee of Experts	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
<b>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.</b>				
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%
<b>As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.</b>				
1995	1252	479 38.2%	824 65.8%	988 78.9%
<b>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.</b>				
1996	1806	362 20.5%	1145 63.3%	1413 78.2%
1997	1927	553 28.7%	1211 62.8%	1438 74.6%
1998	2036	463 22.7%	1264 62.1%	1455 71.4%
1999	2288	520 22.7%	1406 61.4%	1641 71.7%
2000	2550	740 29.0%	1798 70.5%	1952 76.6%
2001	2313	598 25.9%	1513 65.4%	1672 72.2%
2002	2368	600 25.3%	1529 64.5%	1701 71.8%
2003	2344	568 24.2%	1544 65.9%	1701 72.6%
2004	2569	659 25.6%	1645 64.0%	1852 72.1%
2005	2638	696 26.4%	1820 69.0%	2065 78.3%
2006	2586	745 28.8%	1719 66.5%	1949 75.4%
2007	2478	845 34.1%	1611 65.0%	1812 73.2%
2008	2517	811 32.2%	1768 70.2%	1962 78.0%
2009	2733	682 24.9%	1853 67.8%	2120 77.6%
2010	2745	861 31.4%	1866 67.9%	2122 77.3%
2011	2735	960 35.1%	1855 67.8%	2117 77.4%



Year of the session of the Committee of Experts	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	
<p><b>As a result of a decision by the Governing Body (November 2009 and March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals.</b></p>							
2012	2206	809	36.7%	1497	67.8%	1742	78.9%

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Part Two: II (a)

### *Bahamas*

Part One: General Report, paras 187, 221  
Part Two: I A (b)

### *Bahrain*

Part One: General Report, paras 184, 221  
Part Two: II (a)

### *Bangladesh*

Part One: General Report, para. 184  
Part Two: I B, No. 87  
Part Two: II (a)

### *Belarus*

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Part Two: I B, No. 87

### *Belize*

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### *Comoros*

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Part Two: I A (c)  
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### *Congo*

Part One: General Report, paras 184, 221  
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### *Côte d'Ivoire*

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### *Democratic Republic of the Congo*

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*Iran, Islamic Republic of*

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*Ireland*

Part One: General Report, paras 193, 221  
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*Kiribati*

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Part Two: I B, No. 111

*Kyrgyzstan*

Part One: General Report, paras 184, 187, 221  
Part Two: I A (b)  
Part Two: II (a)

*Libya*

Part One: General Report, paras 184, 190, 193, 221  
Part Two: I A (c)  
Part Two: II (a)  
Part Two: III (a)

*Malaysia*

Part Two: I B, No. 29

*Mali*

Part One: General Report, paras 190, 221  
Part Two: I A (c)

*Mauritania*

Part One: General Report, paras 190, 191  
Part Two: I A (c)  
Part Two: I B, No. 81

*Mongolia*

Part One: General Report, paras 190, 221  
Part Two: I A (c)

*Mozambique*

Part One: General Report, paras 184, 221  
Part Two: II (a)

*Pakistan*

Part Two: I B, No. 81

*Papua New Guinea*

Part One: General Report, paras 184, 221  
Part Two: II (a)

*Paraguay*

Part Two: I B, No. 29

*Peru*

Part One: General Report, paras 184, 221  
Part Two: II (a)

*Rwanda*

Part One: General Report, paras 184, 222  
Part Two: II (a)

*Saint Kitts and Nevis*

Part One: General Report, paras 193, 222  
Part Two: III (a)

*Saint Lucia*

Part One: General Report, paras 184, 222  
Part Two: II (a)

*San Marino*

Part One: General Report, paras 186, 190, 221  
Part Two: I A (a), (c)

*Sao Tome and Principe*

Part One: General Report, paras 184, 187, 190, 193, 222  
Part Two: I A (b), (c)  
Part Two: II (a)  
Part Two: III (a)

*Saudi Arabia*

Part Two: I B, No. 111

*Senegal*

Part Two: I B, No. 182

*Seychelles*

Part One: General Report, paras 184, 187, 191  
Part Two: I A (b)  
Part Two: II (a)

*Sierra Leone*

Part One: General Report, paras 184, 186, 190, 193, 221  
Part Two: I A (a), (c)  
Part Two: II (a)  
Part Two: III (a)

*Solomon Islands*

Part One: General Report, paras 184, 190, 221  
Part Two: I A (c)  
Part Two: II (a)

*Somalia*

Part One: General Report, paras 184, 186, 193, 221  
Part Two: I A (a)  
Part Two: II (a)  
Part Two: III (a)

*Spain*

Part Two: I B, No. 122

*Sudan*

Part One: General Report, paras 184, 221  
Part Two: II (a)

*Suriname*

Part One: General Report, paras 184, 221  
Part Two: II (a)

*Swaziland*

Part Two: I B, No. 87

*Syrian Arab Republic*

Part One: General Report, paras 184, 190, 221

Part Two: I A (c)

Part Two: II (a)

*Tajikistan*

Part One: General Report, paras 184, 190, 193, 222

Part Two: I A (c)

Part Two: II (a)

Part Two: III (a)

*Thailand*

Part One: General Report, paras 190, 221

Part Two: I A (c)

*Turkey*

Part Two: I B, No. 98

*Uganda*

Part One: General Report, paras 184, 221

Part Two: II (a)

*Uzbekistan*

Part One: General Report, para. 201

Part Two: I B, No. 182

*Vanuatu*

Part One: General Report, paras 187, 193, 222

Part Two: I A (b)

Part Two: III (a)

*Zambia*

Part One: General Report, paras 190, 221

Part Two: I A (c)

*Zimbabwe*

Part Two: I B, No. 87

REPORT OF THE COMMITTEE ON THE  
APPLICATION OF STANDARDS

SUBMISSION, DISCUSSION AND APPROVAL





**Eighteenth sitting**

Thursday, 20 June 2013, 10.15 a.m.

*President: Mr Katamine*

**TRIBUTE TO MR SHRI VIKAS**

The PRESIDENT

Before we begin our work, I am obliged to share with you the sad news of the sudden death of Mr Shri Vikas, Director, Ministry of Labour and Employment of India. Mr Vikas attended the International Labour Conference and the Governing Body for the last few years, providing excellent support to the Government of India in its representations. He was also a staunch defender of the International Labour Organization in many different areas of work.

The Conference is profoundly saddened by this news, and I offer condolences, on my own behalf and that of my fellow Officers, to the family of Mr Vikas and to the Government of India.

*(A minute of silence is observed.)*

Mr SINHA (*Government, India*)

We are deeply grateful to the ILO and to the distinguished delegates here for this extremely kind gesture of showing solidarity with us in our hour of grief.

Mr Vikas was one of our much loved and admired delegates, who endeared himself to all by his dedication, sincerity and hard work. He joined the Government of India after an outstanding career in one of our leading institutes of technology where he graduated as a gold medallist.

He joined the Ministry of Labour in 2007 as Director of International Labour Affairs. He was also concerned with the national policy on HIV/AIDS and the world of work. He was an alternate member of the Country Coordination Mechanism and participated in the International Labour Conference in 2010 at which the HIV and AIDS Recommendation, 2010 (No. 200), was adopted.

He worked closely with employers' organizations and trade unions in disseminating national policy on HIV/AIDS and the world of work. He also handled the work of the project management team of the Ministry of Labour on HIV/AIDS. Prior to joining the Government of India, he worked in the National Thermal Power Corporation and the Tata Steel Company.

Mr Vikas died yesterday. His body was found in the hotel by the hotel staff at 2 p.m. He had gone back to his room at about 8 a.m. and he collapsed there. We were deeply shocked by this. He is sur-

vived by his wife and one son, who is a student of engineering.

We will miss him in our delegation. This was possibly his concluding year in the Ministry of Labour and he was to move on to other assignments in government. But clearly that was not to be and it is a loss that we will mourn.

We are deeply grateful once again to the ILO and to all the delegates here for sharing our grief.

The PRESIDENT

We shall indeed also hope that his soul will be in paradise.

**REPORT OF THE COMMITTEE ON  
THE APPLICATION OF STANDARDS:  
SUBMISSION, DISCUSSION AND APPROVAL**

The PRESIDENT

I now turn to the first item before us, which is the submission, discussion and approval of the report of the Committee on the Application of Standards. This report is published in *Provisional Record* No. 16, Parts 1 and 2.

I invite the Officers of the Committee to come up to the podium. They are Mr D'Alotto (Government, Argentina), who will deliver the statement on behalf of the Chairperson, Ms Rial; Mr Kloosterman (Employer, United States), who will speak on behalf of the Employer Vice-Chairperson, Ms Regenbogen; Mr Leemans, Worker Vice-Chairperson; and Mr Katjaimo, Reporter.

I now call on Mr Katjaimo to present the report.

Mr KATJAIMO (*Reporter for the Committee on the Application of Standards*)

It is a pleasure and an honour to present to the plenary the report of the Committee on the Application of Standards. The Committee is a standing body of the Conference, empowered under article 7 of the Standing Orders, to examine the measures taken by States to implement the Conventions that they have voluntarily ratified. It also examines the manner in which States fulfil their reporting obligations as provided for under the ILO Constitution.

The Committee provides a unique forum at the international level. It covers actors in the real economy, drawn from all the regions of the world. We sit alongside one another during times of economic booms and busts. Significant work by all parties went towards the preparation of this session of the Committee.

Following the outcome of last year's discussion, the decision taken by the Conference upon the Committee's recommendation resulted in a series of informal tripartite consultations in September 2012 and February 2013, as well as discussions in the Governing Body in November 2012 and March 2013, led by the Officers of the Governing Body with the active support of the Director-General. These consultations contributed to the smooth functioning of the Committee, enabling the Committee to adopt, in a timely manner, a list of individual cases for discussion, which it had not been able to do last year.

The report before the plenary is divided into two parts corresponding to the principal discussions dealt with by the Committee.

The first part addresses the Committee's discussion on general questions relating to standards and the General Survey of the Committee of Experts on the Application of Conventions and Recommendations, which concerns, this year, labour relations and collective bargaining in the public service. The second part consists of the discussions on the 25 individual cases, as well as one case of progress, examined by the Committee, and its related conclusions.

I will recall the salient features of the Committee discussions in respect of each of these questions.

In the general discussion, the operative approach of the Committee's work, which is also the ILO hallmark, that is oversight through discussion, was recalled. The fruitful dialogue between the Committee and the Committee of Experts is key in this respect. The Committee works closely with, and to a large extent on the basis of the report of, the Committee of Experts.

Furthermore, it is established practice for both committees to have direct exchanges on issues of common interest. To this end, the Vice-Chairpersons of the Committee engaged in an exchange of views with the members of the Committee of Experts at its last session in November–December 2012.

Subsequently, this year the Committee had the pleasure of welcoming the Chairperson of the Committee of Experts, who attended the first week of its session as an observer, with the opportunity to address the Committee. The discussions placed emphasis on the question of the interaction between the two committees and how this interaction could be further strengthened. It was reaffirmed in this regard that the plenary legal examination of reports by an independent body, prior to the tripartite examination by the Committee on the Application of Standards, is essential to any serious effort at supervision.

One issue of common interest which has been broadly emphasized by the Committee is the fulfilment of reporting obligations by member States.

