



## 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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**A. DISCUSSION OF CASES OF SERIOUS FAILURE BY MEMBER STATES TO RESPECT THEIR REPORTING OR OTHER STANDARDS-RELATED OBLIGATIONS, INCLUDING SUBMISSION TO THE COMPETENT AUTHORITIES OF THE INSTRUMENTS ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE**

The Worker members said that it was essential to maintain the special sitting, which highlighted the large number of countries which did not respect their constitutional obligations. These failures endangered the smooth functioning of the ILO supervisory system. The sitting provided the occasion to invite countries that were not respecting their obligations to do so. Of all the reports requested from governments, only 38.2 per cent had been received on time, compared with 39.9 per cent the previous year. Governments should therefore be encouraged to submit their reports within the time limits to avoid disruption to the smooth functioning of the supervisory procedure. The reduction in the number of reports received by comparison with the previous year was continuing since for the last session of the Committee of Experts they amounted to only 67.8 per cent compared with 71.1 per cent for the previous session, in other words 3.3 per cent less. Moreover, 15 countries had not supplied the reports due for at least two years and 13 countries had not submitted first reports for at least two years. First reports that were due following a ratification were very important since they enabled an initial evaluation of the application of the Conventions concerned. In addition, 43 countries had not replied to the observations and direct requests made by the Committee of Experts. Such failure had an adverse impact on the work of the supervisory bodies. They invited the defaulting governments to send all the requested information. The production of General Surveys was also based on the reports supplied by member States. It was therefore crucial that the latter send their reports to allow an overview of the application of ILO instruments in law and in practice, even in countries which had not ratified the Conventions concerned. The Worker members had noted that 38 countries had not supplied any information during the last five years for the purposes of the General Surveys produced by the Committee of Experts. This was regrettable since these States would otherwise have contributed to the General Survey. The Worker members expressed concern at these figures and called for the positive initiatives already taken by the Office to ensure better monitoring of the countries where there had been serious failure to meet constitutional obligations to be strengthened in order to reverse the negative trend observed this year.

Under the ILO Constitution, member States were obliged to indicate the representative organizations of workers and employers to which copies of the reports on ratified Conventions had been sent. The report of the Committee of Experts indicated that two countries had not met this obligation. The Worker members reminded these two States that tripartism was the cornerstone of the ILO and that it was essential that the social partners be involved in the supervision of the application of international labour standards in their countries. With regard to cases of serious failure to submit, these were the cases in which governments had not submitted the instruments adopted by the Conference to the competent authorities for at least seven sessions of the Committee of Experts. Yet this obligation was essential to ensure tripartite participation at national level in the ILO standards-setting process. This year, 31 countries were in a situation of serious failure to submit. For this reason, the Worker members called on all member countries invited to the present sitting to duly note the serious failures to respect their constitutional obligations and to rectify them as soon as possible. In conclusion, the Worker members appealed to the Office to give fresh impetus to the process by calling for replies and reports from States through dialogue between the ILO supervisory bodies and the member States. This always constituted a vital exercise, just as it

had done in the past, to ensure the effective application of international labour standards.

The Employer members recalled that the functioning of the ILO supervisory system was based primarily on the information provided by governments in their reports. Compliance with reporting obligations was therefore crucial for an appropriate and effective supervision of ILO standards. The number of reports under article 22 of the ILO Constitution which had been received by 1 September 2017 remained low, and the number of instances in which no information had been supplied in reply to comments made by the Committee of Experts continued to be high. They regretted that, despite all efforts, it had not been possible to achieve visible progress on these long-standing issues. Submissions by workers' and employers' organizations could add to the factual basis and provide a reality check, but could not replace government reports. While the Office, within its existing financial and human resources capacities, should continue to provide assistance to governments in meeting these obligations, reporting was ultimately a government responsibility. It was the decision of governments to ratify Conventions, and ratification entailed reporting obligations. The Employer members noted with concern that none of the reports due had been sent for the past two or more years by 15 countries. Furthermore, 61 of the 95 first reports due had been received by the time the Committee of Experts' session had ended, and 13 member States had failed for two or more years to supply a first report, albeit the basis for a timely dialogue between the Committee of Experts and the member State on the application of the ratified Convention. They encouraged the governments concerned to request technical assistance from the Office and submit the first reports without delay. The Employer members welcomed the decision taken by the Committee of Experts, following a proposal made by the Employer members, to institute the practice of launching "urgent appeals" on cases corresponding to certain criteria of serious reporting failure and to draw the attention of the Conference Committee to these cases, so that governments could be called before the Conference Committee and, in the absence of a report, the Committee of Experts might examine the substance of the matter at its next session. With respect to reports under article 19 of the ILO Constitution, 38 countries had not sent reports on unratified Conventions and Recommendations for the past five years, despite their importance for the comprehensiveness of General Surveys. As to the submission of instruments adopted by the Conference to the competent authorities, the Employer members noted with concern that 31 member States had failed to meet this constitutional obligation, while welcoming the efforts made by the Democratic Republic of the Congo, Guinea, Jamaica and Mozambique to overcome the delays in submission.

The obligation of member States to communicate copies of the reports supplied to the ILO to the representative employers' and workers' organizations was key for the implementation of tripartism at the national level. The social partners had submitted 1,325 observations under article 23, 330 of which (compared to 314 last year) had been communicated by employers' organizations. The Employer members trusted that the Office would step up efforts to encourage governments to respect this obligation and continue to provide technical assistance and capacity building to the social partners. Employers' organizations, with the invaluable support of the International Organisation of Employers (IOE), were working to contribute to the supervisory system in a more effective manner by submitting up-to-date and relevant information to the Committee of Experts. The Employer members highlighted that member

States needed to take their reporting obligations seriously. Part of the discussion on cases of serious reporting failure touched upon the question of the high number and relevance of existing ILO standards. The present efforts to streamline reporting, including extending the possibilities for e-reporting, would help facilitate reporting and increase the reporting rate. Nonetheless, more fundamental steps were needed. A significant consolidation, concentration and simplification of ILO standards was a prerequisite for effective reporting. This had already been achieved to a significant extent in the field of maritime labour standards, and the work of the Standards Review Mechanism would hopefully lead to similar progress in other areas.

**A Government representative of Angola** said that the reports had been submitted to the Council of Ministers. However, the Council of Ministers had asked for the reports to be translated into Portuguese. He wished to take the opportunity to request the Office to provide technical assistance in order to resolve the issue.

**A Government representative of the Bahamas** stated that her Government would request ILO technical assistance so that the situation concerning the obligation to submit instruments to the competent authority could be rectified.

**A Government representative of Bahrain** noted that the Government had sent a written response to the ILO concerning the comments of the Committee of Experts on the failure to submit instruments to the competent authorities. He underscored that the Kingdom of Bahrain had complied with its obligations in this regard, in accordance with the constitutional requirements and domestic regulations regarding the submission of instruments to the competent authorities (the Council of Ministers). He requested the Committee to take that into account. With regard to the submission of instruments to the National Assembly (Parliament), he noted that the Government would examine the matter, and take the necessary measures, in accordance with domestic legislation.

**A Government representative of the Democratic Republic of the Congo** indicated that the observations of the Committee of Experts had been taken into account in the drafting of the various government reports. The reports would be sent to the ILO before the end of the Conference. In order to avoid any delay in the provision of information in response to the comments of the Committee of Experts, the Government requested ILO technical assistance to strengthen the capacities of the personnel responsible for preparing reports.

**A Government representative of El Salvador** welcomed the technical cooperation received from the ILO for the preparation of the protocol of institutional procedures for the submission of ILO Conventions and Recommendations. The first part of the protocol had already been completed. For over 40 years, this obligation in respect of international labour standards had been omitted from the processes, customs and standards of the competent institutions. As a result, a review had been commenced to determine the relevant competences for the implementation of the process. Her Government would soon take the first steps for the submission of the relevant Conventions and Recommendations to the competent authorities, which would allow it to fulfil its obligations in the near future.

**A Government representative of the United Arab Emirates** said that her country was committed to complying with its obligations to the ILO and that it regularly submitted the reports requested. Given that the questionnaires concerned were long and complex and required information and data to be collected from several bodies, there had been a delay in submitting reports by the deadlines set. While hoping that the questionnaires would be simplified in future, the Government would do its utmost to submit the reports requested by the deadline.

**A Government representative of Haiti** said that his country was aware of the alleged delay in the submission of its re-

ports on ratified Conventions. Owing to several natural disasters and the electoral crisis, the country had had other priorities in recent years, such as reconstruction and economic recovery. The Government reiterated its commitment to respecting its international obligations. In that regard, measures and provisions had been put in place by the Ministry of Labour with a view to getting the country's reporting cycle back on track. Given the large number of pending reports, the Government renewed its request for ILO technical assistance in that regard.

**A Government representative of Ireland** indicated that her country fully supported the work of the ILO and acknowledged the importance of reports submitted under article 19 of the ILO Constitution. Regretting the Government's failure to supply reports on unratified Conventions and Recommendations, she stated that procedures had been put in place to address the matter and prevent any recurrence. The report concerning social protection floors would be submitted in the course of the present month. To illustrate the value attributed to the ILO's reporting processes, she highlighted the efforts made to prepare the report on the effective and sustained suppression of all forms of forced labour, as part of the follow-up to the Declaration on Fundamental Principles and Rights at Work, which was being used as a basis for the well-advanced work towards the ratification of the Protocol of 2014 to the Forced Labour Convention, 1930. In this regard, following the conclusion of consultations with the social partners and other stakeholders, the stage of seeking government approval for ratification had been attained.

**A Government representative of Kiribati** indicated that her Government had been experiencing staff turnover for the past few years. Technical assistance from the ILO had been received, and one staff member from the Government had been trained at the International Training Center of the ILO in Turin. She hoped that her Government would have the capacity to report as required.

**A Government representative of Liberia** reaffirmed the sustained commitment of her country to the obligations under articles 19 and 22 of the ILO Constitution. The Government was working actively to submit the outstanding reports in due course, in consultation with the relevant stakeholders, and with the technical assistance of the ILO.

**A Government representative of Malaysia** indicated that challenges were faced that caused non-compliance with the obligations referred to, not only at the regional level (Malaysia–Peninsular Malaysia, Malaysia–Sabah, Malaysia–Sarawak), but also at the federal level. Steps had been taken to foster engagement between the agencies and ministries involved in matters relating to labour standards, such as workshops and meetings, and to address the issues regarding reporting obligations. Technical assistance had been requested from the ILO Regional Office for Asia and the Pacific, based in Bangkok, Thailand, and the ILO project office to consult on a Decent Work Country Programme. His Government was committed to complying with obligations related to international labour standards and would expedite the supply of reports on the application of ratified Conventions during the required period between 1 June and 1 September.

**A Government representative of Jamaica** indicated that her Government would make the necessary arrangements to complete outstanding reports with the technical assistance of the ILO. Internal procedures were being conducted to submit eight reports in the very near future.

**A Government representative of Malawi** stated that her Government was working to ensure that all the comments raised by the Committee of Experts were responded to. The necessary action was being taken to that effect. In this respect, some reports had already been submitted to the Office during the current session of the International Labour Conference.

A **Government representative of Mozambique** noted that, during the period 1999 to 2017, her Government had submitted the Conventions and Recommendations adopted by the ILO to the Assembly of the Republic. Concerning the observations in paragraph 34 of the General Report, her Government was preparing the relevant information and would provide it the following day.

A **Government representative of Nicaragua** said that her country was committed to fulfilling its obligations regarding the submission of reports and the implementation of ILO principles in general. With regard to the failure to submit the first report on the application of the Maritime Labour Convention, 2006, as amended (MLC, 2006), the delay was due to the fact that the competent authorities were currently holding discussions and consultations, with the participation of the social partners and other interested parties. Once the process had been completed, the relevant report would be sent.

A **Government representative of the Netherlands (Curaçao)** indicated that the Government of the Netherlands was in contact with the Government of Curaçao to ensure the timely submission of the information requested. He reiterated his Government's commitment to ILO Conventions and to related reporting obligations.

A **Government representative of Pakistan** indicated that, thanks to ILO technical assistance, the exercise of submitting the outstanding 36 instruments to the competent authority had been completed. The relevant report would be communicated to the competent ministry in due course, and subsequently sent to Cabinet.

A **Government representative of Serbia** indicated that her Government apologized for not submitting the first report on the application of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), ratified in 2014. The report should have been submitted in 2016. The underlying reason had been the serious lack of capacity, including administrative capacity, of the institutions responsible for preparing the report. A general election had been held since the ratification of the Convention, followed by changes in Cabinet, including inter-institutional staff movements. The Ministry of Construction, Transportation and Infrastructure had temporarily not been in a position to prepare the report. Improvements in the situation had occurred since November 2017, and the preparation of the first report on the application of the Convention had been resumed in April 2018. The report would be submitted by 1 September 2018.

A **Government representative of Singapore** stated that seven out of 16 reporting requests had been responded to. The Government would fulfil the remaining reporting requests by the end of the year and was committed to continue meeting its constitutional obligations.

A **Government representative of South Sudan** underlined her Government's commitment to meet its constitutional obligations. She highlighted the need for ILO technical assistance to be able to meet the reporting requests.

A **Government representative of Eswatini (formerly known as Swaziland)** indicated that his Government sincerely apologized to the Committee of Experts for its failure to supply reports as expected. Serious constraints were being faced, such as the shortage of personnel and capacity gaps. On this matter, ILO technical assistance had been requested and was being received, including the training the previous month of one staff member from the Government at the International Training Centre of the ILO in Turin. His Government pledged to comply with its obligations in the future.

A **Government representative of Yemen** indicated that his country had been in a situation of conflict since March 2015, which had widely affected the capacity of its institutions. While being committed to its constitutional obligations, he asked the Committee to take into consideration that the current circumstances and capacities did not allow for reporting.

The **Worker members** expressed regret that not all of the 69 countries invited to appear before the Committee had indicated their presence. With some 20 countries having supplied information to the Committee, they noted the difficulties encountered by certain governments, including with regard to the issue of languages. They also noted the need for specific information and asked the Office to take action in conjunction with the Turin Centre to ensure that courses were provided for those who requested them. Moreover, the Worker members reiterated their request to the Office to ensure ongoing, attentive action with regard to governments by providing them with all necessary assistance to enable them to discharge their constitutional obligations. While thanking governments which had provided additional information on their constitutional obligations, they expected coherent monitoring of the commitments made and appealed to all governments to provide the requested information as quickly as possible.

## **Conclusions**

The Committee took note of the information provided and the explanations given by the Government representatives who had taken the floor. The Committee noted in particular the specific difficulties referred to by certain governments in complying with their constitutional obligations to transmit reports and to submit to the competent authorities the instruments adopted by the International Labour Conference. The Committee has periodically recalled that the ILO is able to provide technical assistance to contribute to compliance in this respect.

*Concerning the failure to supply reports for the past two or more years on the application of ratified Conventions*

The Committee recalls that the submission of reports on the application of ratified Conventions is a fundamental constitutional obligation and the basis of the system of supervision. The Committee also stresses the importance of respecting the deadlines for such submission.