The work of the Committee on the Application of Standards, as well as that of the Committee of Experts, hinges primarily on the information contained in the reports submitted by governments. This year again, the Committee noted that although the strengthened follow-up, put in place by the committees, had achieved some positive results, serious difficulties remained. Further progress is still necessary and indeed, crucial, for the effectiveness of the ILO supervisory system.

The Committee reiterated its call on the Office to pursue its technical assistance to member States to

enable them to fulfil their constitutional reporting obligations.

One of the highlights of the first part of the Committee's work was its examination of the Committee of Experts' General Survey concerning labour relations and collective bargaining in the public service, particularly the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). The Committee decided to take up, at an early stage of its work, the examination of the General Survey to ensure a timely coordination with the Committee for the Recurrent Discussion on Social Dialogue.

The outcome of the Committee's discussion was transmitted to the Committee for the Recurrent Discussion on Social Dialogue, and completed with an oral presentation by the Officers of the Committee on the Application of Standards. In this outcome, the Committee expressed its strong attachment to the principles of freedom of association and collective bargaining, and emphasized that these rights could only be fully developed in a democratic system in which civil liberties are respected.

The Committee highlighted the fact that: (i) collective bargaining in the public sector, as in the private sector, should be conducted in accordance with the principle of free, voluntary and good-faith negotiation; (ii) collective bargaining in the public service could maximize the impact of the responses to the needs of the real economy to be of particular importance during this time of economic crisis; (iii) collective bargaining contributes to just and equitable working conditions, harmonious relations in the workplace and social peace; and (iv) collective bargaining may cover a broad range of subjects of interest, both to the workers and to the employers, including fundamental rights, wages and working conditions, maternity protection, gender equality, family responsibility, productivity, workplace adaptations and much more.

A noted change to the Committee's work this year was that it did not hold a special session to consider the application of the Forced Labour Convention, 1930 (No. 29), by Myanmar, because following the recommendation made by the Governing Body in March 2013, the Conference has suspended paragraph 1(a) of the 2000 resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar. This was a significant development. The observance by Myanmar of Convention No. 29 had involved the most comprehensive combination of procedures available in the ILO's supervisory system. The case illustrates the importance, as well as the capacity, of tripartism in social dialogue, in ensuring the impact of the supervisory system. It demonstrates that a great deal can be achieved for the advancement of labour rights when there is a comprehensive institutional response from the ILO, backed by tripartite consensus.

With respect to core work, concerning the individual cases, the Committee pursued its efforts to achieving a balance in cases listed between different regions.

This year, the breakdown of cases was as follows: Africa, seven cases; Arab States, one case; Americas, five cases; Asia and the Pacific, seven cases; and Europe, six cases.

As in previous years, the majority of the cases selected concerned the application of fundamental Conventions – 21 cases.



Moreover, this year, for the first time since 2008, the Committee discussion included the examination of a case of progress: the application of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), by Iceland.

The Committee's conclusions on all these cases constitute an authoritative and effective compass to guide member States in sustaining their commitments under the Conventions they have ratified. Once again, the Committee has placed priority on ILO technical cooperation assistance to help member States in implementing international labour standards.

The Committee decided to include in its report special paragraphs on the following cases: the application by Belarus and Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the application by Uzbekistan of the Worst Forms of Child Labour Convention, 1999 (No. 182). The results achieved highlight, in particular, the Conference Committee's remarkable capacity, through dialogue, to discharge its core mandate and to be simultaneously responsive to contemporary challenges. Hence, it makes a lasting contribution in enabling the ILO to discharge, in an effective manner, its core responsibilities.

It has been an enriching experience to participate in this work. I would like to thank the Chairperson, Ms Noemí Rial, in absentia, along with the Employers' and Workers' Vice-Chairpersons, Ms Sonia Regenbogen, also in absentia, and Mr Marc Leemans for their competence, efficiency and spirit of cooperation which has enabled this Committee to carry out its work.

I would like to recommend that the Conference adopt the report of the Committee on the Application of Standards.

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Mr KLOOSTERMAN (*Employer, United States*)

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On behalf of the Employers' group, I, too, commend the report of the Committee on the Application of Standards to the plenary today and recommend its adoption.

We Employers believe we had a very successful session this year. Having a successful Conference allows for a certain amount of reflections on the events of the past year. Last year, as I am sure most of you are aware, the Committee on the Application of Standards heard no cases whatsoever. And instead of a speech focusing, like this one will, on a successful Conference, my colleague's speech last year focused on issues that the Employers had with the Committee of Experts, their mandate and the interpretations they have given to certain standards, especially their view that Convention No. 87 contains a sweeping right to strike. I will try not to dwell on those issues any further. Instead, I would prefer to focus on this year and on the future.

Hopefully, what will be my last comment on the past is that last year's events showed that the ILO's standard supervisory system has a few problems, but we want to focus on solving those problems. We think tentative solutions have certainly been found on some critical issues and we certainly see the potential for a far more consensual approach in the work of this Committee, but continuing efforts need to be made to put the system back on stable ground and to make it resilient and sustainable for the future.

Now let us move on to this year and the future. This year, unlike last year, the Committee heard cases. As you have heard, we have heard 25 cases. We heard one case of progress, that of Iceland.

In September of last year, the Employers and the Workers jointly pledged that there would be a list of cases this year. We delivered on that pledge, I am happy to say. It means that we can all leave Geneva proud.

The shortlist was even finalized by Thursday of the first week. That timing gave governments ample time to prepare their cases before the Committee. Now the compromise achieved that allowed us to do these things came about only after some difficult negotiations – but we did it. Nevertheless, we all need to find some ways to make the list-making process less difficult in the future. So, in addition to the double-footnoted cases that we hear every year, we think it might be useful to consider, perhaps, some automatic elements in the selection process similar to that. A rotation system could be one, or perhaps covering all member States within a defined number of years.

Now the actual discussion we had of the 25 cases and one case of progress was full and constructive, led by the determined will on everyone's part to come to objective and fair assessments. We had mutually agreed upon conclusions for all of the cases and those conclusions gave clear and unambiguous messages to governments as to what this Committee wants them to do to better comply with their obligations. Was this easy? No, it was not!

A continually contentious matter is cases under Convention No. 87 where strikes are an issue. I mentioned it before, and we all know by now the Committee of Experts has delineated a sweeping right to strike in Convention No. 87. Everyone knows that the Employers' group disagrees with that.

This year, eight of the 25 cases involved Convention No. 87 and, of those eight, seven involved this unilaterally interpreted right to strike. Because there is no consensus on this issue agreeing on conclusions can be difficult in these cases.

So the Committee took an innovative step this year. The conclusions on Convention No. 87 right-to-strike cases, for the very first time, have included a clarifying phrase: "The Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike recognized in Convention No. 87."

The phrase certainly is not perfect. It is absolutely a compromise and it is most likely an exemplar of what a compromise is. But the phrase makes two things transparent that have not been transparent in the past. First, there is no agreement in the Committee that Convention No. 87 recognizes a right to strike. Second, because there is an absence of consensus on this issue, the Committee recognizes that we are not in a position to ask governments to change their internal laws and practices with regard to strike issues.

In February of this year we had the last of a set of informal discussions on the way forward. Some representatives from the Committee of Experts attended that meeting and they challenged this Committee to make our views clearly evident. They questioned whether our Committee was properly and adequately supervising the cases before us if our conclusions avoided mentioning areas of dispute. So, this year we have very clearly indicated

that there is a lack of consensus as to whether Convention No. 87 encompasses the sweeping right to strike that the experts delineated. We hope that the experts properly consider this Committee's views. A division of views on an important subject like this between the two major ILO supervisory bodies is certainly not healthy.

We reiterate the readiness of the Employers' group to discuss the wider issues of industrial action in the ILO, to try and better understand the situation in member States and to see if there is sufficient common ground for standard setting at an international level.

Also this year, the Committee of Experts published a General Survey, concerning labour relations and collective bargaining in the public service. Overall it was a very positive survey and we certainly commend the Committee of Experts for their hard work in producing the survey.

During the course of our Committee work this year, the Employers' group did level some fairly critical comments about some of the contents of the General Survey – in particular some of the interpretations provided of Conventions Nos 151 and 154. As a group, we absolutely made those comments in good faith. We made them with a view to identifying issues and promoting consensus within the Committee and within the larger body. This was also something that the experts asked us to do at our meeting with them in February. We appreciated the constructive reaction by the Chairperson of the Committee of Experts, Professor Yokota, who considered the points made by the Employers as “very thought-provoking and legally interesting”. Since that discussion, we have been roundly criticized by various individuals within this House. I have heard every tired battle and war cliché used: that we were brutal, that we were violent, that we launched a “full frontal assault”. It is rhetoric, it is not constructive. We critiqued a document, we were asked to do it, and that is all we did. There is no battle, there is no war, there is no violence. Let us just move on with this.

I will mention one of our specific General Survey comments, which has to do with the experts' response to our request for a simple statement in future surveys and reports indicating that the contents are the experts' views and not necessarily the agreed views of the tripartite constituents. If you look at paragraphs 6, 7 and 8 of the General Survey, you will see that the experts responded to our request and we think that they meant to respond to us in a constructive manner. We certainly appreciate their willingness to listen to our concerns and to respond. The final result, in our opinion, was not satisfactory though. Paragraph 8 of the General Survey refers to a statement the experts made in 1990 claiming that their views are to be considered binding until contradicted by the International Court of Justice. Historically, the Employers' group – and I am sorry to repeat the past again – the Employers' group has disagreed with that statement ever since 1990. And, it is our disagreement with that very statement 23 years ago that has essentially started this whole issue in the first place. So dredging up that statement is certainly not constructive but we look forward to further discussions with the experts, with our social partners, with governments and with the Office, with the overall aim of finding a clear and more transparent solution.

The Employers' group made six proposals in the general discussion that we think might make the standard supervisory system in the ILO more efficient and effective.

I will just note what they are: (i) closer cooperation between the Committee on the Application of Standards, the Committee of Experts and the Office; (ii) a more participatory approach for the report of the Committee of Experts; (iii) that the reports address reporting failures in a more sustainable way; (iv) improving the focus of supervision by reducing the number of observations; (v) measuring progress in compliance with ratified Conventions in a more meaningful way; and (vi) revitalizing general observations as a tool in standard supervision.

We invite Governments and we invite the Workers to constructively consider these proposals and add proposals of their own. There should be a dialogue within the full House so that the consideration of concrete reforms can be started in the appropriate ILO bodies as soon as possible.

I would like to make a few remarks about serious cases affecting Employers who we have not heard from this year. These involve the Plurinational State of Bolivia on Convention No. 131, Serbia on Convention No. 87, Uruguay on Convention No. 98, and the Bolivarian Republic of Venezuela also on Convention No. 87.

The Bolivian case, in particular, has gone on for many years. It involves the Government setting the minimum wage every year by decree without any kind of consultation with the most representative employers' organization. We believe this is a clear violation of Convention No. 131, and hope that the experts will urge the Government to remedy this violation without further delay.

We find the Serbian case equally worrisome. There, the Government has established an independent commission, which is formed of arbitrators paid by the Government for the peaceful settlement of labour disputes. But there is also a well-functioning Representativity Board that was established under the Labour Code which includes the most representative employers' and workers' organizations. We support the Serbian employers' association in their deep concerns with respect to the application of Convention No. 87 in the country.