The Committee expresses the firm hope that the Governments of the Cook Islands, Dominica, Equatorial Guinea, Gambia, Guinea-Bissau, Haiti, Malaysia – Sabah, Saint Lucia, Solomon Islands, Somalia, Timor-Leste and Vanuatu will supply the reports due as soon as possible, and decides to note these cases in the corresponding paragraph of its General Report.

*Concerning the failure to supply first reports on the application of ratified Conventions*

The Committee recalls the particular importance of supplying first reports on the application of ratified Conventions.

The Committee expresses the firm hope that the Governments of Belize, Comoros, Congo, Cook Islands, Equatorial Guinea, Gabon, Guyana, Republic of Maldives, Nicaragua, Saint Vincent and the Grenadines, Serbia and Somalia will supply the first reports due as soon as possible, and decides to note these cases in the corresponding paragraph of its General Report.

*Concerning the failure to supply information in reply to comments made by the Committee of Experts*

The Committee underlines the fundamental importance of clear and complete information in response to the comments of the Committee of Experts to permit a continued dialogue with the governments concerned.

The Committee expresses the firm hope that the Governments of Barbados, Belize, Botswana, Brunei Darussalam, Chad, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Gambia, Grenada, Guinea-Bissau, Haiti, Jamaica, Kyrgyzstan, Kiribati, Liberia, Malaysia, Malaysia (Peninsular Malaysia, Sabah and Sarawak), Malawi, Mozambique, Netherlands (Curaçao), Papua New Guinea,

Saint Vincent and the Grenadines, Saint Lucia, Sierra Leone, Singapore, Solomon Islands, Somalia, Timor-Leste, Trinidad and Tobago, Vanuatu and Yemen will supply the requested information in the future, and decides to note these cases in the corresponding paragraph of its General Report.

*Concerning the failure to supply reports for the past five years on unratified Conventions and Recommendations*

The Committee stresses the importance it attaches to the constitutional obligation to supply reports on unratified Conventions and Recommendations.

The Committee expresses the firm hope that the Governments of Afghanistan, Angola, Armenia, Belize, Botswana, Chad, Congo, Cook Islands, Dominica, Eswatini, Grenada, Guinea-Bissau, Guyana, Haiti, Ireland, Kiribati, Liberia, Libya, Republic of Maldives, Marshall Islands, Papua New Guinea, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, South Sudan, Timor-Leste, Tonga, Tuvalu, United Arab Emirates, Vanuatu and Yemen will comply with their obligation to supply reports on non-ratified Conventions and Recommendations in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

*Concerning the failure to submit instruments adopted by the Conference to the competent authorities*

The Committee recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to national competent authorities is a requirement of the highest importance in ensuring the effectiveness of the Organization's standards-related activities.

The Committee expresses the firm hope that the Governments of Azerbaijan, Bahamas, Bahrain, Belize, Comoros, Croatia, Dominica, El Salvador, Equatorial Guinea, Fiji, Ga-

bon, Guinea-Bissau, Haiti, Kyrgyzstan, Kiribati, Kuwait, Liberia, Libya, Pakistan, Papua New Guinea, Saint Kitts and Nevis, Samoa, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Syrian Arab Republic, Somalia and Vanuatu will comply with their obligation to submit Conventions, Recommendations and Protocols to the competent authorities in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

*Concerning the failure for the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, copies have been communicated of the reports and information supplied to the Office*

The Committee recalls that compliance with the obligation of Governments to communicate reports and information, as provided in article 23, paragraph 2, of the Constitution, is a fundamental requirement in order to ensure the participation of employers' and workers' organizations in the ILO supervisory machinery.

The Committee recalls that the contribution of employers' and workers' organizations is essential for the assessment of the application of Conventions in national law and practice.

The Committee expresses the firm hope that the Governments of the Plurinational State of Bolivia and Rwanda will comply with this obligation in future. The Committee decides to note these cases in the corresponding paragraph of the General Report.

Overall, the Committee expresses *deep concern* at the large number of cases of failure by member States to respect their reporting and other standards-related obligations. The Committee recalls that Governments may request technical assistance from the Office to overcome their difficulties in this respect.



## B. INFORMATION AND DISCUSSION ON THE APPLICATION OF RATIFIED CONVENTIONS (INDIVIDUAL CASES)

The Committee on the Application of Standards (CAS) has adopted short, clear and straightforward conclusions. Conclusions identify what is expected from governments to apply ratified Conventions in a clear and unambiguous way. Conclusions reflect concrete steps to address compliance issues. Conclusions should be read with the full minutes of the discussion of an individual case. Conclusions do not repeat elements of the discussion or reiterate government declarations which can be found in the opening and closing of the discussion set out in the Record of Proceedings. The CAS has adopted conclusions on the basis of consensus. The CAS has only reached conclusions that fall within the scope of the Convention being examined. If the Workers, Employers and/or Governments had divergent views, this has been reflected in the CAS Record of Proceedings, not in the conclusions.

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**Hours of Work (Industry) Convention, 1919 (No. 1)**  
**Weekly Rest (Industry) Convention, 1921 (No. 14)**  
**Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)**  
**Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)**

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**HAITI** (ratifications: 1952, 1952, 1952 and 1958)

A Government representative assured the Committee of the full and complete cooperation of the Haitian delegation, emphasizing his appreciation of the work of the ILO supervisory bodies, which were a source of inspiration and a reference for States in relation to labour standards. The Government had noted the comments of the Committee of Experts on the application by Haiti of the working time Conventions that had been ratified. With reference to the national context, he recalled that in recent years the country had suffered many natural disasters and political crises, which had had an impact on the regular operation of the institutions responsible for the formulation and implementation of the State's social policy, and especially the Ministry of Social Affairs and Labour (MAST). At the economic level, the situation was precarious, with an official unemployment rate of nearly 35 per cent of the active population and falling economic growth. The Government that had been in office since May 2017 had set as its specific objectives mass job creation to combat unemployment, national economic recovery, the reinforcement of social dialogue, the achievement of the objectives of sustainable development and the promotion of social justice, as set out in the ILO Constitution. For that purpose, emphasis had been placed on the subcontracting sector, which was vital for the national economy. It was with a view to the rapid promotion of mass job creation that Parliament had adopted in 2017 an Act to organize and regulate work over a period of 24 hours divided into three eight-hour segments. Through the Act, the Government intended to adapt the labour situation to contemporary realities. While establishing the principle of the eight-hour working day and the 48-hour week, the Act permitted, where necessary, through agreement between the employer and the employee, and in accordance with national and international labour standards, the normal eight-hour day to be exceeded, without the total number of hours worked exceeding 48 in a week. The eight-hour day remained the centrepiece of Haitian working time legislation. The system of three time segments introduced in all sectors had only been designed with a view to increasing the dynamism of the national economy and strengthening production through the availability of machines, which could create a greater number of jobs and employment for the benefit of the population as a whole. In principle, the Act took into account the protection, health and safety of workers within the spirit of the Conventions ratified by Haiti. By placing the responsibility upon employers of ensuring the good health and recuperation of workers, and by requiring enterprises to make available to them health and catering services in accordance with the law, the Haitian legislator had established safeguards which would be supplemented by regulations with

a view to improving the protection and safeguarding workers against any form of abusive exploitation. Having taken due note of the observations of the Committee of Experts and the social partners, the Government was prepared to continue the discussions in a tripartite framework with ILO assistance with a view to identifying an agreed working-time regime adapted to the reality in Haiti. With reference to labour inspection, the Government recognized the importance of a competent body of labour inspectors in ensuring effective compliance with the provisions of the Labour Code. For that purpose, efforts had been made and cooperation with the ILO had made it possible to reinforce the capacities of the labour inspection services, which currently had seven stable inspectors and around 40 resource persons who occasionally fulfilled the functions of inspectors and conciliators. A project for a "call centre" to facilitate the reception of individual complaints from anyone who might have been a victim in their workplace had been delayed by a series of practical requirements related to confidentiality and the reliability of the services provided by local telephone operators. Several programmes coordinated by the ILO were making a useful contribution in the country, such as the Better Work Programme and the Employment Intensive Investment Programme (EIIP). However, despite the Government's efforts, the country was still fragile and cooperation projects needed to be designed and executed with a view to having a lasting impact on the population. They should be aimed at the strengthening of social dialogue and the rapid creation of decent sustainable jobs to generate income for the most underprivileged population categories. For these reasons, the Government called for the strengthening of ILO cooperation on such fundamental issues as social protection, action to combat child labour, vocational training and other relevant subjects which lay within the competence of the Organization. The Government considered that social dialogue was a fundamental element in pursuing the objectives of peace and economic growth. The encouragement of the social partners to resolve disputes through peaceful means remained a priority of the Government, which welcomed the conclusion of an agreement in March 2018 between the six principal workers' organizations in the country and the employers. The Government also noted the significant number of reports on the application of Conventions and Recommendations which were due from Haiti. Measures were being taken at the level of the relevant body with a view to fulfilling these international obligations as rapidly as possible. ILO technical assistance would be requested on that specific issue. Finally, he emphasized that there was no intention by the Government to be in violation of the ILO Conventions to which Haiti was a party, including the working-time instruments. The difficulties that arose in relation to the 2017 Act would be addressed by the Government through tripartite discussions. The agreement reached between unions and employers in March 2018 offered a solid basis for such initiatives.

The Employer members first noted that it would be helpful if the Committee of Experts provided a clear indication on why cases were double-footnoted. They considered that this case, which concerned the adoption of the Act organizing and regulating work over a 24-hour period divided into three segments of eight hours (Act on working time), was timely as it took place two days after the discussion of

**Hours of Work (Industry) Convention, 1919 (No. 1)**  
**Weekly Rest (Industry) Convention, 1921 (No. 14)**  
**Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)**  
**Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)**  
*Haiti (ratifications: 1952, 1952, 1952 and 1958)*

the 2018 General Survey on working time instruments. Working time was an issue subject to constant changes and requiring regular adaptation to new realities. Enhancements in technology and communications were changing the traditional time and space dimensions at work, and the organization of working time was of fundamental importance for productivity, performance, competitiveness, sustainability and the ability to create jobs by enterprises. With regard to Conventions Nos 1 and 30 on hours of work, they referred to the 2005 General Survey on hours of work, according to which: *“Conventions Nos 1 and 30 do not fully reflect modern realities in the regulation of working time. In fact, there are elements of the Conventions that are clearly outdated. ... In general, these two instruments are viewed by an increasing number of countries as prescribing overly rigid standards. The ‘fixed’ working hours system adopted by both Conventions as a cornerstone for the regulation of working time conflicts with today’s demands for more flexibility.”* With regard to Conventions Nos 14 and 106 on weekly rest, these had been considered by the ILO Governing Body as up to date and were more widely ratified. This was particularly the case for Convention No. 14 which was a relatively flexible instrument in that it allowed almost unconditional total or partial exceptions to the normal weekly rest day, as well as exceptions to compensation where it was not possible to grant the weekly rest days. On the other hand, Convention No. 106 allowed exceptions to weekly rest under much stricter conditions and did not foresee exceptions regarding the provision of compensation. They noted that, as the decree of application of the Act on working time had not yet been published, the articles of the Labour Code regarding working time continued to apply in the country. They encouraged the Government to ensure that working time regulation was discussed in the framework of the comprehensive reform of the Labour Code with a view to ensuring conformity with ratified Conventions. They considered that, in the event that the new and emerging realities of the labour market in Haiti required a change in legislation that went against the provisions of the Conventions in question, the Government should consider denouncing these Conventions to avoid a lack of conformity with its international obligations. Finally, they noted with deep concern that, for the fifth consecutive year, the reports due on all ratified Conventions had not been received. They urged the Government to avail itself of ILO technical assistance before 1 September 2018, with a view to submitting without delay the reports due to the Committee of Experts, including on Conventions Nos 1, 14, 30 and 106.

The Worker members recalled that the issue of working time lay at the heart of the employment relationship and was addressed in the founding treaty of the ILO and the Declaration of Philadelphia, which proclaimed that work was not a commodity. The establishment of decent limits to working time preserved the dignity of workers and allowed them to find meaning in their occupational activity. The question of working time gave rise to several major challenges for workers, such as their purchasing power, the reconciliation of work and private life, security, health and well-being. It was fundamental for clear and strict regulations on working time to be adopted and strictly enforced in order to be able to guarantee decent work. The tripartite partners in the ILO had always been convinced of the need for the regulation of working time. It was for that reason that the Organization had adopted many instruments setting certain limits on working time. The Committee needed to ensure that member States made every effort to give effect to those standards. In the case under examination, the Government had gone beyond certain limits set out in the

international labour standards on working time. The various measures taken had had the effect of increasing working time in practice and departed from the Reduction of Hours of Work Recommendation, 1962 (No. 116). In Haiti, a large proportion of the population was seeking employment and the introduction of reforms intended to lengthen the working time of workers who were already active would not promote the effective distribution of the work that was available. The recent legislative reform had repealed provisions regulating exceptions from the principles of the eight-hour day, normal working hours and the provision of weekly rest of 24 consecutive hours, to be given in preference on Sunday and at the same time for all workers in the same establishment. As a result of these various measures, Haitian legislation was no longer in conformity with the Conventions that had been ratified. The new legislation also provided that an employer and a worker could agree to exceptions at the individual level from the principle of the eight-hour working day, without specifying the maximum daily working time, and that workers negotiated their hours of work on an individual basis. As the employment relationship was fundamentally asymmetric, it was essential for provisions on working time to be negotiated collectively, not individually. Moreover, the absence of a framework to limit possible exceptions to normal working hours led to the belief that overtime could be carried out without due reason or limits, contrary to the provisions of Conventions Nos 1 and 30. That would compromise the objective of Recommendation No. 116 to achieve a social standard of the 40-hour week. The new legislation also had the effect that unions no longer needed to be consulted and that the Labour Department of the Ministry of Social Affairs and Labour no longer had to give authorization on a number of issues relating to possible exceptions to working time provisions. That was in violation of the provisions of Conventions Nos 1 and 30. With reference to the lack of resources of the labour inspection services, the Worker members recalled that Conventions Nos 30 and 106 provided that States shall adopt appropriate measures to ensure the effective enforcement of the rules on working time through adequate inspection. They added that Haiti had also ratified the Labour Inspection Convention, 1947 (No. 81). The Government therefore needed to ensure that the inspection services had adequate personnel and that inspectors received appropriate training on working-time issues and were allocated sufficient financial and material resources. The development of statistics was also essential so as to be able to target sectors where abuses were likely in relation to working time. Noting that the great majority of economic activity in Haiti was in the informal economy, where workers were particularly exposed to abuses, the Worker members emphasized that it was necessary to ensure that the inspection services had the competence to enforce the legislation on working time in the informal economy. In the case of workers in export processing zones (EPZs), although they generally benefited from more formal employment relationships, they were also subject to many abuses. EPZs were an important source of employment in the country and it was necessary to ensure compliance with working-time regulations in such zones. It was to be regretted that the reform of the working-time provisions had been undertaken without any consultation of representative unions and outside the process of the global reform of the Labour Code that was currently being undertaken with ILO assistance, and which the Government had undertaken to finalize by July 2015 within the framework of the Decent Work Country Programme covering the period 2015–20. The new working-time legislation had been adopted to general surprise by Parliament in a night sitting.

Nor did the reform take into account in any way the agreement that had been obtained in the context of the overall reform of the Labour Code, which had now ground to a standstill. It was therefore necessary to reaffirm that social dialogue and collective bargaining had a fundamental role to play in the development of working-time rules that were supported by the social partners and, through them, a large part of society. The reform, which had been forced through by the Government and approved unilaterally by a fringe of employers' organizations, was not supported by the workers. Attempts to pass over opposition in silence endangered the democratic order in Haiti and the Government was therefore called upon to make a firm commitment to ratify the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Worker members also shared the deep concern of the Committee of Experts at the reporting failures of the Government, which needed to ensure compliance with its constitutional obligations. It was also to be regretted that, due to the delay in the designation of the Haitian delegation, the titular Haitian Workers' delegate had not been able to take part in the examination of the case. That amounted to negligence by the Government with respect to its obligations towards the ILO and a complaint had been lodged with the Credentials Committee. The Worker members condemned the threats and pressure to which trade unionists were subjected in Haiti. The Government needed to take every measure to ensure an environment that was conducive to the free expression of trade union views and the safety of all trade union activists so that they could exercise their activities in full freedom and without fear of reprisals so that the democratic order in Haiti could be safeguarded. The Worker members regretted that the Employer members had encouraged the Government to denounce ratified working-time Conventions and had challenged the relevance of the international labour standards on working time. The examination of an individual case by the Committee could not be used to assess the pertinence of the standards under examination and must be confined to assessing their correct application in the law and practice of the country concerned. The Worker members recalled the conclusions of the ILO Tripartite Meeting of Experts on Working-Time Arrangements, held in October 2011, which clearly indicated that the ILO's current standards on working time remained relevant and should be promoted in order to facilitate decent work.

**The Employer member of Malawi**, speaking on behalf of the Employer member of Haiti in her absence, noted that, while the provisions of the new Act on working time were not as precise as the repealed provisions of the Labour Code, enterprises were obliged to respect the provisions of Conventions Nos 1, 14, 30 and 106 ratified by Haiti since those provisions were legally binding and took precedence over domestic laws by virtue of article 276-2 of the Haitian Constitution. Moreover, the application decree of the Act on working time having not yet been published, the articles of the Labour Code still applied in Haiti. The speaker considered that Conventions Nos 1 and 30 on hours of work did not fully reflect the modern realities of working time. The low rates of ratification of these two Conventions were due to the increased need for flexibility in today's work environment. Countries reverted more frequently to collective or individual labour agreements to address their specific needs on working time. The speaker indicated that, while awaiting the promulgation of the new Labour Code, the Employers in Haiti were determined to continue to engage in tripartite dialogue with a view to adopting the operational framework necessary to ensure conformity with the international instruments ratified by Haiti. He seized

the opportunity to thank the ILO for the continuous technical support provided to Haiti and for its role as facilitator in the tripartite dialogue conducted to resume the work on the reform of the Labour Code.

**The Worker member of Haiti** said that the current situation in the world of work in Haiti was a matter of great concern. Referring in particular to domestic work and the informal economy, he denounced the existence of unfair working conditions in relation to working time, the right to annual leave and prior notice in the event of dismissal. With regard to the situation of security officers and workers in subcontracting enterprises in the textile sector, he deplored the absence of fixed working hours and the refusal of employers to pay overtime, with the complicity of the Government. He drew the Committee's attention to the blatant violation of Conventions Nos 1, 14, 30 and 106 on working hours, as well as Convention No. 81. The labour inspectorate in Haiti lacked resources and capacity. Although the ILO had contributed to building the capacity of a group of inspectors, they were often prevented from acting in a neutral manner and were subject to significant pressures. The new Act, adopted at the initiative of the employers, demonstrated the Government's disregard for its ILO commitments. It allowed employers to force men and women workers to work overtime, which resulted in cases of serious abuse, such as the exertion of psychological pressure and the emergence of forced labour. The Government had decided unilaterally to amend the Labour Code by repealing certain provisions, even though it had requested and obtained ILO technical assistance in the context of the overall reform of the Code, and the finalization of the reform had been identified as a priority in terms of the results to be achieved under the Decent Work Country Programme. The Haitian trade unions called for the resumption of the process of reforming the Labour Code, which must respect the spirit and terms of Conventions Nos 1, 14, 30 and 106 with regard to working time. He hoped that the commitments made in the recent agreement signed under the auspices of the ILO would be respected, and requested the ILO to ensure the close and strict follow-up of the application by Haiti of the ratified Conventions on working time.

**The Government member of Bulgaria** speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro, Serbia, the former Yugoslav Republic of Macedonia and Norway, noted the timeliness of the discussion of this case following the debate on the General Survey on working time instruments. Working hours and rest periods were central to the employment relationship and had important consequences for both workers and employers. Haiti was the largest recipient of bilateral EU development assistance in Latin America and the Caribbean. The speaker recalled the commitment made by Haiti under the Cotonou Agreement (the framework for cooperation with the EU) to respect democracy, the rule of law and human rights principles. She noted with great concern that the new Act repealed most of the provisions of the Labour Code giving effect to the ratified Conventions on working time and that it did not give effect to important matters covered by these Conventions, including on central issues such as the maximum number of working hours per day and the principle of weekly rest. She also expressed concern over the observations of the Confederation of Public and Private Sector Workers (CTSP) regarding non-observance in practice of the provisions of the Labour Code respecting hours of work and weekly rest as well as the absence of resources of the labour inspection services to take effective action to combat violations. The

**Hours of Work (Industry) Convention, 1919 (No. 1)**  
**Weekly Rest (Industry) Convention, 1921 (No. 14)**  
**Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)**  
**Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)**  
*Haiti (ratifications: 1952, 1952, 1952 and 1958)*

Government was urged to complete the reform of the Labour Code in consultation with the social partners and to ensure that it was in full conformity with ILO Conventions. The Government was also requested to ensure in practice that workers benefit from the protection afforded by Conventions on working time and to take the necessary measures to carry out labour inspections to make this protection effective. The Government was strongly encouraged to continue to avail itself of ILO technical assistance and to comply with its reporting obligations. The EU and its Member States would continue to support Haiti in its efforts to comply with ILO Conventions.

**An observer representing the International Trade Union Confederation (ITUC)** drew attention to the Decent Work Country Programme, signed by the Haitian Government, employers, workers and the ILO in 2015, the first intended outcome of which was to resume the process of revising the Labour Code, which should have been completed by 31 July 2015. Instead, the Act organizing and regulating work over a 24-hour period divided into three segments of eight hours had been adopted in August 2017. The Act violated the fundamental principles of work and jeopardized the conformity of domestic legislation with international standards on the subject. The strict regulation of working time guaranteed a decent life and a good work–life balance, protected health, prevented forced labour and ensured remuneration that was in keeping with the effort made. The adoption of the new Act on working time therefore represented a major backward step and disregarded the work undertaken within the framework of the ILO and the commitments made in terms of social dialogue and tripartism. The Act was having a serious impact, particularly on the most vulnerable workers. The negotiation of working time on an individual and non-collective basis opened the door, in practice, to the strengthening of the unlimited power of employers, greater employer pressure to increase working time and penalties for workers who did not agree to submit to the needs of enterprises. The situation was a matter of even more concern as the labour inspectorate was not functional, lacked capacity and resources, and was sometimes corrupt. Furthermore, the Act removed the requirement for the consultation of trade unions on issues relating to possible exemptions from working-time rules. The Act also violated the principle of weekly rest and drastically reduced wage levels. He regretted the complacent attitude of the Government, which had decided to team up with the employers in violating international Conventions, and called on the Government to respect the fundamental rights of workers, and particularly to resume the process of reforming the Labour Code, in accordance with the agreements concluded.

**The Worker member of the Dominican Republic** drew attention to the fact that industrial relations in Haiti were not in compliance with important ILO Conventions. When a country had high levels of unemployment and poverty, job creation tended to be prioritized over decent work. However, decent work was a means of overcoming poverty. When workers in the *maquila* sector or export processing zones called for genuine labour reform, such as the reform that was currently blocked in Haiti, many believed that they were deterring foreign investment. However, any investment based on the poverty of workers did not make sense and should be rejected. He called on the Government to respect the Conventions and proceed with the labour reforms, without submitting to the rules respecting labour conditions imposed by enterprises, which were in breach of ILO Conventions.

**The Worker member of Italy** recalled that, after obtaining ILO technical assistance for the reform of the Labour Code,

Haiti had concluded its Decent Work Country Programme (DWCP) 2015–20, within the framework of tripartite negotiations under the auspices of the ILO. Although the DWCP envisaged that the reform of the Labour Code would be completed by July 2015, the Government had preferred to adopt an Act establishing a 24-hour working day divided into three eight-hour segments. The Act repealed several sections of the Labour Code, strengthened the power of employers and did not regulate overtime. The Act, which was in breach of all the ILO Conventions on working time, removed the requirement to consult representative trade unions when making decisions on working time and abandoned the principle of weekly rest. Furthermore, the loss of the 50 per cent pay supplement for night work and, in general, the increase in working time had resulted in dramatic reductions in wages, plunging workers and their families into even greater poverty. Although, in the context of ILO technical assistance, the labour inspection services had received technical training and capacity building, the inefficiencies of the Ministry of Social Affairs and Labour and the lack of resources had rendered the labour inspectorate powerless in relation to employers. She denounced the failures of the Government in relation to fundamental labour rights and its disregard for its obligations under ILO Conventions. She called on the Government to resume the process of reforming the Labour Code, in full compliance with the principles of tripartism.

**An observer representing IndustriALL Global Union** stated that for workers in the Haitian garment industry, ILO standards on working hours and the 48-hour working week were unfortunately meaningless concepts. They were working long hours in order to survive on starvation wages. When overtime was paid, it was almost always below the legal rate. The failure of the Government to uphold international standards and national laws was giving factories and their multinational customers free reign to steal wages and the lives from some of the world's poorest workers. The introduction of the new Act on working time, which repealed existing standards on overtime, weekly rest, Sunday pay and night time rates, only made matters worse. In May of 2017, the workers of 22 garment factories went on strike to demand higher wages. Dozens of union leaders and members had yet to be reinstated, and were even blacklisted, in spite of very clear recommendations following an investigation by the ILO's Better Work Programme. Finally, the speaker stated that without better wages and respect for workers and union rights, the ILO Conventions on hours of work would remain on the wish list and there would be no lasting social peace in Haiti's garment industry.

**The Worker member of Uruguay** considered that addressing the case of the compliance by Haiti with the working-time Conventions from a technical point of view and asking Haitian workers to adapt to new working hours was to deny the existence of a humanitarian tragedy. He believed that the solution to the problems lay in social dialogue. He indicated that it was necessary to help Haiti to resume social dialogue with the objective of achieving decent work. He called for the case to be addressed from that perspective.

**The Government representative** noted the constructive spirit in which the remarks and recommendations had been made during the discussion. He reiterated the Government's determination to respect its international commitments and to pursue tripartite dialogue. As the decree to implement the new Act had not yet been published, an agreed solution was still possible. The agreement signed between the social partners in March 2018 was an ideal

framework for continuing discussions. He requested ILO technical assistance to support that process.

The Worker members welcomed the Government's determination to take action to bring its legislation on working time into line with international Conventions and expressed the hope that this determination would lead to concrete action in practice. Working-time issues were fundamental. The following action could usefully be taken by the Government to bring its law and practice into conformity with the international Conventions on working time. Firstly, guaranteeing consultation with all representative social partners for any revision of the regulation of working time with a view to bringing it into conformity with Conventions Nos 1, 14, 30 and 106. Following the agreement reached in March 2018 with the social partners with a view to resuming social dialogue, consultation with all the social partners could usefully be undertaken within the framework of the comprehensive reform of the Labour Code that had been interrupted. That would allow the Government to fulfil its commitment made in the Decent Work Country Programme 2015–20 to complete the global reform. The Worker members called on the Government to resume that process in close collaboration with the ILO. The Government should work in conjunction with the social partners on several issues. Accordingly, and without exceptions in the legislation, it was necessary to apply and enforce the principle of an eight-hour working day and to declare illegal the exceptions applied in practice. Furthermore, a limitative list of cases in which overtime was justified should be reintroduced, along with limits on overtime. The disappearance from the Labour Code of any explicit mention of the principle of the minimum period of weekly rest of at least 24 consecutive hours, which should wherever possible be on Sunday and granted simultaneously to all workers in the same establishment, constituted a failure to comply with the obligations set out in the Convention. That principle should therefore be reintroduced into the Labour Code. The Government must provide, in law and practice, for consultation with the social partners on any proposed reform of those issues. The possibility for individual negotiations between a worker and an employer on exceptions to the maximum working day should be removed from the legislation. Individual bargaining on such important matters as working time was extremely sensitive in view of the fundamentally asymmetric nature of the contract of employment, with the employer having authority over the worker. Inspection services were essential to ensure that working-time legislation was respected in practice. The inspection services should therefore be provided with sufficient staff and material and financial resources. Adequate training for inspectors on working time and international standards was also essential. The Government should respect and ensure respect for the independence of the inspection services. Particular attention should also be given to regulating working time in the informal economy and export processing zones, where a large majority of Haitians worked, by ensuring that inspection services were competent to enforce the legislation in such zones. The case showed that the absence of a report from a Government did not mean that it could escape the ILO supervisory bodies. The Worker members called on the Government to submit its reports in accordance with its constitutional obligations. The violence and intimidations reported against trade union activists were unacceptable. The Worker members urged the Government to bring an end to any acts of intimidation towards trade union representatives in Haiti, carry out thorough investigations and impose effective and dissuasive penalties on those responsible. It was important for trade union activists to be able to carry out their activities

freely and without fear of reprisal. In order to implement all those recommendations, the Government was strongly urged to request technical assistance from the Office. In response to the comment that the low number of ratifications of the Conventions under consideration could be due to the fact that they lacked flexibility, the Worker members emphasized that it was more indicative of the need for a large-scale ratification campaign for those Conventions, which had been adopted on a tripartite basis, to make member States aware of the principles that they contained and the flexibility of the instruments.

The Employer members stated that it was clear that Haiti was not immune to the realities of a changing world of work, which required more modern, flexible and responsive regulating measures. They wished to make clear that, far from encouraging the Government not to comply with ratified Conventions, Haiti needed to comply with all international obligations voluntarily assumed. They pointed out that the only way for a Government to escape compliance with a ratified Convention was to denounce the Convention when the window for denunciation opened. They urged the Government to continue with the reform process, in collaboration with social partners and under the guidance of the ILO, in order to comply with its obligations under ratified Conventions. Finally, they urged the Government to seek technical assistance from the ILO to rectify the situation of serious failure to comply with its reporting obligations.

### **Conclusions**

The Committee took note of the information provided by the Government representative and the discussion that followed. The Committee expressed concern over a number of legislative provisions stipulated in the 2017 Act on working time, which are not in conformity with the ratified Conventions on working time. The Committee noted that the application decree of the new law has not been published and that the Labour Code continues to apply. The Committee noted with regret that the comprehensive reform of the Labour Code has not been finalized.

Taking into account the Government's submissions and the discussion of the case that followed, the Committee urged the Government to:

- review in consultation with the most representative employers and workers organizations the conformity of the Labour Code and the Act on working time, with respect to the ratified ILO Conventions on working time;
- strengthen the labour inspectorate and other relevant enforcement mechanisms to ensure that workers benefit from the protection afforded by the Conventions; and
- report to the Committee of Experts on these measures.