With regard to Uruguay and Convention No. 98, we have conclusions from a past Committee discussion which requested the Government to amend Act No. 18566 on collective bargaining. Nothing appears to have been done. We call the attention of the ILO supervisory bodies to the lack of serious commitment from the Government of Uruguay and to such evident disrespect of the supervisory body's resolutions.

Finally, the violation of Convention No. 87 by Venezuela is an issue well known to all of us. We believe no progress has been achieved. We therefore request the supervisory bodies of this House, and the Office, to make great efforts so that a high-level mission can visit the country without further delay, and in any event before the October session of the Governing Body.

In conclusion, welcome to the new “normal”. I say that because everyone for the past year has been asking all the Employers: “When are we going to return to normal, after last year's events?” Well, the old “normal” is no longer with us. We have a new “normal”. Welcome! It is a good “normal” in that the Committee on the Application of Standards is

functioning. It functioned well this year and we hope it continues to function well in the future.

We want to make it absolutely clear to everybody in this House that the Employers support the ILO standards supervisory system. We are 100 per cent committed to maintaining an effective supervisory system. We want that supervisory system to be consistent with the ILO Constitution. We want it to be envied by every other international body.

We appreciate the constructive but robust dialogue we have had with the Workers, the Governments and with the Office over the past few weeks and, certainly, over the past year.

We wish to thank the Office for its excellent support for our work, in particular, once again, Ms Doumbia-Henry and her excellent team. Ms Doumbia-Henry has actually been able to smile occasionally this year. I know she did not have a good year last year. A special thanks go to our Chairperson, Ms Noemí Rial, in absentia; I know she had to return to her country. She ran the Committee well this year and we certainly thank her for that. We thank our Reporter, Mr David Katjaimo, who this year ensured the Committee's work was properly kept on record. I would also like to thank all my colleagues in the Employers' group, especially Sonia Regenbogen, who was our spokesperson at the beginning of the Committee, and for whom I am delivering this speech. I would like to thank my colleagues Sandra D'Amico, Alberto Echavarría, Juan Mailhos and Paul Mackay for their excellent help in preparing and presenting the cases we heard this year. I would certainly like to express our gratitude to the IOE, particularly Roberto Suárez, María Paz Anzorreguy, Alessandra Assenza and Catalina Perafan. And we appreciate all the work provided by ACT/EMP, Christian Hess and Sanchir Tugschimeg.

Last, and certainly by no means least, I thank Mr Leemans, my Worker colleague and his team because, as I have said over and over again, we had an interesting year. It was a constructive year, and I thank them for their constructive collaboration in what have been some very difficult matters.

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*Original French: Mr LEEMANS (Worker Vice-Chairperson of the Committee on the Application of Standards)*

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I would like to begin by extending, on behalf of the Workers' group, our condolences to the Indian Government following the sudden passing away of Mr Vikas.

In 2012, the Committee on the Application of Standards stopped its work prematurely, having found some flaws which were very worrying for the Committee itself and for the future of the supervisory machinery. Everything had gone wrong. There was no list or consideration of individual cases and no conclusions. In addition, it was impossible for the Committee to reach joint conclusions on the recurrent discussion which, last year, was about promoting the application of fundamental principles and rights at work.

The Employers later described the events of June 2012 as a "rupture point", meaning that maintaining the status quo was not possible, but that their participation in the system would be unaffected as long as the system itself was "mended". I am quoting here the summary record of the tripartite consultations which took place on 19 and 20 February 2013.

During these informal consultations, Governments recalled that they were relying on the social

partners to establish a list of cases, and the social partners responded by committing to this. So my first objective in representing the Workers' group of the Committee on the Application of Standards was to reach agreement with the Employers on a list of 25 cases to be considered at this session of our Committee. I have to say sincerely that through the months of April and May 2013, everything possible was done by the Workers and the Employers to guarantee the normal working of the Committee on the Application of Standards.

I must say that some very constructive meetings were organized between the spokespersons of the two groups, in the firm intention of being able very soon to submit a list of individual cases and so get down quickly to work.

In order to achieve this, there was a condition that had to be met, which was that no veto would be applied by either of the parties when it came to a choice among the cases proposed. It was clear that we expected to be able to talk about all the Conventions, respecting, as always, a geographical and thematic balance between fundamental Conventions, priority Conventions or more technical ones. On 6 June we did in fact have a list.

My second objective was to reach conclusions based on a consensus between Employers and Workers. This is what Governments were expecting from us and, in any case, it is the only common sense way of working if the supervisory bodies are to work on a tripartite basis.

Achieving consensus-based conclusions required two things, as far as the Workers' group was concerned.

First, to set aside matters relating to the events of 2012 solely within the Committee on the Application of Standards, in view of the processes that had begun, either officially, within the Governing Body, or in its margins with the help of high-level individuals. We said it would be all right to mention these matters, but only when it was appropriate.

Secondly, we expected to be able to discuss all the cases on the list agreed upon with the Employers, in the very promising climate, which I have already mentioned. So we have to welcome the fact that the discussion on individual cases took place. We can be glad that all of the Conventions on the list of individual cases were discussed, including one of two cases where progress had been made. I think we need to welcome the fact that it has been possible to present to the Committee for the Recurrent Discussion on Social Dialogue unanimous conclusions on the General Survey. The relationship between the Committee on the Application of Standards and the Committee for the Recurrent Discussion is still an important question. It was agreed upon in 2012, but the procedure was reinstated this year.

From our point of view, the contribution of our Committee to the work of the Committee for the Recurrent Discussion should be seen as the expression of a tripartite determination to reaffirm the importance of collective bargaining in all sectors, private and public, in these times of crisis in which attempts are being made to reform labour laws on a basis of austerity policies. But I must emphasize that it was by no means easy to achieve this result. We have to say it loud and clear: the Workers agreed to make concessions. They were bent on saving the supervisory machinery through the role of the Committee of Experts, acting in concert with the Committee on the Application of Standards.

This is in fact the role which was chiefly under attack.

From the very first day, the Workers' group insisted that the ongoing consultation process had to be given every chance to succeed, focusing our hopes on an improved outcome. There was no question of blurring the issues. So the Workers' group this year has made not only huge efforts, but significant concessions too, and I do not think that these concessions can be used to our detriment or analysed outside of the ILO as a confession of weakness. Let me put it another way. These concessions are a one-time event, and they cannot be repeated every year.

The first concession we made was to agree to take Colombia off the list of the 25 individual cases. It was not easy to accept this, because the case has not been discussed in the Committee on the Application of Standards since 2009, in spite of the systematic violation of workers' rights and those of their representatives, and despite the violence committed against trade union members and leaders. Today, they are still under threat and in mortal danger.

We know that throughout this Conference, contact took place between all interested parties under the guidance of Mr Guy Ryder, the Director-General. The intention of all parties seems to be to continue the dialogue in Colombia, and to make the most of the opportunity represented by the tripartite consultation committee as a space for dialogue.

There is still a lot to do, but a positive message has certainly been sent at this Conference. As spokesperson of the Workers' group, I expressed the wish that our Committee's report take note of the promises made and that the follow-up of the contacts made should also be communicated to our Committee in 2014, in the most appropriate manner.

The second concession we made was with regard to the interpretation of Convention No. 87. These concessions were perhaps not always fully understood within our own group, and indeed their scope has perhaps been underestimated by the Employers, who would have preferred a thousand times to reopen the debate on the mandate of the experts, and on the question of the legal basis of the right to strike. The sole objective of the concessions we made was to avoid the failures of 2012; in this sense, 2013 marks a turning point: this approach will not be repeated.

On our list we had nine Convention No. 87 cases, which we approached with moderation, trying to recall everything that the fundamental Convention contains in terms of important principles which go beyond the question of strikes and the experts' mandate for interpretation. Many of the discussions of Convention No. 87 cases began with a statement of principle, recalling that the Convention is, above all, a useful tool for workers and employers, and that freedom of association is a human right and a precondition for collective bargaining and for a healthy social dialogue benefiting employers and workers alike and fostering social peace.

We had to go further under pressure from the Employers, to avoid failing to achieve one of our objectives, which was to have conclusions for all cases. Anybody who reads the conclusions closely will find that in six of the nine conclusions relating to the discussion of Convention No. 87, there is the following comment: "The Committee did not address the right to strike in this case as the Employers

do not agree that there is a right to strike recognized in Convention No. 87."

The right to strike exists, but the exercise of the right has to be decided by national law? Seeking to have the right to strike legislated for at national level alone places the government of the member State concerned in an unequal balance of power in which the main weight falls to its advantage. I repeat now what I have said on many occasions. What we are talking about here is a war at the national level against trade unions and against social dialogue. By taking this line, the Employers are simply repudiating texts such as Article 8.1(d) of the International Covenant on Economic, Social and Cultural Rights, Article 6.4 of the European Social Charter of 1961 and also the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

It is interesting to recall that the European Committee of Social Rights, through the supervisory mechanisms for the application of the European Charter, has compiled a digest of its case law which not only sets out in detail the points raised by the Committee of Experts and the Committee on Freedom of Association, but actually goes further.

The tripartite supervisory bodies of the ILO recognize the right to strike, which they regard as a fundamental instrument for workers' organizations to defend their economic and social interests.

Apart from the Committee of Experts, which now takes the view that the right to strike is an essential corollary of the right to organize, we also have the various opinions of the Committee on Freedom of Association, which is a tripartite committee. At its 1952 meeting, it recognized the existence of this right.

For its part, the Committee on Freedom of Association bases the right to strike on the texts of the Conventions dealing with freedom of association, but also on the fact that this is a right which is generally accepted and recognized in the various member States. The Committee on Freedom of Association is not bound by the text of Conventions. Taking a wider view, it bases its recommendations more broadly on international principles in the area of freedom of association.

I would like to say, in passing, that on a number of occasions, the Employers' group has referred to the Committee on Freedom of Association when discussing the cases that come to our Committee.

So it seems that only the Employers fail to agree with the finding that Convention No. 87 recognizes a right to strike, and certainly not the Workers! The right to strike is a collective right and is regarded as an activity of workers' organizations, within the meaning of Article 3 of the ILO Convention.

Once more, what was essential for us this year, 2013, was to bring everything to bear to ensure that when work is completed on the 25 chosen cases, the mandate of the ILO for the promotion of social justice and of all the rights of the workers and employers is respected.

If the Employers wish to go further, we suggest they look at article 37(2) of the ILO Constitution. We hope they will come up with solutions. We await their proposals, and the door is not closed.

With regard to the conclusions adopted by our Committee for the 26 cases we examined, I would particularly like to focus on three cases, which are given a separate paragraph in the report of our Committee. The case of Uzbekistan for Convention

No. 182, which was featured in the double footnote in the report of the experts; the case of Belarus for Convention No. 87; and the case of Fiji for Convention No. 87.

Apart from the application of the special paragraphs, it is important to note that in these three cases constructive steps have been taken, based on the measures pursued by our Committee.

If I take the case of Uzbekistan, which agreed to technical cooperation with the ILO, the conclusions are geared to specific forms of action. A high-level commission is to be set up during the cotton harvest. This mission will have full freedom of movement and free access to all of the situations and all individuals concerned at the appropriate time and place, including in the cotton fields. Our Committee urged the Government to continue its efforts to organize in the near future, a round table with the ILO, the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the European Commission, and national and international organizations of workers and employers. We are confident that the Government will continue to do everything to combat child labour effectively, and that at the next session the experts will be able to provide positive news about the observance of Convention No. 182 by Uzbekistan.