The Committee calls on the Government to avail itself of technical assistance to address these matters. The Committee calls on the Government to submit without delay all the reports due to the Committee of Experts and include a detailed report on the measures taken to implement these conclusions to the next meeting of the Committee of Experts in November 2018.

The Government representative said that the Haitian delegation had taken due note of the discussions and conclusions adopted by the Conference Committee and shared the view of the Committee of Experts in its report that working hours and the organization of work can have a profound influence, not only on the quality of work, but also on the private life of workers, their "physical and mental health and well-being ... their safety at work and during the transit to and from their homes, and their earnings". The Conventions that Haiti had ratified were part of its body of domestic law under article 276-2 of the Constitution, and took

## Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

Malaysia – Peninsular Malaysia (ratification: 1957)

Sarawak (ratification: 1964)

precedence over national laws in the hierarchy of standards and could be invoked without reserve before the courts. Taking note of the observations of the Committee of Experts concerning the application of the Act of 7 August 2017 on working time, the Government was planning to hold tripartite consultations to identify and overcome the main difficulties encountered in the application of the Act, and to issue orders or regulations to specify its scope. The Government was also aware of the delay in finalizing the process of reforming the Labour Code. Discussions had begun at the level of the Prime Minister's Office and would be continued within a tripartite framework, in the spirit of the San José Agreement of 21 March 2018, taking into account the Office's recommendations.

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### Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

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**MALAYSIA – PENINSULAR MALAYSIA** (ratification: 1957)  
**SARAWAK** (ratification: 1964)

A Government representative indicated that the Government had noted the concerns raised by the Committee in 2017 as well as its conclusions calling for the re-establishment of equality of treatment through the extension of the coverage of the Employees' Social Security Scheme (ESS) to foreign workers. The Government had in fact agreed to extend the protection of the ESS, which would come under the Social Security Organization (SOCSO), to foreign workers and had taken serious measures over the past year to that effect. However, that process needed to be done in a just and fair manner and at a pace that was comfortable to both employers and workers, as well as the insurance panels, the system provider and the SOCSO. A period to ensure the smooth transition of foreign workers to the ESS was needed to allow for the establishment of implementation mechanisms, databases and roadmaps, and the organization of engagement sessions with stakeholders and the social partners to accommodate the change. Over the past year, the Government had taken several steps to strengthen and enhance the existing Workmen's Compensation Scheme (WCS) with the objective of phasing it out during a transition period of a maximum of three years. This transition period was needed in view of three main factors. First, the SOCSO had only recently been made responsible for the implementation of the Employment Insurance System and needed a certain time for the funds to be sustainable and the administrative matters related to the Employment Insurance System to operate smoothly. In addition, the existing Social Security Act would need to be amended. Secondly, there existed contractual obligations with the insurance panels and the system provider of the e-compensation scheme. Lastly, employers needed to be provided with ample time to adjust to the changes that would occur when the WCS shifted to the ESS. In light of the recent changes that had occurred in the Government, the transition plan would be submitted to the new administration for consideration and approval. The Government was ready to take immediate action, which included further deliberations and engagement with the social partners. No foreign worker should be left without coverage for both employment and non-employment injuries. It was the responsibility of states to protect the rights of foreign workers and prevent all forms of discrimination. But it should be noted that access to medical care had always been made available to all workers, regardless of their status. The Government fully supported the principles of equality of treatment and was committed to complying with the request of the Committee to ensure that foreign workers had access to accident compensation. The Government had already sought ILO technical expertise and was ready to forge closer collaboration

with the guidance and approval of the new administration. Discussions would be held and technical assistance be sought from the Office on the matter under discussion with a view to developing appropriate mechanisms to overcome any issues that might arise.

The Worker members stated that, for over two decades, the ILO supervisory mechanisms had been addressing the persistent issue of equal treatment of migrant workers, in particular with respect to employment injury. Since 1993, the Committee of Experts had addressed the transfer of foreign workers, employed in Malaysia for up to five years from the ESS, which provided for periodical payments to victims of industrial accidents, to the WCS, which guaranteed only a lump sum payment of a significantly lower amount. Lowering the protection afforded to migrant workers was a clear breach of Article 1 of the Convention, which required ratifying States to grant to migrant workers who suffered injury due to industrial accidents which occurred in its territory, or to their dependents, the same treatment in respect of workmen's compensation as it granted to its own nationals. The Committee had discussed the case on multiple occasions, requesting the extension of the coverage of the ESS to migrant workers and the development, in consultation with the social partners, of laws and regulations that would ensure the removal of discriminatory practices between migrant and national workers. It had also noted with deep regret that the Government had taken no measures to implement the conclusions of the Committee, nor had it responded to the Committee of Expert's express request to provide a detailed report on the application of the Convention. For many years, millions of migrant workers had been affected by this discriminatory treatment, despite filling substantial shortages in the supply of low-skilled labour for key economic sectors. It was estimated that around 20–30 per cent of the country's workforce was constituted of migrant workers coming from a number of different countries, such as Cambodia, Indonesia, Lao People's Democratic Republic, Myanmar, Philippines, Thailand and Viet Nam. In addition to the 2 million legally registered migrant workers, there were also several million undocumented migrant workers. It was estimated that between 1 and 4 million undocumented migrant workers who were engaged in the most hazardous jobs were not eligible for any compensation. Approximately one third of the workers in the agricultural, manufacturing and construction sectors were migrant workers, with migrant workers making up to 70 per cent of workers in the agricultural sector. Although those industries had contributed 297 billion ringgits (€63 billion) or 35.7 per cent of Malaysia's gross domestic product in 2014, the rate of occupational accidents was extremely high. According to official data, between January and October 2017, the Department of Occupational Safety and Health had recorded 1,645 workplace accidents causing permanent or temporary disability and 46 fatal accidents in the manufacturing sector alone. In the same period, the construction industry and the agricultural sector had claimed the lives of 63 and 18 workers, respectively. Given that official statistics only took into account investigated accidents, it was estimated that the real number of workplace accidents was even higher. Despite those appalling numbers and the enormous contribution of migrant labour to the economic growth and development of Malaysia over the years, the Government continued to deny equal and fair treatment to migrant workers. While under the ESS, a permanently injured worker was entitled to a periodical cash benefit of 90 per cent of his/her "assumed average daily wage" (section 22b and the fourth Schedule of the Social Security Act), permanently injured migrant workers in the same situation would only be entitled to a lump sum payment of 62 months' salary or 23,000 ringgits (around €4,900) under section 8 of the

Workmen's Compensation Act (WCA). The payment of a lump sum instead of periodic payments in itself amounted to a differentiation in the quality of the protection provided, as existing global evidence demonstrated. Furthermore, the level of the lump sum payment provided to migrant workers was a mere fraction of the amount to which Malaysian workers were entitled in the exact same situation. An actuarial simulation undertaken by the ILO, estimated that a national worker was entitled to a total of 425,000 ringgits, with periodic payments calculated as a lump sum. According to that simulation, migrant workers were entitled to about 23,000 ringgits which meant that they were only entitled to 5.4 per cent of the benefits received by Malaysian workers. Such a level of discrimination between workers in the twenty-first century was shocking and appalling to say the very least.

With regard to medical care, Malaysian workers were entitled to the free treatment of injuries at any public hospital or clinic, with the medical bill being settled by the ESS fund. Under the WCS, medical expenses for work injuries were borne by the employer, which exposed migrant workers to possible abuses, as employers might refuse to pay for the necessary treatment. In addition, migrant workers could only claim refunds for medical costs after they had fully recovered, and even then it usually took several months for them to be refunded, leaving them with no means of survival in the meantime. Undocumented migrant workers ran the risk of being arrested while attempting to access medical treatment. Furthermore, a national worker who sustained a workplace injury causing a temporary inability to work for at least four days was entitled to temporary disability benefits equivalent to 80 per cent of his or her wage. Migrant workers temporarily incapacitated due to workplace injury were only entitled to half-monthly payments equivalent to one third of their monthly wage. It should be noted that migrant workers were subject to other forms of unequal treatment. As the Committee had noted in its 2016 examination of the application in the country of the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), migrant workers still faced a number of practical obstacles to collective bargaining, in particular due to insecure employment contracts and vulnerability due to anti-union discrimination. In addition, the estimated 300,000 to 400,000 migrant domestic workers employed in Malaysia were still denied basic labour protection under national laws, and suffered from abusive working conditions, including cases of forced labour. The Government had taken severe measures with regard to undocumented migrant workers. In July 2017, the Malaysian authorities had arrested over 3,300 undocumented migrant workers who had failed to register for an E-card. Due to their fear of detention and deportation, many migrant workers had gone into hiding, which severely limited their access to social protection. The Worker members expressed their deep concern at the situation of migrant workers, who constituted a significant part of the working population of the country. Despite numerous discussions in the Committee, the technical advice provided by the ILO and the Government's statements that it would take the measures, they had not materialized so far. They urged the Government, with the greatest insistence, to bring its legislation and social security institutions into conformity with the Convention and to ensure equal treatment between migrant and national workers with respect to occupational injuries in an effective and expeditious manner. As a party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), Malaysia was required to undertake legislative reforms to eliminate all discriminatory provisions. The new Government had renewed Malaysia's commitment to undertaking such necessary reforms. They expected that the Government would fully honour its commitments by

taking swift and concrete action to eliminate all forms of discrimination against migrant workers.

**The Employer members** recalled the numerous observations that had been made by the Committee of Experts over a number of years. In addition to the technical issues raised by the Worker members, it was important to consider the context of the situation. The examination of the case concerned Malaysia and Malaysia – Peninsular, that is, Peninsular Malaysia and East Malaysia. Malaysia was a federal state. It was made up of 13 federal states and three federal territories, divided between two regions. Governance of the state was divided between the federal and state governments, while the federal government exercised direct administration over the federal territories. Of particular note was the fact that the states of East Malaysia (Sabah and Sarawak) had separate immigration policies and controls, and a unique residency status. Visas were required for travel between those two states or between either state and Peninsular Malaysia, which created a number of issues, including in terms of the administration of the schemes at the national level. The situation giving rise to the discussion of the case had begun in 1993, when foreign workers had been transferred from the ESS, which provided for periodical payments to victims of industrial accidents, to the WSC, which guaranteed only a lump sum payment of compensation for industrial accidents. Over the years, the supervisory bodies had expressed concern at the differences in those schemes, indicated by the Worker members. The Government's intention to carry out reforms and to align or realign the provisions applicable to foreign workers with the scheme for national workers should be welcomed. However, they also noted that as far back as 2011, the Government had indicated that a technical committee the Ministry of Human Resources, including all stakeholders, had considered the three following options: (1) the extension of the ESS to cover foreign workers; (2) the creation of a special scheme for foreign workers under the ESS; and (3) raising the level of benefits provided by the WSC to an equivalent level to those provided by the ESS. That was not the first time that the Government had provided similar information, and concrete action was not expected. It should be noted that the Government had expressed its willingness and commitment to address the situation before the present Committee.

They were aware that making those changes was easier said than done, considering a number of existing challenges. Under the ESS, workers were required to contribute for a minimum of 24 months before they or their family could receive any benefits, in the event of industrial accidents or occupational diseases. Foreign workers had often not been in the country long enough to have access to those benefits, while under the WSC, they were covered immediately in case of injury. While there were differences in the monetary compensation, as indicated by the Worker members, other elements also needed to be taken into account. Since foreign workers were generally contracted for fewer than 24 months, it had become evident that the ESS scheme was not suitable for them, at least not in its current form. Taking into account the large number of migrant workers concerned and their statistically high accident rate, achieving the objective of equity required the reconciliation of three main factors: first, the administrative and practical difficulties that impeded equal treatment of migrant workers, including that migrant workers were typically in Malaysia for project-type work, usually fewer than 24 months. Also, if they were incapacitated in industrial accidents, they were often repatriated making compensation an administrative challenge. Second, there was the question of whether or not the Convention required absolute equality of treatment. The actual requirement of the

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Convention was that workers had to receive the same treatment, which was often not possible for practical reasons. That raised the question of a broader interpretation, for example whether treatment of equal value was as acceptable as exactly the same treatment. Third, irrespective of the interpretation chosen, and given that the ESS scheme was difficult to apply to workers who were not in the country for the minimum qualifying period, it was essential to determine the actuarial equivalence of the lump sum paid under the WCS to migrant workers to the value of the periodic payments. The comparison between the value of the periodical benefits and that of a lump sum benefit was a particularly delicate and technical question. Depending on the answer, it was possible for the WCS to be viewed as a valid way of managing employment injury and invalidity benefits for foreign workers in Malaysia. This could require the adjustment of the payment. But the quantum of compensation was not the only consideration as coverage was also important. The ESS scheme applied only to workplace accidents (including commuting) that resulted in at least four days of sick leave, whereas no such restrictions applied to the WCS. With respect to coverage, the WCS was arguably more favourable to foreign workers than the ESS was to nationals. A number of other member States with federal or state jurisdictions faced similar challenges. That was the reason why a number of such States did not ratify Conventions unless their federal laws required compliance by States. However, since it was arguably outside the mandate of the Committee to request that member States to change their constitutions, it should be recognized that a solution to the issue was unlikely to involve the application of the domestic scheme directly to migrant workers. Instead, a hybrid solution should be sought to achieve a sustainable outcome, taking into account the practical challenges. In conclusion, the Committee should acknowledge the Government's commitment to making progress on the issue, as well as its commitment to the value of equivalence. The Government should, as soon as possible, provide plans and processes on how it intended to achieve progress.