For Belarus, our Committee has also adopted a very targeted approach. It has invited the Government to accept a direct contacts mission with a view to getting a full understanding of the situation concerning workers' rights in the country and helping the Government to implement the recommendations of the Commission of Inquiry of 2004. Our only regret is that the Government has clearly indicated that it wants to ponder the acceptability and soundness of the conclusions of our Committee.

For the case of Fiji, we note with pleasure that the Government has stated that it is in favour of a new direct contacts mission, and the Workers' group hopes that this will be able to take place as quickly as possible so that it can be reflected in the report to the Governing Body in October 2013. We note, however, that the Government of Fiji took the floor, after the conclusions were read out, to express reservations and also stating that it had observations to make later. For all of the workers of Fiji who are still subject to very serious harassment and threats, we hope that they will not be deprived of freedom again on their return to the country.

Looking at our conclusions, it is evident that they are oriented towards action, not condemnation. We have a number of direct contacts missions that have been decided upon, and on each occasion they have been given a very detailed and targeted agenda for practical solutions to be achieved on the ground.

I am thinking particularly of Saudi Arabia, where the aim of the mission will be to analyse the situation on the ground with regard to discrimination, and to help the parties in the country to continue making tangible progress.

Our approach is that such a mission should be able to function in the legal and legislative areas and be in touch with the daily life of those concerned, including through interviews. Many technical assistance missions have been planned, including a reinforced and extended technical assistance mission to Paraguay for Convention No. 29. The Government of Egypt has also been encouraged to draw upon this technical assistance, along with the enhanced capacity of the ILO by all the social part-

ners, so that a law on freedom of association, to which the Government has committed itself, can be adopted as quickly as possible.

Offers to host high-level missions have been made for a number of different cases, because of their seriousness or the length of time they have been outstanding, but essentially because it could be seen from the information exchanged with the government concerned that dialogue was starting up. These offers vary in kind according to the case and the Convention concerned. Our follow-up in the cases of Swaziland and Zimbabwe will be especially scrupulous, given the gravity of the situation. An invitation to exchange good practice has been made to Chad with regard to the full and effective understanding of Convention No. 144. Embarking on this kind of dialogue with other States, in another continent, is definitely a plus.

In conclusion, the Workers' group believes that the Committee has worked well this time. The quality of the conclusions, their content, the avenues that they open up for governments; all this proves that the efforts made in the Workers' and Employers' groups and by their spokespersons have borne fruit, and that is the most important thing. We must continue with the process of leaving this crisis behind us, and the difficulties still have to be overcome, because everybody expects a solution which is worthy of the mandate of the ILO.

I would recommend, on behalf of the Workers' group, the approval of the Committee report by the Conference plenary.

I would like to thank all of those involved in the work of the Committee on the Application of Standards, beginning with our Chairperson, Ms Rial, and the Reporter, Mr Katjaimo, as well as Ms Doumbia-Henry and Ms Curtis. I would also like to thank the Workers' group and the Officers of the Workers' group for our Committee for their excellent cooperation. I would also like to thank the Employers' group and their spokespersons for the efforts that we have made together, Ms Regenbogen, Mr Kloosterman, as well as the staff of the ILO and the interpreters, whose work is sometimes tough. My thanks go to everyone who has helped and worked with me; you did an excellent job.

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*Original Spanish: Mr D'ALOTTO (Government, Argentina)*

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It is my honour to take the floor on behalf of the Chairperson of the Committee on the Application of Standards, Ms Noemí Rial, who had to leave for Argentina to assume her responsibilities as Vice-Minister of Labour. With the agreement of the social partners, I am submitting the report of the Committee for your approval.

We have come to the end of our work, on which I would like to make a few comments.

First of all, I would like to commend the constructive spirit that prevailed in this Committee, which to a great extent enabled us to find a way out of the impasse that had impeded the work of the Committee in 2012. The representatives of all the governments and social partners are encouraged to continue along this path and to continue promoting social dialogue.

I would like to emphasize the conciliatory spirit in which all the members of the Committee, and particularly the Vice-Chairpersons of the Employers' and Workers' groups, continually sought the consensus that we needed to find the best solutions. The issues that were still pending from the extensive

discussion that took place in 2012 and this year will continued to be examined by the Governing Body of the ILO.

The fact that the Committee has fulfilled its mandate and attained the objectives that it was set from the start has strengthened the ILO's supervisory system. We welcome this outcome and trust that the Committee will continue along that path.

In accordance with the 2008 Declaration on Social Justice for a Fair Globalization, the Committee examined the Committee of Experts' General Survey on the very important aspect of social justice, labour relations and collective bargaining in the public service. For the first time, the Committee was able to examine a General Survey on the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154), and their accompanying Recommendations. At the end of its discussions the Committee reached a consensus and its Officers presented its conclusions to the Committee for the Recurrent Discussion on Social Dialogue.

The Committee examined 26 individual cases from the list that was adopted at the start of the work of the Committee, which was thus able to function normally. The cases that were selected concerned the application both of core Conventions and of technical and promotional Conventions and also reflected a regional balance.

The purpose of the list is to invite governments to provide information on the application of a specific Convention. A consensus was reached on every case examined, and in several instances the Committee suggested that the governments concerned accept the ILO's technical assistance to bring their law and practice fully into line with the Convention concerned.

The Committee was pleased to be able to note one case of progress, namely, in the application by Iceland of Convention No. 159. This is a reflection of governments' willingness to provide the Committee with information and to collaborate in the subsequent discussion.

I would also like to acknowledge the presence of Professor Yokota, Chairperson of the Committee of Experts, who attended our meetings, which is a clear sign of the dialogue that exists between the two committees.

The Committee concluded its work in the hope that, with ILO assistance if necessary, the countries concerned would find in its conclusions the necessary guidance to resolve all the issues raised.

I would like to thank the President and Vice-Presidents of the Conference for their visit to our Committee, as well as our Reporter, Mr Katjaimo, the Employer Vice-Chairperson, Ms Regenbogen, the Worker Vice-Chairperson, Mr Leemans, and their respective teams. Special thanks are due to the Secretary-General's representative, Ms Cleopatra Doumbia-Henry, and the rest of the secretariat, and I would like to pay tribute to the excellent work of the interpreters.

Lastly, I invite you to approve the report of the Committee.

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The PRESIDENT

I now open the general discussion of the report of the Committee on the Application of Standards.

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Ms DEMBSHER (*Government, Austria*)

I will be speaking on behalf of the IMEC group. IMEC is pleased to endorse the approval of the report of the Committee on the Application of Standards. As we have said on many occasions, IMEC governments place a high level of importance on the supervisory system of the ILO, given the key role it plays in facilitating the implementation of, and adherence to, international labour standards as we seek to improve working conditions across the globe.

The ILO supervisory system is a unique and essential element of the Organization's mandate and mission and it is often cited as the most advanced and best functioning within the international community. We recall the different but complementary roles of the Conference Committee and the Committee of Experts. These two committees, one with a tripartite composition and the other composed of independent experts, function in tandem and constitute the heart of the supervisory system. They bring different perspectives to the same goal.

The impartiality, objectivity and, most of all, the independence of the Committee of Experts are essential for preparing the work of the Conference Committee and ensuring proper application of standards in law and practice. Continuous dialogue between the experts and the Conference Committee is critical to both bodies and should be further enhanced.

IMEC is pleased that the Committee on the Application of Standards was able to resume functioning as normal after the unfortunate events of last year. In particular, we thank the social partners for ensuring that the list of individual country cases was adopted on schedule, and for the constructive cooperation throughout the Committee's work. We note that the list included an appropriate range of Conventions and that consensus conclusions were adopted in each case that provided clear, relevant and practical guidance that can be implemented by the respective governments. We hope this level of cooperation and commitment will continue into the future.

IMEC further notes that the automatic registration of cases that was begun as an experiment in 2011 is working effectively. We welcome the fact that this scheduling allowed the Committee to begin discussing cases on the first Saturday of the Conference and to discuss an important case of progress. Recalling that the Tripartite Working Group on the Working Methods of the Conference Committee has not met since November 2011, IMEC considers that it would be appropriate to reconvene the Working Group to assess recent innovations and consider whether other improvements can be made.

IMEC is committed to facilitating a resolution to the issues that created the current difficulties surrounding the ILO supervisory system. Despite the smooth functioning of the Conference Committee over the past days, there are many matters left to discuss and resolve.

IMEC believes it is imperative that these issues are dealt with openly and constructively, in a way that will strengthen, rather than diminish, the effectiveness, credibility and prestige of the ILO supervisory system. The solution, therefore, will require tripartite participation and consensus. As the Director-General indicated in his Report to the Conference, a supervisory system that lacks the necessary

credibility and authority, as well as the support of all parties, will not allow the ILO to discharge its core duties.

Notwithstanding the difficulties that arose last year, the Employers', Workers' and Government groups have steadfastly expressed their belief in, and support for, the ILO supervisory system. IMEC remains encouraged by this unanimous support and we look forward to participating in further tripartite discussions following the Conference.

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*Original Russian: Mr SAIDOV (Government, Uzbekistan)*

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First of all, allow me to express my gratitude to the Director-General of the ILO, Mr Guy Ryder, for the innovative Report dedicated to the ILO centenary.

We have carefully studied the Report and we support the initiatives of the Director-General relating to governance and management of the ILO, initiatives relating to standards, green jobs, enterprises, eradicating poverty, women at work and the future of work.

It is true that social dialogue and partnership, as well as tripartism, constitute the paradigms of social justice, fair labour relations and decent work.

I would like to draw attention to the main areas for technical cooperation between Uzbekistan and the ILO.

First, as we have already stated, in order to develop and implement broad technical cooperation and discussion of the main directions for cooperation with the ILO, we propose this year, as soon as possible after the 102nd Session of the International Labour Conference, to hold a round table on the prospects of technical cooperation on the implementation of international obligations of Uzbekistan within the ILO framework, in Tashkent.

Second, we will invite representatives of the ILO secretariat and the office in Moscow, the European Commission, international organizations accredited in Uzbekistan, including the UNDP and UNICEF, and also foreign representatives of workers' and employers' organizations, representatives of interested national ministries, parliamentarians and representatives of non-governmental organizations.

Third, during the round table we will review a range of aspects, for broad technical cooperation with the ILO secretariat, on the implementation of the Worst Forms of Child Labour Convention, 1999 (No. 182), including issues of organizing and carrying out monitoring during the cotton harvest in the coming autumn.

Fourth, all these events will be implemented on the basis of tripartism, with the participation of representatives of workers' and employers' organizations for capacity building, to protect social and labour rights of citizens within the implementation of ratified ILO Conventions and reporting on these, including on assistance with ratification of other ILO Conventions.

We do not agree with the statement in the report of the Conference Committee on the so-called systematic mobilization of children by the State in the cotton harvest, including the extensive use of the labour of teenagers, young people and adults in all the country's regions and the impact of such practice on the health and education of school-age children.

We also disagree with the decision to include the conclusions on the case of Uzbekistan in a special

paragraph in the report of the 102nd Session of the International Labour Conference.

We believe that this practice of placing pressure on ILO member States is counterproductive and in no way facilitates constructive dialogue and cooperation.

We fully share the efforts to strengthen the activities of the ILO in the area of the protection of the rights of the child, by promoting international cooperation based on the principles of non-selectivity, impartiality and objectivity.

Uzbekistan is prepared for open and constructive cooperation with the ILO to improve the protection of the rights of the child.

We are entirely committed to implementing our international obligations within the ILO Conventions, and also recommendations of the Committee of Experts and the Conference Committee on the Application of Standards, through technical cooperation with the ILO secretariat and its Moscow office.

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*Mr SAHA (Worker, India)*

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I am Sankar Saha, an Indian worker. I want to draw your attention to the systematic and organized attempt the world over to take away the basic human right to strike. It is a way of disarming the workers' community, of crippling them, so that no effective protest can be made against a system that has introduced globalization to prolong the life of capitalism.

Bear with me when I refer to globalization in such terms, because it is a reality that has a direct bearing on the life and rights of the workers. Under capitalistic globalization, the third world economies have sunk ever deeper into crises that have brought the whole of Europe and the United States close to collapse.

The United States, the locomotive of capitalism, is today the biggest borrower nation and has lost its creditworthiness. Its current rate of unemployment exceeds 10 per cent, and underemployment is 17 per cent. One out of six Americans lives below the poverty level. Drastic cuts in health care, education and social justice programmes have made life unbearable for the average American.

This model of the leading Western nation is adopted by its followers: Greece, Portugal, Spain, Italy, France, United Kingdom, Germany, and so on. All the giants of Europe are either bankrupt or near bankruptcy. All these national governments have adopted austerity measures and, in turn, mounted ghastly attacks on the working people by denying their hard-earned rights, beginning with wages and pensions. Job loss, employment insecurity, downsizing, lay-offs and high unemployment is what government have in store for the workers while, on the contrary, they offer incentives, concessions and tax exemptions to corporations and monopolies; in other words, cheating the exploited while rewarding the exploiters. This is the global element of free exploitation of finance capital on the common masses.

Globalization is not just exploiting the workers; more shrewdly, it is destroying human civilization by degrading society in its entirety, culturally, morally and ethically, by promoting vulgarism, extreme consumerism, total self-centredness and indifference to the social cause. It is the other end of the spectrum from the workers' unity, consolidation and struggle, from the ongoing movement in

Europe, in America, in the Middle East, in the ASEAN countries and, most notably, the militant movement of the United States working people, the “Occupy Wall Street” movement, raising the slogan: “We are the 99 per cent and you are the 1 per cent.”

The workers want the right to work but they are not given it. They want the right to organize and collective bargaining but they are denied them. They want health care, shelter and social benefits but they are deprived of them. They are not paid the wages and other benefits that are collectively agreed upon. They have no social security. Trafficking of women and children for personal gain has become the order of the day. Migrant workers throughout the world are physically tortured and used as forced labour.

Come what may, as globalization awaits its death at any moment, it cannot stand up against the workers’ right to strike. Without the right to strike, democracy has no meaning for the workers, and national and international laws will be meaningless if the right to strike is not recognized.

Civilization demands that the international fraternity of workers realize the gravity of the situation and unite to ensure freedom, democracy and the right to strike as a basic human right.

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Mr LEWIS (*Government, Canada*)

With respect to the consideration of Canada on Convention No. 87, the draft record had included one sentence on a point of order that accurately reflected the proceedings. This text is not included in Part 2 of *Provisional Record* No. 16. Canada would ask that the initial text be restored in the final record.

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*Original Russian:* Mr KHVOSTOV (*Government, Belarus*)

First of all, we would like to express the condolences of our delegation to the Government of India for the unfortunate incident resulting in the passing away of Mr Vikas.

We support the supervisory mechanisms of the ILO. We recognize that they are of importance in assessing the application of the ILO Conventions by member States. In this regard, we fully support the activities of the Director-General of the ILO and the ILO itself.

However, on the basis of the Committee’s discussion concerning the application by Belarus of Convention No. 87, we wish at this plenary sitting to express our reservation with regard to the soundness and acceptability of the Committee’s recommendation concerning Belarus.

We need some time to study the relevant document. But I can say that according to the recommendation, we are supposed to guarantee the right to freedom of association and the right to organize, although we believe these rights are respected in the country. As this recommendation has been made, we would like to know which right of association is meant here. Is it the right to strike, or are we talking about a different right, the right to gather together, such as ourselves gathered together in this room, at a peaceful meeting? This right is enshrined in the International Covenant on Civil and Political Rights. I think that these are questions that we need to fully understand and we would reaffirm that we greatly value the work of the Committee. We have a fully respectful attitude towards its activities and the

recommendations that it makes, but we feel bound to express our reservation at this time.

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*Original Arabic:* Mr ABDULLA (*Worker, Bahrain*)

I am speaking on behalf of the General Federation of Bahrain Trade Unions (GFBTU). Since we are the original member accredited with the International Labour Conference, we do not agree in general and in detail with the intervention made by one of the speakers on behalf of what is called the “Bahrain Free Labour Unions Federation” in the Committee on the Application of Standards during the examination of the case of Egypt. This is especially due to the fact that the speaker attacked the International Labour Organization, its employees and the International Trade Union Confederation (ITUC). We hope that our position will be put on record.

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Mr LAGUNZAD III (*Government, Philippines*)

On behalf of the Philippine delegation, I would like to express our gratitude and congratulations to Mr Nidal Katamine, the Minister of Labour of Jordan, for his competent leadership as President of the 102nd Session of the Conference and I also wish to commend the Worker and Employer Vice-Chairpersons. Furthermore, the Philippines congratulates and commends the ILO Director-General, Mr Guy Ryder, for his inspiring vision articulated in his Report to the Conference. This has set the tone for the whole Conference and inspired the debates that now provide guidance to the ILO on its priorities and strategies as it nears its centenary.

The Philippines particularly commends the extraordinary leadership of the Chairperson, Ms Noemi Rial, and Vice-Chairpersons of the Committee on the Application of Standards, and also the representative of the Secretary-General, Ms Cleopatra Doumbia-Henry, for her competent and hardworking leadership in the Committee’s discussions. This has been an extraordinary session of the Conference because of the convergence of ideas and experiences. We have heard many times about the issues concerning the world of work, we have witnessed the passion and commitment of the tripartite delegates, and we have seen the direction set by the Conference as the ILO approaches its centenary. This has truly inspired us to make decent work for all a reality.

It is always inspiring to see and work with people who are serious in moving the discussions from general to real action. The discussions at the 102nd Session of the Conference have been sometimes intense and always enlightening. Delegates have responded positively to the well-studied analyses in the reports and this suggests their seriousness and commitment to discussing labour matters and the cross-cutting themes of social dialogue, sustainable development, green jobs and decent work, unemployment and social protection in the new demographic context.

In the Committee debates, we tried to clarify and sort out the new realities or new normalcies and the challenges they pose. The seeming conflicts and trade-offs considered in policy decisions in response to crisis and the need to manage transitions have to be resolved by employing better, new and creative solutions.

Where workers experience exposure to vulnerabilities due to life cycles, changing economic conditions and environmental degradation, then social protection must be guaranteed. Development is sus-



tainable for a good number of reasons, but decisions that affect the lives of citizens in the name of growth require participation of all those affected by such decisions. Social dialogue in managing these issues is fundamental. There is no trade-off in this regard.

As the Philippines furthers its efforts to achieving sustainable and inclusive growth, the conclusions of this Conference reinforce our resolve to build a future of decent work under a regime of social justice and social cohesion.

The Philippines therefore reaffirms its full support to the values and vision of the ILO under the leadership of Director-General Guy Ryder, and renews its commitment to building a future where decent work is a reality for all.

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The PRESIDENT

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I now give the floor to Mr Brenta (Minister of Labour and Social Security, Uruguay), who wishes to exercise the right of reply.

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*Original Spanish: Mr BRENTA (Minister of Labour and Social Security, Uruguay)*

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First of all, we would like to join in congratulating the Director-General for the Report submitted to the Conference.

We would also like to welcome the fact that, unlike what happened last year, the Committee on the Application of Standards worked well under its Chairperson, Ms Noemí Rial, whom we congratulate. This is clear from the Committee's report, which is constructive and positive and sets out clear and objective criteria for selecting the cases to be examined.

We would also like to pay tribute to the valuable contribution and leadership of Ms Cleopatra Doumbia-Henry, which certainly had much to do with the success of the Committee's work, along with that of all those who took part in the Committee.

Regrettably, we have asked for the floor because we were surprised to hear our country mentioned in the statement by the Employer spokesperson, which shows his total misconception, ignorance or bad faith with regard to the situation in Uruguay. Specifically, he said that nothing has been done about the reports of the Committee on Freedom of Association which made some comments on Act No. 18566 on collective bargaining.

The spokesperson is unaware that Uruguay received a mission led by Ms Doumbia-Henry and that a tripartite agreement was signed to work on the issues raised by the Committee. For more than a year and a half there has been a permanent dialogue with the representatives of the employers and workers in order to reach agreement on a draft law that would take up the points to which the Committee on Freedom of Association has drawn attention.

The National Parliament has already approved an article modifying the composition of the Higher Tripartite Council, the body governing labour relations in Uruguay, so that the Government, workers and employers have the same number of representatives.

The Council thus recently adopted a set of regulations that were approved by the six government representatives, the six workers' representatives and four of the six employers' representatives. In other words, the majority of the employers approved the new regulations governing the body responsible for labour relations.

The Employer spokesperson is also unaware that the Executive has submitted a bill to Parliament, which is currently examining it, covering all, absolutely all, of the recommendations issued by the Committee on Freedom of Association, and that it has duly informed the International Labour Standards Department at every stage.

We also regret that the Employer spokesperson is unaware that 90 per cent of the negotiations on minimum wage fixing and other bargaining issues that took place in the course of the collective bargaining ended in tripartite agreements that were signed by the workers, the employers and the Government.

Having said that, we regret profoundly that in his statement he referred to a case that was not presented to the Committee on the Application of Standards properly this year.

Finally, we regret that the Employer spokesperson does not know that in 2012, Uruguay presented its reports on Conventions Nos 98 and 87, on which the Committee of Experts made no particular observation other than to request that it present a further report in 2015.

Once again, we deeply regret that the Employer spokesperson does not realize that Uruguay fully respects the freedom of association and freedom of expression of workers and employers and that the Government constantly promotes social dialogue in absolute compliance with the rule of law and democracy.

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The PRESIDENT

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As there are no further speakers, we will proceed to the approval of the report of the Committee on the Application of Standards.

If there are no objections, may I take it that the Conference approves the report of the Committee on the Application of Standards, as a whole?

*(The report, as a whole, is approved.)*

Before moving on to the closing ceremony of the Conference, I would like to offer particularly warm congratulations to the Officers of the Committee on the Application of Standards, the members of the Committee and the ILO staff members who provided the secretariat support.

This Committee is one of the cornerstones of the ILO's supervisory machinery, and I was highly gratified that the Committee was able to adopt a list of cases efficiently, as well as conclusions on the cases, which will assist the member States concerned in meeting their international obligations under ratified ILO Conventions.