**The Worker member of Malaysia** said that Malaysia was a major destination country for migrant workers in Asia. There were about 2 million migrant workers with regular immigration status, while it was estimated that there were about 4 million migrant workers in an irregular situation, with an accurate number for the latter still being unavailable. The Committee had examined the case for the first time in 1996 after the downgrading of migrant workers from the ESS to the WCS in 1993. The compensation for workplace accidents involving migrant workers had continued to remain blatantly unequal. For example, national workers under the ESS were entitled to two forms of payment: temporary disablement and invalidity payment. They were also entitled to other additional benefits such as medical benefits, constant attendance allowance, vocational rehabilitation, dependants' funeral and education benefits. On the other hand, migrant workers were entitled to a one-off payment under an insurance scheme that had to be purchased by employers, on the condition that the employers had purchased it. The insurance benefit entitlements provided constituted about US\$2,500 to \$6,281 for accidental death or permanent disability sustained during working hours. Migrant workers could also claim meagre sums for medical treatment and approximately US\$1,206 could be claimed for repatriation and funeral expenses. If migrant workers were injured outside working hours, they had to sustain a permanent disability to benefit from an insurance which was supposed to cover loss of pay, compensation, treatment costs and reparation. Migrant workers in Malaysia were largely employed in dangerous jobs without sufficient protective equipment or training, and they also lived

in very poor conditions. A high incidence of workplace accidents and commuting accidents had been documented, with the largest number of occupational injuries and deaths occurring in the manufacturing, construction and agricultural sectors, all of which were major sectors of employment for migrant workers. In 2018, the death of three migrant workers had caught the attention of the media. The 28-year-old Adelina had died in February 2018 at Taman Kota Permai Bukit Mertajam as a result of abuse. A post-mortem report found that she had died of organ failures, and the police had not ruled out the possibility that, in addition to being beaten and slapped, the maid's health had also been neglected, including by not giving her proper food and shelter for several months. The family had been paid an amount equivalent to three years' wages that had not been paid and compensation for the family, which had included the costs of repatriation and the funeral. In another case, an Indian migrant worker, Mr Lathif, a 22-year-old documented worker in Malaysia since January 2018, had been pinned under an overturned tractor while working in an oil palm plantation. He had died in May 2018 as a result of his serious injuries. The meagre compensation sum had yet to be paid to the family. Moreover, Haironnissa, an Indonesian migrant worker, had died of a high fever while in service. The panel clinic doctor had refused to refer her to hospital for further treatment. Her supervisor and production officer had failed to assist her, and she had died after her parents had taken her back to Indonesia. Action was still pending to investigate the company. Since January 2018, the Malaysian Trades Union Congress (MTUC) had been informed of 42 cases concerning occupational accidents of migrant workers. A total of 60 per cent of those workers had suffered salary deductions, inadequate access to medical treatment and were unable to work. No steps had been taken to implement the objectives of the Eleventh Malaysia Plan (2016–20), namely: (1) developing and implementing a comprehensive immigration and employment policy for migrant workers; (2) engaging with the tripartite constituents; and (3) providing the Committee with the detailed reports requested in 2011 and 2017. This was the fifth time since 1996 that the Committee had examined the Government's failure to comply with the Convention. While the issue remained unresolved, the life, safety and security of migrant workers continued to be at stake. After 60 years, the Government had been replaced. The new Government should undo the wrong that had been done and reinstate equality of treatment of migrant workers in conformity with the Convention in accordance with the recommendation of the Committee of Experts without any further delay.

**The Employer member of Malaysia** noted that foreign workers in Malaysia were currently insured under the WCS, established by the WCA. The scheme had been working well, as foreign workers were provided many benefits, including: a lump sum payment for injuries or death; payments for injuries sustained during work; and payment for repatriating the deceased body to the country of origin in the event of death. The Labour Department was empowered to assess speedily claims for workmen's compensation, receive payments from the respective insurance company and disburse workmen's compensations to the dependants of deceased workers. Finally, the insurance premium under the WCS, ranging from 68 to 72 ringgits per employee per year, was fully paid by employers. More concretely, the types of benefits and compensation under the WCS were the following: (1) in the case of temporary disablement: half-monthly payments of up to 165 ringgits for up to five years; (2) in the event of permanent total disablement: payments in the amount of wages for 60 months or 23,000 ringgits (whichever amount was inferior); if in need of constant personal assistance, an additional 25 per



cent would be added to the compensation; (3) in the event of permanent partial disablement: a percentage of 23,000 ringgits depending on the degree of physical impairment or loss of earning capacity; (4) in the case of death during work or commuting: payments of the amount of wages for 60 months or 18,000 ringgits (whichever was inferior); (5) in the case of death or permanent total disablement: 23,000 ringgits; and (6) repatriation expenses for death or permanent total disablement: 4,800 ringgits. Taking into account those benefits and the accident coverage, it was ironic that the Committee had insisted on multiple occasions that foreign workers should be placed under SOCSO coverage, without examining whether that was really beneficial for foreign workers. For example, under the Employment Injury Scheme, coverage was limited to workplace employment injury, which included commuting injury, which had to fulfill the criteria that the sick leave arising out of employment injury was at least four days of unavailability for work, as compared to the WCS which provided for 24-hour coverage. In view of the above, while the examination by the Committee was based on the technical issues of equality of treatment, there was no realization that placing foreign workers under the SOCSO would be to their detriment. The insistence of the Committee to examine the present case would eventually result in foreign workers being covered by the Employment Injury Scheme which was only applicable for workplace employment injury, instead of the WCS, which provided 24-hour coverage with a list of benefits as indicated above which were superior and more beneficial than the benefits under the SOCSO Employment Injury Scheme.

**The Government member of Bulgaria**, speaking on behalf of the European Union (EU) and its Member States as well as Montenegro, Bosnia and Herzegovina, and the European Free Trade Association (EFTA) countries, Norway and the Member of the European Economic Area) said that the EU–Malaysia Partnership and Cooperation Agreement concluded two years ago had further strengthened its bilateral cooperation with the EU and had encompassed a wide range of areas, including human rights and sectoral cooperation on labour and employment. Nevertheless, it was deeply regrettable that the case had already been discussed the previous year by the Committee and that the discriminatory treatment of foreign workers was a long-standing issue that had persisted since 1993, despite recurrent calls by the Committee to putting an end to the practice. Since the detailed report, as requested by the Committee, had not been provided by the Government, she was bound to reiterate the same comments as the previous year. Migrant workers provided much needed skills and made an invaluable contribution to the social and economic development of Malaysia and often filled jobs that were considered undesirable by nationals. Yet their contribution was often not fully recognized, and they remained vulnerable to precarious conditions, abusive practices and unequal treatment, which contributed, among other issues, to an increased risk of accidents and health problems. She therefore urged the Government to take prompt measures to extend the social security scheme for national workers to foreign workers in order to bring an end to that discriminatory practice and ensure equal treatment of foreign workers, particularly with regard to accident compensation. In conclusion, she reiterated the commitment of the EU to a constructive engagement and partnership with Malaysia.

**The Government member of Thailand**, speaking on behalf of the member States of the Association of Southeast Asian Nations (ASEAN), welcomed the progress made by the Government and its willingness to extend the social security scheme to foreign workers, as well as the measures adopted. The Government should be encouraged to continue its efforts to realize its commitment with respect to

the Convention, in particular to ensure equal treatment of foreign workers with regard to accident compensation. The Committee should consider the efforts made by the Government.

**The Worker member of the United States** recalled that there were two distinct workers' compensation systems in Malaysia: one for Malaysians, the other for registered migrant workers. Unregistered migrant workers were not covered by any kind of accident compensation, even though they outnumbered registered migrant workers by an estimated two to one. To be cynical, there were actually three schemes in Malaysia: the ESS, WCS and nothing at all. There was no accountability for employers in relation to purchasing the workers' compensation insurance. If an employer purchased no insurance, inadequate insurance or insurance with exclusions (for example, for injuries that occurred without the proper safety equipment), it was only the injured worker that suffered. Moreover, the registration of migrant workers was tied to specific employers. If a worker was injured performing work for another employer, not only was the worker no longer covered by the WCS, but he faced the risk of being arrested when seeking medical attention and of being deported. The WCS set a maximum limit for lump sum payments, which were abused by employers. For example, a Nepali construction worker had a workplace accident that had resulted in the loss of four fingers. The medical costs had been more than the 25,000 ringgits provided by the insurance policy. His employer had not only used the entire lump sum payment to pay for the medical expenses but was now charging the worker for the expenses, in excess of the policy. The worker was, in fact, paying for the injury, rather than being compensated for it. Sadly, under the WCS, that was a "best case" scenario, as that worker's employer had purchased an insurance policy for the maximum amount. In the absence of labour inspections, there was no way of holding employers accountable for compliance with the minimum guarantees under the WCA, which was already in violation of the Convention, and did not cover two-thirds of the migrant workforce in the country. There was also no way for workers to lodge complaints for inadequate insurance, and particularly no way for them to do so without fear of retaliation. Not only was the existence of two accident compensation schemes for national and migrant workers plainly discriminatory and in violation of the Convention, but it was also exploitative of migrant workers. The WCA was a legal means of refusing to take care of workers injured at work, and offered a convenient means of avoiding obligations once the lump sum was paid. It was that kind of exploitation that the Convention sought to eliminate.

**The Worker member of Singapore** noted that, although the laws did not explicitly discriminate against migrant workers, in practice the rights of migrant workers were not fully protected due to the inaction of the Government. There were several examples. First, according to the Employee Provident Fund Act, 1991 (Act No. 452), contributions to the Employee Provident Fund were mandatory, but were voluntary for migrant workers. Moreover, migrant workers could withdraw savings only in the event of death, mental or physical incapacitation, or their return to their country of origin. Secondly, pursuant to the Trade Union Act, 1959 (No. 262), Malaysian workers could organize and form trade unions, while migrant workers only had this right if their employers had no objection. However, the Ministry of Home Affairs had set an absolute prohibition on migrant workers from joining any sort of association. Thirdly, under the Employment Act, 1955, every worker had to have a contract of employment clearly naming the employer. However, migrant workers were faced with the absence of employment contracts or contracts with less favourable conditions than those agreed before departure from their

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country of origin. Some employers did not renew the permit of workers, resulting in migrants losing their legal status. Migrant workers were also faced with issues regarding the right to collective bargaining, the non-payment of wages, unfair dismissal and the lack of protective workplace equipment. He referred to a pending complaint to a regional Labour Department concerning a Nepali worker who had been injured, who had not received any wages during his period of medical leave, and who had had to pay his medical expenses. Without paying 3,000 ringgits to the placement agency, he would not be able to return to his country of origin. As a result of an investigation by the Regional Labour Department, various labour law violations had been determined. Discriminatory practices such as those described above were occurring to migrant workers on a daily basis. Considering that the issue relating to the Convention had persisted for over 20 years, he called on the Government to restore migrant workers under the SOCSO and to ensure equal treatment and protection of migrant workers.

**The Worker member of Australia** said that the significantly inferior compensation rights of migrant workers were a direct breach of the Convention and remained of serious concern. According to estimates, between 4 and 6 million migrant workers were working in Malaysia. A large percentage of them were engaged by outsourcing or recruitment agencies, with more than 2,000 agencies in Malaysia alone. Legislative changes had made migrant workers employees of those agencies rather than of the employers for whom they provided labour, with those agencies organizing the legal documents. Although illegal, many migrant workers faced debt bondage situations. The withholding of passports was common and human trafficking occurred on an increasing scale. An Amnesty International report in 2010 had found that migrant workers were highly dependent on the agents because, if they left or were dismissed by the agency their status changed to being illegal. Referring to the example of a Nepalese migrant worker employed by a recruitment agency, who did not know the name of his employer, which made it difficult to claim accident compensation, she emphasized that the current system meant that it was difficult to obtain a clear picture of the incidence of injury among migrant workers. Outsourcing also further limited the capacity of the labour inspectorate, which already made very few labour inspections. Despite past offers of ILO technical assistance, the breaches of the Convention had persisted.

**The Worker member of Indonesia**, speaking on behalf of the Indonesian Workers Welfare Union (IWWU), the Cambodian Labour Confederation (CLC), the Federation of Trade Unions of Myanmar (CTUM), the Federation of Korean Trade Unions (FKTU), the Korean Confederation of Trade Unions (KCTU), the Federation of Free Workers (FFW) and the Center of United and Progressive Workers (SENTRO) if the Philippines emphasized that, despite the vital role played by migrant workers in the development of the South-East Asian region, they were often subject to abuse. Malaysia had benefited greatly from the employment of migrant workers in several economically important sectors, such as manufacturing, construction and plantations. However, the situation regarding migrant workers, particularly with respect to employment injury compensation, was not in accordance with the Convention and it was necessary to take bold action. The high incidence of workplace accidents and deaths among foreign workers in Malaysia was of serious concern. At a current side event during the present session of the International Labour Conference, the interregional trade union organizations (Asia and the Pacific, Africa, America, Arab States, South-East Asia and South Asian) had signed a memorandum of understanding (MOU) to join and coordinate efforts

with a view to better promoting the protection of migrant workers across the region. During the signing ceremony of that MOU, the Director-General had expressed ILO commitment to support the initiative. The Government should demonstrate a similar commitment to ensure that the issues of migrant workers were addressed effectively.

**The Government representative** said that all the comments made during the discussion would be taken seriously as they would help the Government to improve the situation in the country. Support was being sought from the Employer and Worker members of the country and particularly the latter, to act as a catalyst in realizing the transfer of the protection of foreign workers by the ESS. Managing the welfare of foreign workers had always been a priority for the Government, as set out in the Eleventh Malaysia Plan (2016–20). The Government was committed to this priority, despite the recent change of administration, and would ensure that the quality of protection for all workers in the country was in accordance with international labour standards, and particularly those Conventions that had been ratified by the country. The Government had agreed to expand the coverage of the ESS to foreign workers, which would be done in a progressive and cautious manner. He concluded by assuring the full and undivided commitment of the Government to make efforts to ensure that Malaysia abided by the principles of the Convention.

**The Employer members** said that the main issues raised in the discussion related to the different benefits to which foreign and national workers were entitled, and the practical challenges relating to the reintroduction of equal treatment for foreign and national workers. The discussion had shown the many instances and scenarios that could occur with regard to documented and undocumented foreign workers. The Government needed to address those challenges, in cooperation with the social partners. It also needed to give genuine consideration to how to deal with the individual situations of foreign workers who had been injured, who were in a desperate situation, and who were denied access to social security benefits. Such situations also occurred in many other countries, and not only Malaysia, but the individuals concerned needed consideration. The issues surrounding the case had been raised many times by the ILO supervisory bodies, and the Committee would have to be realistic in recognizing that changes would not be immediate. While the commitment of the Government had been heard before, the new Government had given a firm undertaking to achieve progress. Between the obligations out of the commitments under the CPTPP and the Convention, the only way for the Government was to go forward.

**The Worker members** emphasized that the Committee had abundantly discussed the long-standing and persistent issue at previous sessions, including last year, and had consistently urged the Government to bring its legislation into conformity with the provisions of the Convention. They welcomed the answers provided by the Government, which had been conveyed in a positive and constructive manner. However, despite benefiting from ILO technical assistance on the subject in 2016, the Government had taken no concrete steps to address the situation and ensure equal treatment for migrant workers and national workers with respect to workplace injury compensation. The required measures to remedy the situation were quite simple and involved the re-introduction of all migrant workers in the ESS, so as to guarantee equal treatment between migrant workers and national workers in relation to accident compensation. Their reintegration under the ESS would be in accordance with the principles of the Convention, and it had been recommended by the ILO technical team in 2016 as the most effective solution. Recalling that urgent action was required on the issue, they called on the Government

to show its commitment to giving full effect to the Convention by taking immediate and effective measures to meet the requirement of the Convention for equal treatment of migrant workers and national workers with respect to workplace accident compensation. In view of the persistence of the situation, while welcoming the positive approach, the Worker members urged the Government to accept a direct contacts mission to assess progress before the next International Labour Conference. They thanked the Government for the response and hoped that the situation would evolve positively in the coming years.

### **Conclusions**

The Committee took note of the oral statements made by the Government representative and the discussion that followed.

The Committee welcomed the Government's stated commitment to ensuring the Convention's requirement for equal treatment of migrant workers and national workers.

Taking into account the Government's submissions, the discussion of the case that followed, and the 2017 conclusions of the Committee, the Committee urged the Government to:

- take steps to develop and communicate its policy for governing the recruitment and treatment of migrant workers;
- take immediate steps to conclude its work on the means for reinstating the equality of treatment of migrant workers, in particular by extending the coverage of the Employees' Social Security Scheme to migrant workers in a form that is effective;
- engage in genuine consultations with employers' and workers' organizations to develop laws and regulations that ensure the removal of discriminatory practices between migrant and national workers, in particular in relation to workplace injury;
- adopt special arrangements with other ratifying member States to overcome the administrative difficulties of monitoring the payment of compensation abroad; and
- take necessary legal and practical measures to ensure that migrant workers have access to medical care in the case of workplace injury.