I want to encourage the tripartite constituents to continue working in the true spirit of social dialogue, the hallmark of this House, to address any issues that may still exist and to find outcomes that will lead to the strengthening of the ILO supervisory system, which is the model for the rest of the international community. For today, I congratulate the Committee and its secretariat on its very efficient work.

I understand that the Workers' delegate from Australia, Ms Kearney, wishes to make a statement on behalf of several Workers' delegates to the Conference. I shall give the floor to her now, but I do not intend to open a debate on this subject.

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Ms KEARNEY (*Worker, Australia*)

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I wish to inform the Conference that today a number of Workers' delegates have submitted to the ILO Director-General a complaint under article 26 of the ILO Constitution against the Government of Fiji for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The serious and continuous violations of freedom of association in law and practice, including constitutional amendments that threaten to undermine fundamental labour rights require, in our view, the establishment of a commission of inquiry.

#### CLOSING SPEECHES

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The PRESIDENT

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The 102nd Session of the International Labour Conference has now completed its work. We will now proceed to the closing ceremony.

It gives me great pleasure to invite my fellow Officers, in turn, to take the floor and address the Conference.

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Mr RAHMAN (*Employer, Bangladesh; Employer Vice-President of the Conference*)

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It has been a great honour to serve as Employer Vice-President of the 102nd Session of the International Labour Conference.

Allow me to convey my thanks to the President, His Excellency Mr Nidal Katamine, Minister of Labour, Government of the Hashemite Kingdom of Jordan, and my co-Vice-Presidents, Ambassador Paulauskas and Ms Familia, from the Government and Workers' groups, for their goodwill and fellowship all through this Conference.

Let me also thank the Office for its support in helping me to discharge my duties.

This year's Conference agenda addressed a number of questions that lie at the heart of the mandate of the ILO: social dialogue and social protection. It also addressed other important policy issues, such as demographics and the challenge of greening the economy and its implications for the workplace.

We have heard yesterday and today from the spokespersons of the three Committees about their intensive but successful work.

I am convinced that the outcomes in all these areas are highly relevant and can make a real difference on the ground. That is what our work here is all about – to develop policy approaches which improve the situation for all in the world of work.

Our Geneva paperwork is not an end in itself, but a means to change situations and circumstances at regional, national and local levels. If the results of this Conference do not meet the needs of the constituents, our work becomes meaningless.

We have also begun an enriching discussion on the issues raised in the thought-provoking Director-General's Report. Now a proper follow-up process to this discussion and the various points of view raised is needed so that the process of reform, ably begun by the Director-General, follows through with results at the policy level.

This was the first Conference for Mr Guy Ryder as Director-General. We would like to place on record our appreciation for the process of reflection he has begun and for the way he has put himself at our disposal, as constituents, to listen to us. We look forward to a continuation of this, and assure him

that we will play our part in the continuing dialogue, reflection and necessary decisions.

I would like to conclude with the clear commitment of the Employers' group to this Organization and its structure.

After last year's problems in the Committee on the Application of Standards, we are pleased to see that despite ongoing fundamental issues, which are still to be resolved, this year the Committee was able to hear cases owing to our ability to find pragmatic approaches.

Going forward, I am sure we will continue to work together to identify a new impetus in the ILO supervisory machinery which respects all constituents' views and concerns, including the Employers.

The Employers are very much committed to working jointly with Workers, Governments and the Director-General for the success of this Organization.

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*Original Spanish: Ms FAMILIA (Worker, Dominican Republic; Worker Vice-President of the Conference)*

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It has been a great pleasure and an honour for me and my organization to have been elected Vice-President of the 102nd Session of the International Labour Conference. I would like to express my most sincere thanks to the Worker delegates for the trust they have bestowed in me.

I would also like to congratulate the President of the Conference, Professor Nidal Katamine from the Hashemite Kingdom of Jordan, the Vice-President of the Government group, Mr Paulauskas from Lithuania, and the Vice-President of the Employers' group, Mr Rahman from Bangladesh, for their excellent and fruitful cooperation.

This 102nd Session of the Conference has been the first for the new Director-General of the ILO. This has coincided with a whole series of reforms that he has implemented to make the Office able to respond more effectively and more efficiently to the needs of the constituents, and to the significant challenges they are currently facing. We hope that the conclusions adopted at this meeting of the Conference will contribute to strengthening the Office and reinforcing the relevance and the authority of the ILO.

In this regard, we, too, welcome the adoption of the Programme and Budget for 2014–15, which will allow the Office to take on a heavy future workload. We would also like to thank the Director-General for his Report to the Conference, which concisely and strategically sketches out the main challenges facing the ILO and its constituents in achieving social justice. As we move towards the centenary of the ILO, the Workers' group is prepared to continue this important discussion in the Governing Body.

Allow me now to refer to the main outcomes of the work of the committees.

We are particularly pleased to learn that the Committee on the Application of Standards has worked well this year. After the failure of the Committee to carry out its mandate last year, our objectives were geared mainly to guaranteeing discussion of the cases related to the effective application of the Conventions, which are of fundamental importance to the men and women working in different parts of the world.

In this regard, the Committee achieved its objective. A total of 25 cases were discussed and practical conclusions were adopted in the Committee. The conclusions include technical assistance, high-level

missions and direct contact, and special paragraphs in three cases. To achieve this result, the Workers had to demonstrate not only considerable solidarity within their own ranks but also to accept, on an exceptional basis, that in six cases concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), a statement would be included on the right to strike. The time has come to resolve the most fundamental problems, particularly re-establishing respect for the supervisory system, the experts and their mandate. This is an essential precondition for the Workers' group to be able to commit with confidence to the standards review mechanism.

The Committee on Employment and Social Protection in the New Demographic Context reached a series of good conclusions. Despite the fact that the challenges for employment and social protection in the demographic context differ between the regions, it is important to guarantee people income security throughout their lifetime. It is essential for young people to be able to enter the labour market and for social security systems to function in order to guarantee income security for all age groups. Furthermore, it is vitally important that people are able to age with dignity. This requires strong, stable collective bargaining institutions, fair minimum wage mechanisms, effective job protection legislation and good, accessible centres for childcare and care for the elderly.

The conclusions have identified a range of ILO instruments that can help to facilitate measures to deal with demographic change, such as the Social Protection Floors Recommendation, 2012 (No. 202), the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Older Workers Recommendation, 1980 (No. 162), the Workers with Family Responsibilities Recommendation, 1981 (No. 165), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Employment Policy Convention, 1964 (No. 122).

However, one area that is not yet regulated but is of major importance is the care economy. Care systems that provide adequate care to people who need it, regardless of their level of income or wealth, should be established and strengthened in each country. We hope that the Office will continue working on this issue in the coming months with a view to identifying the need for a possible standard in this area.

The conclusions of the Committee on Sustainable Development, Decent Work and Green Jobs recognize the vital importance of a just transition framework towards sustainability covering microeconomic policies for creating decent green jobs, as well as industrial and sectoral policies that should be defined through social dialogue and collective bargaining.

Additional aspects to bear in mind for a just transition are assessing the impact on jobs, comprehensive social protection systems, vocational training plans and skills development through lifelong learning. The conclusions also recognize that the international labour standards are the main pillar for managing the transition. Green jobs should be decent and respect freedom of association and the occupational health and safety standards, among others. Social dialogue, tripartism and collective bargaining are the backbone for all policies. To this end, an appendix has been included containing a list of

standards for more guidance. Although the conclusions include international cooperation as an important element of the transition, we regret that Members did not agree on a more ambitious focus. A just transition for all must include financial assistance and technology transfer to least developed countries. The conclusions constitute a clear mandate for the ILO and its constituents with a view to moving towards sustainability, both internally – through a strategic action plan, inclusion of a reference to sustainable development, holding a tripartite meeting of experts on the green economy with a just transition, and incorporating green jobs and sustainable development into Decent Work Country Programmes – and through an external mandate for the post-2015 development agenda and other economic forums.

No less importantly, the Committee for the Recurrent Discussion on Social Dialogue adopted a whole series of conclusions with some important policy messages as well as an extensive framework of action. The conclusions show strong tripartite commitment to social dialogue, as well as the importance of complying with certain preconditions, including respect for freedom of association and the right to collective bargaining, for real and effective social dialogue. The conclusions express their disapproval for the unilateral measures adopted in some European countries, which have weakened collective bargaining mechanisms and institutions and affirm that, particularly in times of crisis, social dialogue and collective bargaining have an important role to play.

We welcome the firm declaration that collective bargaining is at the centre of social dialogue, and the broad work programme on collective bargaining, and encourage the Office to rebuild its authority in this area.

The Office should also promote the Conventions and Recommendations related to social dialogue and collective bargaining and, in general, help Members to promote collective bargaining, and with research and the necessary expertise on the benefits of collective bargaining at the different levels. The conclusions highlight the importance of policy coherence and the need to establish a social dialogue mechanism at the national level to enable consultation with the social partners on a series of policies that affect the world of work.

The conclusions pave the way for a new era of commitment on multinational companies and work in global supply chains. The ILO must demonstrate its relevance, both within and outside the ILO, to address the challenges posed by supply chains. We hope that the Governing Body in October will give its full support to a general debate on decent work in supply chains at a future session of the Conference.

Lastly, we welcome the historic decision of this Conference to adopt a resolution on Myanmar replacing the 2000 resolution. With this decision, the constituents and the Office have recognized the important steps the Government of Myanmar has taken on forced labour, and they have especially noted that further efforts are needed to eliminate forced labour and to realize the right to freedom of association in this country. We invite the Government of Myanmar to continue this work in consultation with the social partners.

Allow me to conclude by thanking the Director-General, the staff of the ILO and the interpreters,

whose unflagging work has helped make this Conference a success.

I thank you for your attention and hope you all have a good journey home.

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Mr PAULASKAS (*Government, Lithuania; Government Vice-President of the Conference*)

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Thank you very much for this possibility to address the Conference as the Government Vice-President. It was a great honour for me to work with the President and my fellow Vice-Presidents. The time we have spent together at this podium has brought a better understanding for me of the important issues we and the international community face, and has also made it clear that teamwork is needed to address them.

Firstly, I should like to say that I am most impressed by the spirit of tripartism that I have seen prevailing through our debates. This is truly one of the great strengths of the International Labour Organization, and one of the gifts that the Organization gives to the world.

Secondly, I have heard strong messages of support from all benches, Governments, Employers and Workers, for the Director-General's vision of a reformed ILO, able to meet the challenges of this still-new century as the Organization approaches its centenary. I would also personally like to thank the Director-General, Guy Ryder, for his continuous engagement with the leadership of my country, be it in Oslo or here in Geneva, which has resulted in full support for, and good understanding of, his reform proposals. I think this linkage will also be very important to maintain in the second half of the year when Lithuania will take up the presidency of the European Union.

The ILO is uniquely placed to provide policy guidance and assistance in relation to many of the most important issues and I urge you, Governments, Workers and Employers, to give the Director-General the scope to achieve an ILO that is able to respond to your wishes.

This 102nd Session has dealt with issues of a particularly pressing nature: sustainable development, decent work and green jobs; youth unemployment, which has been outlined by Mr Herman Van Rompuy; employment and social protection in the new demographic context; and the very important question of social dialogue, a core value of the ILO and the creative and binding element behind social progress. No one can say that the Conference is not facing up to the issues that are certainly complex but which require immediate answers. I feel that the conclusions produced by the committees that dealt with these issues are particularly clear and give Director-General Guy Ryder a positive framework in which to guide the Organization.