The Committee called upon the Government to accept an ILO direct contacts mission with a view to implementing these recommendations and to develop mechanisms for overcoming the practical issues affecting the implementation of the domestic social security scheme to migrant workers.

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

#### **BELARUS (ratification: 1956)**

The Government has provided the following written information.

Belarus has staunchly and consistently supported the prohibition and eradication of forced labour. The prohibition of the use of forced labour is enshrined in the country's most important legislative instruments. Article 41 of the Constitution prohibits forced labour, with the exception of work or services required under a court ruling or in accordance with the Law on Emergencies and Military Status. The prohibition of forced labour is also covered in article 13 of the Labour Code, which defines forced labour as work which a worker is required to perform subject to the threat of violence, which includes: means of political leverage or indoctrination or punishment for the exhibition or expression of political views or ideological beliefs contrary to the established political, social or economic system; methods for mobilizing and exploiting the workforce for the needs of economic development; means of promoting workplace discipline; and means of punishing people for their participation in strikes. However, the following are

not deemed to be instances of forced labour: work performed as a result of a legally valid court ruling under the supervision of the authorities responsible for upholding the Law governing the execution of court rulings; work to be carried out as a consequence of legislation on military service or emergency situations. The Government has paid great attention to the comments made by the Committee of Experts. It has analysed all of the regulatory instruments referred to by the Committee of Experts, including the aims and purposes of adopting the instruments and the practice of applying them, with the aim of harmonizing the provisions of those instruments with the requirements of Convention No. 29. As a result of this work, taking into account the position of the Committee of Experts with regard to Presidential Decree No. 9 of 7 December 2012 on supplementary measures for the development of the wood processing industry, the decision was taken to start to repeal Decree No. 9. That decision has now been implemented. Presidential Decree No. 182 of 27 May 2016 has been adopted, which makes Decree No. 9 invalid. This information was received positively by the Committee of Experts which expressed satisfaction with the measures taken by the Government with regard to Decree No. 9, as reflected in paragraph 56 of the Report of the Committee of Experts. As regards the other regulatory instruments mentioned during the discussion at the Committee on the Application of Standards in June 2016, additional study of the situation was required. This task was entrusted to the Technical Advisory Mission of the International Labour Office, which visited the Republic of Belarus from 19 to 23 June 2017. The Government of the Republic of Belarus provided the Mission with all the necessary assistance in organizing their work. The Mission's report on the results of its work was submitted to the Committee of Experts. In the Government's opinion, the normative documents mentioned in the conclusions of the Committee of Experts are not at variance with the provisions of Convention No. 29. Presidential Decree No. 3 of 2 April on the prevention of dependency on social aid has undergone conceptual changes. On 25 January 2018, the Decree of the President of the Republic of Belarus No. 1 was adopted, in accordance with which Decree No. 3 was redrafted in a new version and given a new title – "On the Promotion of Employment of the Population". Now Decree No. 3 does not include any provisions on the payment, by unemployed citizens who are able to work, of a fee for financing public expenditures, as well as the rules on bringing to administrative responsibility for failure to pay the fee. The main task of the updated Decree No. 3 is to create more favourable conditions for citizens' employment in the regions of the republic. In this regard, significant increase in the activity of local authorities in assisting citizens in finding a job is envisaged. At the level of each region, all the available opportunities will be used to ensure that all citizens who, for some reason, do not work anywhere but want to work will be assisted in finding a job. Measures of active policy in the labour market will be used: training and re-training for professions that are in demand in the labour market; advisory and legal assistance in organizing private business with the provision of financial support from the State; and temporary employment of citizens, including through participation in paid public works.

The second important issue, which the new version of Decree No. 3 is designed to solve, is to create conditions that will stimulate citizens involved in the shadow economy to work legally with the payment of taxes. The Decree contains a direct material incentive for citizens to start working legally. Today, many public services in Belarus are provided to citizens at low tariffs, since the State subsidizes them from the budget. Therefore, it was decided that citizens who are able to work and who are classified as

not involved in the economy in accordance with the procedure determined by the Government, will be provided with certain services at a higher, not subsidized tariff. At the moment, the procedure according to which citizens will be treated as not involved in the economy is determined by the Government. The Government has also determined the types of services that will be provided at prices ensuring full reimbursement of economically justified costs for the provision of these services, which include utilities such as: hot water, gas supply in the presence of individual gas heating appliances, as well as heat supply. This approach will be implemented starting from 1 January 2019, and as concerns gas and heat supply – starting from 1 October 2019. Presidential Decree No. 18 on supplementary measures for state protection of children from dysfunctional families was adopted on 24 November 2006. One of the most sensitive issues in any society is the situation of children from dysfunctional families and families in which parents lead an anti-social way of life, are alcoholics or drug addicts. Unfortunately, the critical issue regarding children whose parents are alcohol abusers, drug addicts or substance abusers is their very survival and the maintenance of their life and health. According to Decree No. 18, children are in a socially vulnerable situation if parents – or one parent – lead an immoral way of life that is harmful to the children, or if they are chronic alcoholics or drug addicts, or in some other way are unable to perform properly their obligations to raise and maintain children. These children are subject to state protection and are placed in state childcare facilities. The Decree defines a system by which state bodies may identify dysfunctional families and take decisions to place children in childcare facilities. Decree No. 18 focuses on working with parents. It is important to enable parents from dysfunctional families to turn away from their anti-social and, often immoral, way of life. This is the only way in which children can return to their biological families. However, many of these parents do not have work. Many of them lost their occupational skills long ago. It is extremely complicated for them to find work independently, because employers are not interested in workers of this kind. Decree No. 18 therefore provides for a work placement mechanism for parents from dysfunctional families whose children have been placed in state childcare facilities following a court order. Job placements are arranged at workplaces defined in coordination with the local authorities. Since, in accordance with Decree No. 18, a portion of the citizen's wage is deducted to compensate for the expenses associated with maintaining their children, one of the conditions in the selection of a workplace is that the wage level is sufficiently high. At the same time, if parents whose children have been placed in state childcare facilities have a job or find themselves work independently and can cover the costs of maintaining the child, no court decision is required. The main purpose of Decree No. 18 is to improve family situations so that children can safely return to their parents. During the time that Decree No. 18 has been in force (between 2007 and 2017), a total of 40,068 children have been recognized as needing state support, of which 23,255 children (more than 58 per cent) have been returned to their families and their parents.

The Law of 4 January 2010 "On the Procedure and Modalities for the Transfer of Citizens to Medical Labour Centres and the Conditions of Their Stay" regulates issues related to the transfer of citizens suffering from chronic alcoholism, drug addiction or substance abuse to medical labour centres. Not all individuals experiencing these problems may be transferred to medical labour centres, but only those who have repeatedly, three times or more in the course of a year, disturbed public order and been found in a state of intoxication from alcohol or caused by the use of drugs or other intoxicating substances. One further condition is that the individuals have already been warned about

the possibility of returning to the centre if they commit further violations, but have nevertheless committed administrative offences for similar violations within a year of that warning. In addition, citizens may be sent to medical labour centres if they are obliged to compensate the child-rearing expenses incurred by the State and have twice violated work regulations during the year through alcohol or other substance abuse, and have furthermore been warned of the possibility of being sent to the centre, and yet have reoffended within a year of that warning. Citizens are sent to medical labour centres for a period of 12 months following a court ruling. The court may decide to extend the period of time spent in the centres or to curtail it by up to six months. Citizens placed in medical labour centres are required to undergo a medical examination to establish whether they suffer from chronic alcoholism, drug addiction and substance abuse. Social and medical rehabilitation measures may be used in relation to them, including the provision of medicines and of medical and psychological assistance. For citizens who lead an anti-social way of life, one of the most important means that ensure their social reintegration is through work. According to the Law, medico-social readaptation activities also include vocational guidance, vocational training, retraining, advanced training and labour. Over the years of the implementation of the Law, since 2010, 2,945 citizens have undergone vocational training in medical labour centres, and 876 citizens have taken part in continuing professional training programmes on the job. Employment of citizens who are placed in medical labour centres is carried out, taking into account their age, working capacity, state of health, specialization and qualifications. They are paid and granted leave from work and welfare-related forms of leave in accordance with labour laws. The Government considers that Decrees Nos 3 and 18 do not conflict with Convention No. 29. These regulatory instruments are aimed at addressing such socially important tasks as promoting employment of the population, protecting children and combating drunkenness and drug addiction. The approaches laid down in these instruments meet the requirements of justice and are socially justified.

In addition, before the Committee, a **Government representative** welcomed the opportunity to provide information on the application of the Convention by Belarus. In her opinion, the comments of the Committee of Experts were balanced, which could be explained by the fact that during consultations with ILO experts during the Technical Advisory Mission, the Government had been able to explain in detail its position on each legislative text and the Government's voice had been heard. The Committee of Experts had not pointed to violations of the Convention, but rather had requested the Government to continue to provide information on the implementation of the legislation in practice. Three legislative texts were mentioned by the Committee of Experts. In that respect, she indicated that Presidential Decree No. 3 on the prevention of dependency on social aid had been fundamentally altered. On 25 January 2018, Presidential Decree No. 1 had been adopted, pursuant to which a revised version of Decree No. 3 had been issued under a new title – "On the Promotion of Employment of the Population". As part of the implementation of the new Decree, ambitious and complex measures would be taken that went beyond the remit of the regional employment services. Other interested parties would need to be involved and their work coordinated. To that end, a permanent committee would be set up in each region, bringing together representatives of the executive authorities, local councils and public associations. The main way in which people would be encouraged to take up lawful labour activities was through a large-scale public information campaign to explain the guarantees offered by labour and social legislation. She further recalled that in 2016, when the

Conference Committee had first discussed Presidential Decree No. 18 of 24 November 2006 on supplementary measures for state protection of children from “dysfunctional families”, the Government had provided detailed information on the objective pursued by the legislation and its application in practice. Decree No. 18 had also been discussed in detail with the experts of the ILO Technical Advisory Mission. Thus, the Office had already been given all the necessary information. She recalled that Decree No. 18 provided for a mechanism to employ parents whose children had been taken into State care. Job placements were arranged at workplaces identified in coordination with the local authorities. The list of organizations where such parents could be employed was drawn up and periodically reviewed in accordance with the decisions of the regional executive committees and the Minsk municipal executive committee. Finally, the Committee of Experts had examined Law No. 104-3 of 4 January 2010 on the procedures and modalities for the transfer of citizens to medical labour centres and the conditions of their stay, and the information submitted by the Government in this regard. In 2016, the Committee had suggested that the Government engage in a detailed discussion with ILO experts regarding the legislative texts mentioned in the Committee’s conclusions. This discussion had taken place. No violations had been identified.

**The Worker members** indicated that the case had been double footnoted and discussed at the 2016 session of the Committee and an ILO Technical Advisory Mission requested by the Committee had taken place in June 2017. Belarus was again on the agenda of the Committee, not because of an overall improvement, but for shortcomings with regard to its application of the Convention. Firstly, the repeal of Decree No. 9, which had prevented workers in the wood processing industry from exercising their right to freely leave their jobs, was noted as a positive point. In that regard, more information needed to be provided on the practical consequences of the withdrawal of the Decree, and on whether it had indeed led to improvements in the sector. However, many important points still posed serious problems of compliance with the Convention. Urgent action was still needed in order to bring the legislation into line with the Convention. Decree No. 3 provided that Belarusian citizens who had not worked for at least 183 days in the past year should pay a special tax to finance public expenditure. The Government had justified this measure on the grounds that these citizens, as they did not work, did not pay taxes on their labour income during the period in question. Those who were not able to pay this special tax were liable to sanctions, either in the form of a fine or administrative detention involving compulsory community service, following a decision by the civil court, not the criminal court. Moreover, the functioning of the labour centres where the persons concerned performed work was very opaque. No form of external control seemed to be applicable to what took place within them. It was thus important for health and safety inspectors to be able to carry out checks on the working conditions in these centres. In reality, this policy represented an additional punishment, which simply criminalized poverty. Not only were workers affected by poverty, but they also had to suffer the sanctions of the public authorities who made workers pay for their own policy failures. As previously noted, this was, in effect, a poverty tax. The Government was thus called upon to review this policy and to make real efforts to combat financial insecurity and poverty rather than penalizing the vulnerable and the poor. The difference was fundamental. The Government had announced that Decree No. 3 had been withdrawn and replaced by Decree No. 1 of 2018. According to the Belarusian Congress of Democratic Trade Unions (BKDP), Decree No. 1 still contained numerous discriminatory provisions against persons who were out of

work, in particular by depriving them of free or reduced prices for certain services. The policy also aggravated gender inequality. When Decree No. 3 had still been in force, peaceful protests had taken place. It was of particular concern that citizens, including members of independent trade unions, who had participated in these peaceful protests, faced reprisals in the form of administrative sanctions and legal prosecutions. The restrictions on the right to peaceful protest and the repressive measures taken, were the direct consequence of the absence of the freedom of organization of trade unions, as had been already pointed out in the conclusions of the Commission of Inquiry in 2004. It was to be hoped that a new regulation respecting the fundamental rights of unemployed citizens would be adopted following the repeal of Decree No. 3, and that the regulation would focus on combating unemployment and not the unemployed. The Government was urged to restore trade union rights in full and to consult all social partners in a meaningful dialogue when drafting new regulations. Another regulation that conflicted with the Convention was Law No. 104-3 of 2010, which provided for procedures and modalities for transferring citizens suffering from addiction to medical labour centres. In these centres, people were sent to work for a period of 12 to 18 months. The Government had responded that not all addicts were sent to these centres. Such individuals needed to have been arrested several times for disturbing the peace and served with a prior warning before they were sent to such a centre. According to the information provided by the Government, over 8,000 people had been sent to medical labour centres since 2016. The Government had painted a very flattering picture of these medical labour centres as examples of rehabilitation programmes for people suffering from addiction. However, the reality was quite different. These centres appeared to be places where vulnerable people were forced to work, when they should really be receiving genuine medical and social support.

There was also Decree No. 18 of 2006, which was designed to enable the withdrawal of children from the custody of parents with an immoral lifestyle, who suffered from addiction or who were unable to raise and care for their children. Such parents were expected to contribute to the costs incurred by public institutions for the care of their children. Parents who found themselves in such a situation and were unable to reimburse the costs might be sentenced to work. Even parents who were already working faced the risk of work being imposed on them. This decision might even lead to the persons in question being dismissed from their jobs, thus leaving them entirely subject to the arbitrariness of the public authorities. Such a sentence was senseless, counterproductive and disproportionate. Moreover, parents who did not comply with the sentence were liable to criminal sanctions that could include a period of up to two years of community service or corrective labour. Apparently, there was a list of 6,770 companies willing to offer employment to people who were the subject of such decisions. It would be useful to have more information about the conditions under which these companies could make use of such a vulnerable labour force. The BKDP had also reported one case in which Presidential Decree No. 18 was used for political purposes: parents whose political views opposed the authorities had been deprived of the custody of their children, despite living in a normal and healthy situation. It was hoped that the Government could provide more information in that regard. It was notable that most issues regarding compliance with the Convention found their source in Presidential Decrees. It appeared that decrees occupied a higher place in the hierarchy of the Belarusian legal system than laws. This concentration of powers seemed to lead to too many authoritarian excesses that were putting Belarus at odds with many international standards, including Convention No. 29. The Government

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was thus invited to involve the social partners in matters relating to social legislation. Decree No. 29, which had been pointed out by the Commission of Inquiry in 2004 as being especially problematic, was still of great concern to the Worker members. The Decree ordered employers to transfer all workers to fixed-term labour contracts, and in fact nullified the provisions of the Labour Code, which prohibited temporary contracts for any person whose job was of a permanent nature. According to Decree No. 29, a worker was not free to leave fixed-term employment and could request early termination of the agreement only on the basis of a limited number of specific reasons, such as illness or the violation of labour laws by the employer. In practice, the legitimacy of the reason was determined by the employer. That suggested that a person working under temporary employment conditions could not leave his or her job during the term of the contract without the agreement of the employer. This Decree was also used as a tool for anti-union discrimination. Transfer to less desirable forms of employment had been used to punish activists and members of independent trade unions, and a disproportionate number of trade union activists and members had not had their contracts renewed when they expired. There was a clear link between the flagrant lack of freedom of association in Belarus and the use of forced labour.

**The Employer members** noted that this case was about the relationship between social measures and the general prohibition of forced labour. The Convention required member States to suppress the use of forced or compulsory labour in the shortest possible period, although recourse to forced labour could be had during a transitional period for public purposes, as an exceptional measure. On the basis of the Committee of Experts' observation, this case had been reviewed by the Committee in 2016 as a double-foot-noted case, designating very serious violations. It was to be noted with satisfaction that, as observed by the Committee of Experts, Decree No. 9 had been repealed. Another text reviewed in 2016 had been Decree No. 3, which had put in place the payment of labour taxes, and if those were not paid, compulsory work. The information provided to the Committee of Experts, and now to this Committee, indicated that a new conceptual framework had been adopted to amend Decree No. 3. The new framework shifted the focus from fiscal measures to the promotion of employment and the reduction of illegal employment. It should be recalled that the Technical Advisory Mission had strongly recommended that the text to amend Decree No. 3 should be prepared in consultation with the social partners. The Employer members requested further information on the new conceptual framework with a view to understanding its potential relationship to forced labour and urged the Government to provide a full report on the amendment process as well as its practical and legal implications. With regard to Law No. 104-3, the Employer members had previously acknowledged the Government's indication that work in medical labour centres was intended to reintegrate individuals into society and to provide them with career guidance and skills training. At that time, the Government had been asked to provide further information regarding the obligation to work during confinement. While taking note of the complex links between social measures and the obligations under the Convention, the Employer members asked the Government to provide practical information on the placing of individuals in such centres. Decree No. 18 authorized the removal of children from their families and instituted a corresponding requirement for those parents to pay for the care of those children. Such parents who were unemployed or unable to pay were subject to an obligation to work, pursuant to a court ruling. They noted that further information would advance understanding of the practical functioning of this Decree, as it was important to ensure

that its application did not exceed the purpose of rehabilitation and that it was not used as a method to exact forced labour. The Employer members asked the Government to review whether the provisions created conditions of forced labour in practice, and requested its continued cooperation with the ILO.

**The Worker member of Belarus** noted with satisfaction that the Committee of Experts had noted significant progress made towards compliance with the Convention. He questioned the inclusion of his country, once again, among the cases examined by the Committee. In keeping with the relevant international standards, the national legislation prohibited forced labour. In practice, there were no cases of compulsory labour in the country. Regarding several legislative texts examined by the Committee of Experts, it was important to highlight that Decree No. 3 had been amended by new Decree No. 1 in January 2018, following broad public consultations, and on the basis of the observations of ILO experts and the opinion of the Federation of Trade Unions of Belarus (FPB) and its member organizations. The amended Decree focused on two tasks: the promotion of employment and the encouragement of a transition from the informal to the formal economy. That would further allow the Government to better understand in which regions labour markets faced difficulties and to establish targeted national plans of action to create jobs. At the local level, interdepartmental commissions were being created to assist individuals to find suitable work. These commissions included representatives of trade unions and other public organizations. The legalization of the shadow economy was a significant concern, as every citizen needed to pay taxes. Tax evasion and the concealment of income were crimes in any country. All countries had developed tools and strategies to confront this phenomenon through creation of conditions in which citizens would be employed legally. Decree No. 1 required able-bodied citizens, who had no objective reason to avoid work, to pay for communal services at full rates, without state subsidies. It did not provide for administrative or criminal penalties that had been criticized previously. The new text established simplified processes for creating businesses, which provided additional opportunities for self-employment, and for the registration of activities of the self-employed and of small and medium-sized enterprises. Thus, no further discussion was required by the Committee on this subject. Regarding Decree No. 18, the objective of which was to protect the children removed from "dysfunctional" families, he recalled that any obligation to work in order to reimburse the State for the fees covering the care and education of children was decided by the courts. Finally, regarding Law No. 104-3, citizens suffering from chronic alcoholism, drug addiction or substance abuse and who had been involved repeatedly in administrative and other offences were sent to special institutions for medical and social rehabilitation. This measure was also applied exclusively on the basis of a court ruling and was under the control and supervision of relevant public bodies; it therefore did not create conditions of forced labour.

**The Employer member of Belarus** referred to the practical steps taken by the Government, which included the repeal of Decree No. 9, the acceptance of the ILO technical assistance provided by the Technical Advisory Mission and the revision of Decree No. 3 by a new Decree adopted on 25 January 2018. The new Decree defined a set of measures to improve assistance for finding employment for those who wanted to work. The main role in implementing such measures was assigned to local authorities. The new Decree did not provide for the use of forced or compulsory labour, nor for the payment of a special fee to finance public expenditure. Rather, it created a situation in which it became unprofitable to work illegally. That was not in contradiction with the Convention. The employers in Belarus

realized their social responsibility in the processes of the labour and social rehabilitation of certain categories of citizens referred to in Law No. 104-3 and Decree No. 18. The Law established a way to resolve problems of alcoholism and drug addiction. Along with measures of a medical nature, labour was one of the means of rehabilitation. Decree No. 18 provided for the State protection of children of “dysfunctional” families, ensuring their rights and legitimate interests. Parents who did not work and could not reimburse the State for the costs of the care of their children were subject to employment by a court decision. Both within the framework of the Law, and within the framework of the Decree, labour was not used as a punishment, but as an aid for rehabilitation. Employers provided such citizens with work, taking into account their state of health and, if possible, profession. They organized their vocational education or retraining, and participated in creating the necessary housing and living conditions. Despite the fact that this imposed an additional burden, employers in Belarus considered that both legislative texts were necessary. The existing legislation did not contain elements of forced labour and was supported and understood by the majority of the population as it aimed at addressing such socially important tasks as the protection of children, combating alcohol and drug addiction, and promoting employment. Employers in Belarus were committed to collaborating with the ILO and the Committee on a basis of mutual understanding and respect.

**The Government member of Bulgaria**, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Montenegro, Albania, Bosnia and Herzegovina, and Norway, reiterated that cases of forced labour remained a persistent phenomenon in Belarus. This case was being discussed for the second time since 2016, when the Committee had urged the Government to constructively engage with the ILO at the highest levels to resolve this issue before its next sitting and to avail itself of ILO technical assistance. She welcomed the fact that the ILO mission had taken place in 2017. With regard to compulsory labour imposed by the national legislation, she welcomed the fact that Decree No. 9 had been revoked and that Decree No. 3 had been suspended. She noted with concern, however, that a new Decree, replacing Decree No. 3 had been adopted in January 2018. She requested the Government to provide information on the purpose of the new Decree and to ensure that its provisions did not lead to situations amounting to compulsory labour. Decree No. 18 was also a matter of concern. In that respect, she called on the Government to take the necessary measures to ensure that the implementation of the Decree did not go beyond the purpose of rehabilitating “dysfunctional” families, and in particular, that it was not used for political purposes. In line with the Committee of Experts’ recommendations, she encouraged the Government to consider revising the provisions respecting the direct deduction of wages from persons in order to compensate for the expenses of maintaining their children in State child-care facilities. Finally, she noted that, pursuant to Law No. 104-3, persons interned in medical labour centres had an obligation to work or were otherwise subject to punishment, such as solitary confinement. She thanked the Government representative for the information provided on the implementation of this Law and on the number of persons who had been placed in these facilities and encouraged the Government to continue providing such information and to indicate whether the decision regarding the internment was of a judicial or an administrative nature.

**An observer representing the International Trade Union Confederation (ITUC)** said that the Government had failed to comply with the Committee’s previous request to abandon forced labour practices and to bring the legislation into conformity with the Convention. The edicts, decrees and

laws which had introduced forced labour had not been repealed. Those that had been amended had not changed in essence. Decree No. 29, which imposed fixed-term labour contracts on all workers, continued to operate. Excessive use of such contracts amounted to an escalation of forced labour as the employees could not resign before the expiry of their contracts. Decree No. 5 was still in force. It introduced a stringent criteria for hiring and a disproportionate system of punishment and fines, which in practice meant that workers’ employment relations became coercive. There was now a threat that the provisions of Decrees Nos 5 and 29 would be included in the Labour Code, as the Government had introduced a draft law to that effect. The system of forced labour in medical labour centres, where alcoholics were sent, continued to function. Parents whose children had been removed were still being forced to work. The practice of compulsory “subbotnik” was flourishing. Decree No. 3, which had obliged the unemployed to pay a fee to the State, which had caused mass protests in the spring of 2017, had not been repealed. This Decree had become Decree No. 1, which had replaced the fee with an obligation imposed upon citizens to pay for state-provided services. Forcing the unemployed to work was a violation of the Constitution of the country, which provided for the right, and not the duty, to work. He concluded by emphasizing that compulsory labour did not solve problems, but rather created them.

**The Government member of the Bolivarian Republic of Venezuela** said that forced labour should be eliminated in every part of the world. He welcomed the fact that, in its 2018 report, the Committee of Experts had noted with satisfaction the information provided by the Government, as a 2012 presidential decree contested by the Committee of Experts had been rendered null and void in 2016. He acknowledged the wide range of legislation that had been referred to, as well as the fact that Decree No. 3 and Decree No. 18 provided for strategies based on the criteria of justice and were geared towards society. Taking into account the Government’s willingness and commitment, the Committee should bear in mind the positive aspects to be taken from the explanations and arguments given in the present case. He trusted that the Committee’s conclusions would be objective and well-balanced. If that were the case, the Government would be able to consider and assess them within the framework of the implementation of the Convention, and there would be no need for the case to be re-considered by the Committee.

**The Worker member of Turkey** stated that forced labour practices had been diversified under the influence of global competition and neo-liberalism and that practices of overworking and low wages had increased. Evaluation of the forced labour situation in a country and the final decision, should be based first and foremost on the views of the representatives of the labour force in a country. In the context of globalization, it was the joint and unavoidable responsibility of all the social partners to tackle the problem of forced labour. The information provided by the FPB, the main organization representing the workers in Belarus, should be the main elements taken into account by the Committee. It appeared that no information or document had clearly indicated that forced labour existed in the country.

**The Government member of Turkmenistan** welcomed the provisions that had been introduced into national legislation in order to eliminate forced labour. The legislative activities, aimed at clarifying and further amending Decree No. 3, was a positive response to the previous recommendations of the Committee. The Government’s collaboration with the ILO and the social partners with a view to implementing international Conventions and protecting labour rights was welcome. The 2017 ILO technical mission to

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Belarus had demonstrated the commitment of the Government to comply with its obligations. Therefore the issue of the implementation of the Convention in Belarus should be removed from the agenda of the Committee.

**The Worker member of Germany** indicated that the right to work protected the freedom not to work, as well as the right to choose a profession freely. The prohibition of forced labour, as provided for in the Convention safeguarded that freedom. The Government was violating that prohibition to a considerable extent, especially with respect to persons living in precarious conditions, such as young people, people addicted to narcotic substances, and so-called “dysfunctional” families. University graduates funded from State sources would be assigned to work for one to two years after their studies. Those who did not complete this work might be required to compensate the State. The European Commission had already criticized this practice. People addicted to alcohol or other substances were admitted to so-called medical labour centres for a period of up to a year and a half, if they committed offences under the influence of the substances. They were de facto imprisoned there, and were obliged to work under often inhumane conditions. It was completely disproportionate to deprive them of their freedom merely on the basis of administrative violations. Inhumane conditions at these centres, in some cases, amounted to attempted suicide in protest. Children whose parents were alcoholics, drug addicts, or were considered to have “an immoral lifestyle” might be enrolled in care facilities operated by the State. If their parents were unemployed or unable to pay the full cost for the care, they would be compelled to work by a civil court. Such a court decision might be grounds for termination of an existing employment relationship. If they refused to comply with the decision, they faced criminal consequences, which could in turn result in forced labour. Children were also victims in such cases, as they were also traumatized by the separation from their parents. Although the Government had now withdrawn Decree No. 3, there was still a constant threat of forced labour. This situation was in stark contradiction with the basic principles of the Convention. She called on the Government to bring its law and practice into line with the Convention.

**The Government member of the Russian Federation** considered that the Government of Belarus had taken into account the comments and recommendations of the ILO supervisory bodies and interacted constructively with the ILO and the social partners. Decree No. 9 had been repealed. The Government had also carried out a comprehensive analysis of the national legislation. In 2017, Belarus had hosted an ILO technical advisory mission. The Government's efforts to introduce elements of active labour market policies and to create conditions that would encourage people to take businesses out of informality could not be ignored. Those measures were aimed at the future and were in conformity with modern trends in the world of work. The steps taken by the Government deserved the most positive assessment. The speaker called on the Committee to take note of the information provided by the Government with satisfaction.

**An observer representing IndustriALL Global Union** expressed his deep concern at the developments taking place in Belarus. The problematic issue remained Decree No. 3, as revised by Decree No. 1 of 2018. The Government claimed that the new Decree would be beneficial to the people. However, it was difficult to understand how the revision could be considered as a positive improvement, as the new Decree returned to the same logic of punishing unemployed workers who would have to pay full cost of public services subsidized by the State. In addition, the new Decree established a mechanism to collect the private information of workers, which could be further shared at all

levels of the State structure. The absence of proper protection of privacy would likely lead to a higher number of violations of workers' rights. In fact, the newly adopted Decree would force employees to stay in jobs even if the conditions were precarious and the pay was low. Moreover, since August 2018, there had been an obvious effort to eliminate independent trade union organizations, including member organizations of IndustriALL. The Chairperson of the Radio and Electronic Industry Workers' Union, Mr Gennady Fedynich, was subject to prosecution, and faced up to seven years of imprisonment. Although the case had been officially announced as only related to economic reasons, about 800 members of the union had been summoned and questioned as part of the investigation. In addition, Mr Fedynich was part of IndustriALL's delegation to the 107th Session of the International Labour Conference, but was not able to participate in the present sitting, as he had been banned from travelling abroad. In light of that case and the union's active participation in the protests against Decree No. 3, the criminal prosecutions were a clear case of retaliation for the previous union engagement in the protests. They were an attempt to eliminate those who opposed the new Decree. He thus expected and demanded that the Government respect, and guarantee fundamental trade union rights in the country.