The ILO has reached a historic turning point in its relations with one of its member States, the Republic of the Union of Myanmar. I congratulate both the Organization and the Government of Myanmar on the lifting of the final article 33 restrictions imposed over 12 years ago. I believe that this will prove the opening of a positive era for the country and I look forward to hearing about how the relationship between it and the ILO evolves. There is a vast amount of information to supply, and technical cooperation and assistance must be put in place to ensure that things go ahead as planned.

Finally, I would congratulate the Director-General, the constituents and the Office on the

adoption of the Programme and Budget for 2014–15. This is a sign of the confidence in the ILO and its Director-General. As I already said, however, the ILO is the key organization in dealing with the problem of employment and requires the full support of its constituents. It is, as the Director-General states in this Report to the Conference, only as strong as its constituent Members wish it to be, and I urge you to make it stronger.

Director-General, Excellencies, distinguished delegates, I wish you courage and luck in the work before you. You will need both, but with the prevailing spirit of tripartism you already possess a powerful tool to achieve the goal of social peace and justice.

Last but not least, I would like to thank the Clerk of the Conference, Mr Christian Ramos, and his very able team who were always there for us and made this experience a truly rewarding one.

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The PRESIDENT

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It is now my great honour to invite the Secretary-General of the Conference, Mr Guy Ryder, to take the floor and give his reply to the general discussion of his Report to the Conference, *Towards the ILO centenary: Realities, renewal and tripartite commitment*.

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The SECRETARY-GENERAL OF THE CONFERENCE

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I begin by adding my voice to the expressions of sympathy to the delegation of India on the sad loss of our friend, Shri Vikas.

My task now, as the Conference draws to its close, is to respond to the debate that has taken place here in plenary on my Report, *Towards the ILO centenary: Realities, renewal and tripartite commitment*.

But before launching into that, allow me a few preliminary words about the work of our Conference and about the reform process at the ILO, which is the institutional backdrop to it. We have had a record 4,718 registered delegates here, including 156 ministers. We have received and heard the messages of eminent guests: President Banda of Malawi; European Council President Van Rompuy; and African Union Commission Chairperson Dlamini Zuma. The Conference's technical committees have completed important discussions and produced valuable conclusions on crucial issues: green jobs and sustainable development; demographics, jobs and social protection; and social dialogue. They have done so in a constructive fashion and with the tripartite commitment to which my Report speaks.

And, as we have heard this morning, our Committee on the Application of Standards completed its work successfully, which is a major step forward from last year. But one that should not blind us to the reality that many more such steps will need to be taken before we get to where we need to be in respect of our standards work.

And, at this Conference, the ILO and Myanmar have completed the long journey of action under article 33 of the Constitution. It has been a unique, bumpy and sometimes uncomfortable ride, but it is one that vindicates ILO capacities and demonstrates just what this Organization can achieve when it unites behind its values and when it exploits to the full the instruments at its disposal.

We have adopted, too, a programme and budget for the next biennium, which I read as a vote of con-

confidence in our Organization and the direction that it is taking. I want to thank all those who supported the programme and budget, and express also my respect for the explanations provided by those who were not able to do so.

So, with all this, here is my first overall conclusion from this year's Conference experience. It is, quite simply, that we have an extraordinary institution in this Conference. It has an unparalleled capacity to bring us together; I might note in that regard that nothing less than 633 meetings were organized in addition to the formal business of our Conference agenda. So this is a unique, global, tripartite parliament on labour issues. It produces results. It needs reform. I have no doubt of that. I believe it has to be shorter, but without impacting negatively on its critical functions, particularly in the setting and supervision of standards.

So please let us not make the mistake of talking down the value of our Conference, because that would be an error of appreciation and of intent. Instead, let us set about, together, the task of changing it to make it still better, because refusing that challenge would also be a failure, a failure of will and a failure of ambition, and I will come back to this in a moment.

Many of you have spoken – either from this podium or in other conversations – of the reform process under way at the ILO. While these exchanges have raised different points on specific issues, the overall message has been overwhelming – I would say practically unanimous – in strong support for change. Indeed, if there has been any concern expressed, it has been to insist that change needs to be pursued with undiminished ambition and sustained energy and determination.

In response to those with whom I have been able to talk personally, I have tried to provide an honest appraisal of the progress that we have made and the challenges that lie ahead. The truth is that both are considerable, and I have the opportunity now to reiterate that my colleagues in the secretariat and I have got your collective message, we understand our responsibilities and we will push forward as you have told us to do. Of course, this is not simply reform for the sake of reform. It is reform with the agreed purpose of upgrading the quality of ILO work and services, of bringing the ILO closer to you, our tripartite constituency, and of making the ILO as useful, relevant and influential as our circumstances demand that it must be. And, in that regard, my Report to this Conference has had the objective of eliciting your guidance on the substantive agenda that must take the ILO forward towards its centenary, driven by the locomotive of the reform process.

And I want to thank you for the very extensive guidance that you have provided, as well as for the positive comments made, about the Report itself. Many of you have been pleased by its accessibility, its concrete and direct approach as well as by its brevity, although I recognize that to say that the chief merit of a report is that it is short raises more questions than it answers. But the idea of the Report and the debate on it is that it should have consequences for our Organization. So the question now is what exactly those consequences should be and how we are going to bring them about.

And let me begin, at this juncture, by stating clearly that the ILO is determined to discharge to the full its proper role and responsibilities to support

and improve the conditions of Palestinian workers. I have made clear our commitment in that regard and the definition of the ILO's mandated responsibilities. We must be practical and we must be active.

The seven centenary initiatives put to the Conference at the end of my Report have been the object of much comment from you, and that comment has varied from the general to the detailed. Some have expressed blanket support for them. Nobody has said that they are inappropriate in substance and in form. It seems then that you agree on the need to set out a broad set of initiatives of this type to carry us forward towards 2019.

This said, some initiatives were more frequently addressed than others. Somewhat, I confess, to my surprise, the Women at Work initiative did not get as much as comment as others, at least not directly. And I prefer not to conclude that this was the result of the fact that only 65 of the 291 speakers on the Report being women – which is itself something of a call to action – but rather that your commitment to gender issues at work is so well established that it does not require further statement.

On the other hand, the enterprise initiative received a great deal of attention from speakers from all your groups, and on this one there was strong convergence around the need for the ILO to establish a platform of engagement with enterprises and very much on the grounds set out in my Report. Where some differing emphases came was in respect of *how* to engage; the Employers, in particular, were insistent on greater clarity on method. In addition, there was widespread interest in defining and implementing an ILO role in respect of global supply chains and, more generally, in respect of corporate social responsibility.

There was strong support, as well, for the end to poverty initiative, with many speakers making the link to agreed future ILO work on the rural economy and informality, as well as the wider international post-2015 development agenda where we do seem to be progressing in our aim of establishing a place for decent work objectives. Clearly, we need to join forces to finally achieve that goal.

In my Report, I described the role that the ILO will be called upon to play in the transition to a low-carbon, sustainable development path as the single factor that will most clearly distinguish the Organization's second century of activity from its first. You seem to agree, and the technical work carried out by this Conference confirms that understanding. That means that the green initiative will need to be at the heart of what we do and in all areas of ILO activity, with the post-2015 agenda very much in mind here as well.

I want to make it clear – because some uncertainty did emerge in debates – that the suggested initiatives on standards and on governance are of a different character from the other ones. They relate to the way that the ILO itself organizes its work. These initiatives are, if you like, tilted more inwards than outwards, but they are nonetheless important for that; they are more closely related as well to the reform agenda.

There are two basic points that I want to make on these two initiatives. The first is that they must take immediate effect. Certainly – and this was never the intention – we will not wait until 2019 to start on them. On the contrary, they are really continuations of processes already started but which need to be given new urgency, new shape, higher profile and

greater political commitment. The initiatives will help us do all of that. The second point is that this very Conference has provided first-hand evidence and instruction about the tasks at hand.

I started my intervention this morning with a sincerely held expression of conviction of the Conference as an institution with unique attributes that must not be lost or damaged. Truly, I do not think that there are many people in this hall, at the end of this near three-week odyssey, who do not really believe that we could do our Conference work better, more efficiently and in ways that strengthen the Conference.

Equally, the experience of this year's Committee on the Application of Standards confirms, as well, that recreating full consensus around an authoritative system of standard setting and supervision may be the most demanding test of tripartite commitment. This year, we have succeeded, but we have succeeded in "getting by" – not without difficulty, as we have heard this morning – but that will not always be possible in the absence of a new understanding on some quite fundamental issues. Let me say that we need to listen to each other, we need to work with each other, we need to be creative and we need to be faithful in this area to the values and objectives of the ILO if we are to find our way forward. I appeal to everybody involved to do all of those things.

Finally, there is the future of work initiative, and I will confess that I felt a little uncertain about proposing this initiative to you because it felt a little removed from pressing, immediate realities, and perhaps something of an indulgence for an Organization that is committed to rigour in efficiency and relevance in addressing your needs of today.

I have to say that your reactions have allayed those doubts. You have said that a forward-looking examination of the place of work in our lives and our societies is needed and will be valuable, and that it will frame policy choices and be appropriate to the marking of the ILO's 100th anniversary, six years from here.

To this review of the seven centenary initiatives, I think it necessary to add, as well, that a number of issues not covered in them did figure prominently in your plenary interventions. I want to pick out one case, and that is the case of migration issues, on which many delegates had very important things to say. I would like to respond by saying that we have taken very good note of those interventions. We do need to position the ILO better in this field. The forthcoming United Nations High-level Dialogue on International Migration and Development is going to give us an important opportunity to do just that.

The question then is: what happens next? Well, I propose that we put follow-up to the discussion of my Report on the agenda of the Governing Body session in October. Before that, we will go through every one of your interventions in detail and will draw out their full intent and meaning. On that basis, we can present a series of decision points which together would constitute a centenary roadmap for our Organization. We will see where it takes us but it is clear, already, that the action to be taken on each of the initiatives will have to vary in accordance with their character and with our circumstances.

In that regard, I think it should be understood, as well, that the initiatives will need to be placed in the context of decisions already taken, or to be taken,

on ILO programmes and activities. We have just approved, after all, our Programme and Budget for 2014–15 with its eight areas of critical importance, which have gained your wide support.

We will be having a first Governing Body discussion, already in October, on the arrangements to be made after the current Strategic Policy Framework for 2010–15. Those arrangements are likely to take us up to, and well beyond, the centenary. My view, and I am clear on this, is that the initiatives can help frame and direct those arrangements. This is not a case of duplication of programme outputs and objectives, but of equipping the Organization with the necessary tools and strategic direction. The relationship with the reform agenda is one of mutual reinforcement. We are engaged here in a single coherent agenda for the future of our Organization.

In this way, I hope and I trust that you will agree that our debate, your interventions and your participation, can, and will, have the consequences that we have sought from this exercise. It is important that they do, because for this Organization to be influential in the future, it needs to respond accurately, effectively and expeditiously to what its member States say to it and expect of it.

My colleagues and I will be investing all of our energy and commitment in the year ahead to making sure that we do just that until we meet again next year to renew this conversation.

Let me finally express my appreciation for the generous words that have been said about the way my staff has conducted itself in the service of this Conference. I have been very proud to lead them and I want to finish by wishing you a successful and safe journey home, and year ahead.

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#### The PRESIDENT

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I would like to thank you, Director-General, for the very comprehensive coverage of the work that the ILO is undertaking under your leadership. We are very proud of you and of all of your staff. I believe that your hard work will definitely show us the way to the light, which is always there at the end of the tunnel. According to Churchill, whenever politicians see light at the end of the tunnel they like to extend the tunnel further, but we hope that in this case, we will definitely go through straight into the light.

Now, with the Conference's indulgence, I shall make my own closing remarks. I wish to give myself the floor.

I see some sleepy eyes, so I would like to reassure you that I will be the last speaker.

*(The speaker continues in Arabic.)*

It is an honour for me to make a few closing remarks to the 102nd Session of the International Labour Conference.

Let me start by reiterating my thanks for entrusting me with the task of guiding this ancient institution through its work. It is a great honour for me personally, and for my country, the Hashemite Kingdom of Jordan.

This Conference is the first to be held under the leadership of the new Director-General, Mr Ryder, and I believe that we can congratulate him on the great success of the Conference.

We were privileged to hear presentations from three high-level guests, each of whom had a particular message.

Her Excellency Dr Joyce Banda, President of the Republic of Malawi, spoke of her determination to eradicate child labour, and stressed that the chief means to obtain results was to eliminate poverty, the root cause of the problem. She also spoke of the thorny problem of discrimination against women, saying that she believed that there was nothing a man was able to do that a woman could not do.

For his part, Mr Herman Van Rompuy, President of the European Council, addressed the Conference, and set the ILO and the European Union in a historical context, highlighting the ties of friendship linking both institutions and the strong bonds between them, as they share the same objectives and values. His particular message was the need to address urgently the problem of youth unemployment, which requires our close attention. He warned that this was a serious problem, and that it was up to us, governments, employers and workers, not to lose an entire generation to unemployment.

The Conference was also privileged to hear Dr Dlamini Zuma, Chairperson of the African Union Commission. She brought us a message full of optimism and hope for the African continent, pointing to the huge potential in natural and human resources that the continent possesses. She outlined many areas in which growth accompanied by employment generation would be possible.

It is also worth noting some key points made during the panel discussion on “Restoring confidence: Jobs, growth and social progress” during the World of Work Summit. The Executive Secretary of the United Nations Economic Commission for Africa spoke about the pressing problem of the informal sector, an issue that will be addressed by the 103rd Session of the Conference next year. He urged the African continent to assume ownership of its own future. The Vice-Rector of the University of Geneva called for equity and balance in setting budgets and coordinating more harmonious financial systems. Mr Funes de Rioja, Employer Vice-Chairperson of the ILO Governing Body, stressed that the return to growth was dependent on the private sector, and that tripartism was essential to realizing growth. The General Secretary of the International Trade Union Confederation, Ms Sharan Burrow, called for a living wage, and for targeted investment in jobs, infrastructure and sustainable enterprises which observe workers’ rights.

All panellists agreed on the importance of the role of the ILO, and the need to place it rightly at the centre of the international stage in the search for solutions.

We followed with great interest the main work of the technical committees. I am pleased to inform you that all committees have done an excellent job.

Let me start with the Committee on Employment and Social Protection in the New Demographic Context. This is one of the most important subjects nowadays, as reflected in the comments of all our guests and panellists. The conclusions and their accompanying resolution adopted by the Conference yesterday recognize that the huge demographic transitions that are under way in the world have major implications for labour markets and for social protection systems.

The committee also took up a topical issue in the world of work: sustainable development, decent work and green jobs. The outcome documents we adopted yesterday call for targeted and urgent action to harness opportunities and address the chal-

lenges in moving ahead towards sustainable development.

As for the Committee for the Recurrent Discussion on Social Dialogue, it has also reached valuable conclusions. This Committee gave the Conference the opportunity to review ways in which the ILO can reinforce social dialogue in all parts of the world, and help build capacities to enable the social partners and governments to interact with each other more effectively.

Here, I would like to extend my thanks and sincere congratulations to all persons who worked in the Committees, to the delegates who participated in their deliberations, and to the secretariats for their enormous efforts to facilitate their work.

Furthermore, I have to mention the Committee on the Application of Standards, which constitutes a cornerstone of the ILO mechanisms. In my opening speech to the Conference, I had referred to the controversy raised in this Committee. I am happy to inform you that a solution was found to the immediate problem, and that the Committee rapidly adopted a list, and subsequently examined all 25 cases included therein, as well as the cases of progress. I take this as a positive sign for the future, and trust that lasting solutions will be found to prevent any further impasse. The work of the Committee on the Application of Standards represents good international governance at its best. I therefore urge and encourage you to work together, in the spirit of tripartite commitment, to find the necessary lasting solutions, and to make the supervisory machinery stronger than ever before.

Lastly, I would like to mention the important issue taken up by the Selection Committee: the question of Myanmar. The decision of the Conference to lift the remaining restrictions placed on Myanmar by virtue of a resolution adopted in 2000 constituted an unprecedented moment in ILO history. I very much hope that the steps that have been taken to continue with a much “lighter” level of follow-up will produce the full and desired results.

The Conference also took another very important decision: the adoption of the Programme and Budget proposals for 2014–15. This is the first budget presented by the new Director-General, which undoubtedly attests to the immense confidence placed in him.

What has struck me most about this 102nd Session of the Conference is the clear vision of the tripartite constituents with respect to the most important problem facing our world today: jobs and the creation of job opportunities. The time has come for the ILO to assume its pioneering role in all confidence, not only in analysing the problems of unemployment and job creation, but also in proposing solutions and participating in their implementation. The ILO should play its proper and privileged role at the international level and be recognized as a main and active player in the formulation of any successful and durable solution.

The entire world is currently undergoing turbulent times at the social and economic levels. Everyone recognizes that job creation is a pivotal factor. We also observe that many countries, both developed and developing, seem to be at a loss, like a blind man probing in the dark hoping to find a ray of light to shed on this problem.

I would like to quote former Director-General David Morse, who, in his Report, said that “The ILO can only be as effective an instrument for pro-

gress as its member States and its other constituents want it to be.”

We now have the opportunity to unleash the potential and capacity of the ILO as a leading institution of excellence in the global efforts aimed at job creation and ensure that any solution to the crises in the world should take the social dimension fully into account.

The ILO should be allocated an appropriate share of the funds in order to resolve the crises and enable it to act directly and effectively in collaboration with the relevant parties.

Let me give a good example: my own country, the Hashemite Kingdom of Jordan, which is still suffering from the negative consequences of the Syrian conflict. I am convinced that the ILO can play an immediate and effective role in alleviating the hardships and suffering of the people by focusing on the employment component and engaging in programmes of training and retraining of the Syrian refugees to enable and equip them to seek employment in the short and medium term, wherever they want.

We need to act now. We have to ensure that the ILO is strong, relevant and effective. We need to be innovative and capitalize on the power of our unique tripartite structure.

It is evident, after having listened to the concerns, aspirations and ambitions of all the speakers in this Conference, that the problems of poverty and unemployment are constantly on the rise in the majority of developing and developed countries. I am aware that we officials agree on the need to find jobs which are suitable for humanity. Everyone today – in his/her respective nation – is looking forward to overcoming this intractable problem.

In this connection, I am sorry to say that we have failed dismally to find a solution to this intractable problem, because unemployment makes the headlines in the news in most countries and is pushing people into a world of confusion, demonstrations and dissatisfaction, and even into revolutions in some countries.

The time has come for our strong Organization to give serious thought and consideration to the convening of a second World Employment Conference. It is to be recalled here that the first Conference was held 37 years ago, in 1976. I believe that it is our duty to call for the convening of this Conference today, in order to provide a framework, policies, the means and new creative tools which will constitute a clearly defined roadmap for the activities of the ILO on its path towards its centenary. Let us give this Conference the title: Yes to the alleviation of unemployment and its eradication – if possible – in all parts of the world.

In conclusion, I wish to thank my fellow Officers: Ambassador Rytis Paulauskas of Lithuania, Government Vice-President; Mr Kamran T. Rahman of Bangladesh, Employer Vice-President; and Ms Eulogia Familia of the Dominican Republic, Worker Vice-President. They have been the best colleagues to work with. I would like to thank them profoundly for all the support they have given me to fulfil my duties as President.

I would like to thank the Director-General for his support and friendship, and to congratulate him on the excellent work carried out by his secretariat to facilitate the deliberations of the Conference; its members have proved to be efficient and generous.

Last but not least, I would also like to thank the interpreters and translators, who are absolutely indispensable, and whose work is very much appreciated.

I would also like to express my profound gratitude to the secretariat of the President: Ms Yasmine Karanuh, Administrative Officer in the ILO, who was appointed to assist the President of the Conference; Ms Yamina Mehellou, the President’s Secretary; and Mr Shukri Dajani. My thanks also go to the Jordanian delegation representing different groups, including the Parliament of Jordan and the mission of Jordan in Geneva, led by Ambassador Dr Rajab Sukayri, for the facilities and logistics provided to me.

My heartfelt thanks to all of you.

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#### The SECRETARY-GENERAL OF THE CONFERENCE

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After all of the hard work of the last nearly three weeks, it is now a real pleasure and privilege for us to observe one of the great traditions of the ILO and one of the great traditions of our Conference.

It is a tradition which I have observed on many occasions, over very many years, but which I now have the chance to be a small actor in. I am quite pleased about that. And the tradition is to express our appreciation, our congratulations and our sincere thanks to the President of the Conference: on this occasion, of course, our President and Minister, Nidal Katamine of the Hashemite Kingdom of Jordan.

I am going to take the liberty of asking the President to join me here. President, when I made my very first speech to this Conference, my very first words were to say that in electing you as its President our Conference was placing itself in very safe hands, and it turns out, on this at least, that I was right.

We have seen that you have conducted our work with enormous skill, total success and all of the tact and the diplomacy that the heavy responsibilities of the presidency require of you. You have even, Mr President, steered our ship safely into port exactly half a day earlier than foreseen and that is quite an achievement. Be careful, we may invite you back next year to do the same! And above all, and for me this is terribly important, you have created at this Conference, which is a very human conference, a warmth, a human warmth, which is not the result of the heat of the discussions, it is the result of the friendship and the way that you brought us all together to get the work done. And for all of that, we owe you our very sincere appreciation.

Now the tradition, as many of you know, is to present you, Mr President, with this gavel, this engraved gavel, which is, you may think, very meagre payment for the work that you have done in the last three weeks, but it is a symbolic representation of the authority which you brought to the job, of the success with which you have conducted our work, of the true respect and appreciation that we have, and a great reflection of the historical relationship between the International Labour Organization and the Hashemite Kingdom of Jordan. We hope that it will provide you with some happy memories of your experience at the head of this 102nd Session of the International Labour Conference.

Thank you, Minister. Thank you, President.



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The PRESIDENT

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You have left me speechless, and I have to make a confession. I wanted to close the 102nd Session from this podium with this gavel! I am going to leave it here and use this one.

I would like to thank you all and wish you a safe journey back home. I declare the 102nd Session for the International Labour Conference closed, and wish you all the best for the coming year.

*(The Conference adjourned sine die at 1.05 p.m.)*