**The Government member of India** appreciated the comprehensive update provided by the Government, and welcomed its willingness and commitment to constructively engage and cooperate with the ILO and to fulfil its obligations. He requested the Government to continue pursuing its efforts to amend the relevant laws in consultation with the relevant stakeholders, especially the social partners, and to continue providing information on any progress made in this regard. He also called on the ILO and its member States to fully support the Government and to provide any technical assistance that it might seek in this regard. The Committee should be a forum for constructive discussion aimed at improving compliance with international labour standards. He reiterated the need for ensuring greater transparency, inclusiveness, objectivity, fairness and credibility in the ILO supervisory mechanism as part of the Centenary Standards Initiative.

**An observer representing the General Confederation of Trade Unions** acknowledged that steps towards implementation of international labour standards had been taken by the Government in coordination with the social partners, including trade unions. Legislative processes took time. The constructive dialogue that had been established between the Government and the ILO had led to positive outcomes beyond the application of the Convention and extended to the application of other Conventions. They included the expansion of the mandate of the national tripartite council, the development of a mechanism for collective bargaining in enterprises with several trade unions, and the repeal of the 10 per cent membership requirement for establishing a trade union. These advances did not, however, mean that all the problems had been resolved. Inconsistencies in the application of the Convention and the lack of conformity between certain national provisions and those of the Convention that had been identified by the Committee of Experts, illustrated the need to pursue dialogue between the ILO and the Government. He therefore welcomed the willingness of the ILO to provide technical assistance and trusted that a positive resolution would be forthcoming.

**The Government member of the Islamic Republic of Iran** noted that the prohibition of forced labour in Belarus was enshrined in both its Constitution and its Labour Code. The ILO Technical Advisory Mission had visited the country in 2017. Decree No. 1 had been adopted. The Government had demonstrated its willingness to improve the situation. He supported the measures taken by the Government and



encouraged it to continue taking further measures. He requested the ILO to provide any further assistance to the Government in this respect.

**The Worker member of Sudan** pointed out that analysis of local labour laws showed that there were no provisions which would lead to forced labour. Therefore, the legislation was fully in line with international labour standards. Belarus was also fully in compliance with all the international Conventions that it had ratified. The ILO Technical Advisory Mission had visited the country in 2017 and provided the necessary technical assistance, which had led to the improvement of the relevant legislation. He thanked the Government for all its efforts in that regard and for the information provided to the Committee.

**The Government member of Switzerland** expressed concern at the provisions in the national legislation requiring certain groups of workers to perform compulsory labour. He took note of the work of the Technical Advisory Mission in June 2017. The changes noted or made in practice showed that things were moving in the right direction. The Government had assured the mission that public consultations, including with the social partners, would be held in line with the amended version of Decree No. 3. The Government was also invited to continue its efforts to bring its laws and practice into line with international labour standards, with the involvement of all stakeholders, to continue working with the ILO and to provide all the information requested on medical labour centres.

**The Government member of China** welcomed the information provided by the Government. Since the examination of the case by the Committee in 2016, progress had been made in implementing the Convention, including the improvement of legislation related to forced labour and of the capacity for law enforcement. For example, Decree No. 9 had been repealed. Decree No. 3 had been suspended and revised. To amend other relevant laws and regulations, the Government had undertaken to seek the views of the social partners and the public. It was the obligation of member States to apply ratified international labour Conventions. To strengthen their capacity in this regard, enhanced dialogue and technical assistance was the most effective approach. He hoped that the ILO would further its cooperation with the Government and provide the necessary technical assistance to solve the problem regarding the application of the Convention.

**The Worker member of the Russian Federation** indicated that special attention was paid in the Russian Federation to labour rights in Belarus because changes in Belarusian legislation that worsened the situation of workers could have an impact on the Russian legal system. He recalled the concerns raised in 2016 regarding the regulation of labour relations in Belarus and the Government's intention to institute a fee for non-working citizens which, if unpaid, could entail more serious measures, including administrative arrest. Fixed-term employment contracts that offered workers no guarantee of permanent employment were the norm, and employers commonly refused to conclude a contract in writing with employees. Yet rather than giving the State Labour Inspectorate the authority to identify and suppress such cases, Decree No. 1 would, as of 1 January 2019, unjustly inflate utility payments for housing for formally unemployed citizens. Given the shortage of jobs offering decent working conditions in Belarus, such measures would place an additional burden on workers. Fears regarding Decree No. 3 had proved justified. As a result of the civil protests in February 2018, the Decree had been suspended, but trade union activists who had participated in the protests were still being persecuted on what were considered unreasonable legal grounds, setting the stage for violations of workers' rights of freedom of association. He called on the Government to take into account the conclusions of the Conference Committee and the Committee of Experts, and

to make the necessary amendments to bring the legislation into line with the provisions of the Convention.

**The Government member of Kazakhstan** considered that Belarus was on the path of rapid development of social dialogue at all levels of social partnership. ILO membership allowed the Government to study and apply international practices in resolving social and labour disputes, developing social partnerships, and improving and regulating the labour market. The Government cooperated with the ILO on various issues, including employment. The information provided by the delegation of Belarus was complete. The ILO mission in 2017, as well as the latest legislative changes, inspired confidence that the Government would continue its interaction with the social partners and the ILO to resolve all the issues raised by the Committee. Decent working conditions could only be created through negotiations and legislation that was in conformity with international labour standards.

**The Government member of Cuba** thanked the Government for the information provided. She emphasized that the advisory mission of June 2017 was proof that the Government was willing to collaborate with the ILO. She trusted that the Government would continue its efforts to improve working conditions and ensure better protection for children and families, while also considering the legislative amendments that were necessary.

**The Government representative** thanked the members of the Committee for the discussion and indicated that all constructive suggestions and comments would be taken and examined. Belarus was a consistent supporter of the prohibition and eradication of forced labour. The prohibition of forced labour was enshrined in the Constitution as well as in section 13 of the Labour Code. Any exception to this principle could be permitted only by the courts pursuant to the Law on emergency and martial law. She reiterated that Decree No. 9 had been repealed, as the Committee of Experts had noted with satisfaction, and thus, this case should be considered resolved. She recalled that Decree No. 29 had been the subject of criticism by the Committee in 2016. The contents of the Decree had been studied by the experts during the Technical Advisory Mission, who had informed the Committee of Experts of their conclusions. Having analyzed all the necessary information, the Committee of Experts had chosen not to comment on Decree No. 29. The contents of an employment contract, its terms and working conditions, were determined by agreement between the parties, namely the employer and the employee. Neither party had the right to coerce the other party or impose unacceptable conditions. The terms of an employment contract should take into account the mandatory minimum guarantees established by labour law. Such an approach corresponded to internationally recognized practices. The comments of the Committee of Experts had become the basis for additional and thorough analysis by the Government of the application of the national legislation. The Government had also studied three regulatory acts – Decrees Nos 3 and 18; and Law No. 104-3 – and had provided detailed information on their application, which covered very limited categories of citizens who, without the active involvement of the State and society, could not return to normal life. Providing those individuals with an opportunity to work was one of the most important and effective means of their social rehabilitation and reintegration. That approach was consistent with the position of the Committee of Experts, which had been indicated in the 1979 and 2007 General Surveys on the Convention, in particular regarding the long-term unemployed who did not want to work and, for that reason, had no livelihood. In conclusion, she assured the members of the Committee that the Government would continue to be a staunch and consistent supporter of the

principles of the ILO. The Government valued its interaction with the ILO, and was ready for further cooperation to improve social and labour relations in Belarus.

The Employer members acknowledged the submissions commending the constructive interaction between the Government and the ILO and the development of social partnership and of the labour market. They took note of the amendments to certain legislative texts, the Government's explanation of the conceptual changes to Decree No. 3, as amended by Decree No. 1, and the repeal of Decree No. 9 by Edict No. 182 of 27 May 2016. Taking into account the submissions regarding the social and rehabilitative value of work, they urged the Government to continue to take all the necessary measures to suppress the use of forced labour, and to refrain from enacting legislation that could amount to the use of forced labour. They asked the Government to provide the Committee of Experts with information confirming the amendment of Decree No. 3 by Decree No. 1, as well as details on the operation of the new legal framework and its effect in practice. They further requested the Government to submit information on the implementation of Law No. 104-3 in practice, including on the number of persons placed in medical centres and the compulsory work that formed part of this rehabilitation.

The Worker members thanked the Government representative for the information provided to the Committee. However, they expressed regret that the Government did not appear to realize the serious shortcomings in its regulation in relation to the Convention. In view of the limited progress on the points addressed, a number of recommendations that had been made in 2016 needed to be reiterated. The Government was urged to take all the necessary measures to end forced labour and to refrain from adopting legislation that could give rise to forced labour. Many groups of the population were likely to be subject to sanctions imposing compulsory work. Particularly vulnerable groups were those who had not worked more than 183 days over a given period, those who suffered from addiction and parents who were unable to take care of their children. In this regard, the Government was called upon to ensure that its decrees and legislation fully complied with the Convention, in particular Decree No. 1 amending Decree No. 3, Law No. 104-3, Decree No. 18 and Decree No. 29. This task should be carried out in close cooperation with all the social partners in Belarus. The Government was thus invited to consult all the social partners when developing regulatory measures to ensure their compliance with the Convention. More attention needed to be paid to the situation in medical labour centres. The Government was therefore asked to provide the Committee of Experts with information on the supervisions carried out by the labour inspectorates in these centres. In order to eliminate all forms of forced labour, those who had imposed forced labour should be prosecuted and, if found guilty, punished with dissuasive civil and criminal sanctions. While the repeal of Decree No. 9 had been confirmed, the effects of the repeal were not yet clear. It would be useful to obtain information in this regard in order to assess whether there had been any improvement in light of the Convention. Moreover, the situation regarding freedom of association in Belarus was extremely worrying. The exercise of this freedom was severely restricted, which did not allow workers to make their voice heard effectively. In order to implement all the above recommendations, the Government was urged to seek ILO technical assistance. In order to speed up the process of bringing Belarusian legislation and practice into line with the Convention, it was also urged to accept a direct contacts mission by the ILO.

## **Conclusions**

The Committee took note of the oral statements made by the Government representative and the discussion that followed.

Further to the Committee's 2016 conclusions and the Government's actions as a result, the Committee noted the Government's explanation of the conceptual changes to the framework of Presidential Decree No. 3 of 2 April 2015 as amended by Decree No. 1 of 25 January 2018 and the repeal of Decree No. 9 of 7 December 2012 by Presidential Decree No. 182 of 27 May 2016. However, the Committee noted with concern the possible exaction of forced labour as a result of the operation of the other Presidential Decrees, which have not been amended.

Taking into account the Government's submissions and the discussion that followed, the Committee recommended the Government to:

- continue to take all measures to suppress the use of forced labour and refrain from enacting legislation that may amount to the use of forced labour in full compliance with Convention No. 29;
- provide to the Committee of Experts information related to the operation of the provisions of Presidential Decree No. 182 in law and its effect in practice;
- provide to the Committee of Experts information confirming the amendment of Presidential Decree No. 3 by Presidential Decree No. 1, including information related to the operation of this new framework in law and practice;
- continue to provide information on the implementation of Law No. 104-3 in practice including the number of persons who are placed in medical centres and the compulsory work that forms part of this rehabilitation; and
- continue to accept technical assistance to ensure continued measures to achieve compliance with Convention No. 29 in law and practice.

The Committee encouraged the Government to continue to constructively engage with the ILO to work to suppress the use of forced labour and to report on these measures at the next meeting of the Committee of Experts.

The Government representative indicated that her Government was committed to compliance with international labour standards and would send additional information to the Committee of Experts to facilitate a better understanding of measures taken to implement the Convention. She underlined that the purpose of the measures taken by her Government was to combat certain undesirable phenomena such as alcoholism and drug addiction through assistance, rehabilitation and support services to protect children.

## **ERITREA (ratification: 2000)**

A Government representative stated that the observations made on 30 August 2017 by the International Organisation of Employers (IOE) and the comments made by the Committee of Experts and the Conference Committee in this regard had been noted by the Government. In 2000, Eritrea had ratified both forced labour Conventions and always remained engaged in matters related to the Conventions. The Eritrean struggle was not only for independence, but also for social justice and ensuring its rights from the colonial rulers. Regarding the issue of compulsory national service, the Government's position needed to be reiterated as it had been stated in the Conference Committee in 2015. He hoped that the discussion would lead to a clear understanding of the issue and a fruitful conclusion. The national service programme was at the centre of nation building and the upbringing and preparedness of the new generation towards that end. Eritrea had introduced the national service programme in 1995 through Proclamation No. 82/1995 against the backdrop of massive demobilization of the Eritrean Liberation Army after independence. In certain ways,

it was also seen as a contingent security architecture which would allow the young nation to maintain a very small regular army with the latitude to mobilize the necessary force if and when it faced existential threats. The need for a dynamic effort for a robust framework of regional security and development was also considered essential. In normal times, national service by law was limited to 18 months, 12 months of which were generally spent on public works in community or development assignments and the remaining six months on military training in the Sawa Education and Training Centre. They were also part of the reserve army eligible for recall if and when war broke out or any demand arose due to any national security challenge. This was compatible with the definition of “normal civic obligation” provided for by Article 2(2)(b) of the Convention. The work exacted was aimed at the best interests of the nation and the community, not for the benefit of private companies or individuals. It focused on reforestation, soil and water conservation, reconstruction projects and food security programmes. Overall, the purpose for which it was used was limited to what was strictly required in the prevailing situation as a pre-requisite for the existence of the nation. The national service programme had been affected by existential external threats over the past 20 years. Ethiopia’s continued occupation of sovereign Eritrean territories constituted a flagrant violation of international law, fundamental provisions of the United Nations Charter and the 2000 Algiers Agreement signed by the two countries. It also constituted a violation of the Eritrean people’s right to sovereignty, development and the right to live in peace without any threats. However, the international community, in particular the United Nations Security Council (UNSC), had not taken any appropriate measures to address the problem. Consequently, Eritrea had no option but to take the necessary measures of self-defence that were proportionate to the threat it faced.

Despite the prevailing challenges, the Government had taken various measures to transform the national service system and address the unintended consequences. For example: (1) the Commission for Demobilization had been established in 2001 and had demobilized over 105,000 soldiers from national service from 2001 to 2005. The project envisaged the full demobilization of the army, but had been discontinued when Ethiopia rejected the decision of the Eritrea Ethiopia Boundary Commission; (2) large scale demobilization practices had continued on various grounds through local resources, especially for women and other segments of society; (3) in the past five or six years, all graduates of the national service programme had been directly enrolled in different education institutions and deployed in various areas of work after finishing their studies. The one year of community or development service in most cases was thus deferred to take place at any convenient time. Most of the recent graduates were covered by the new remuneration system established in 2016, which had introduced a substantial increase in the salary of the civil service; and (4) the communal services were intended to promote social service and the dignified life of the population. Members of the community were frequently consulted through the popular local governance system and were involved both as beneficiaries and active participants on the need for such services. Due to the prevailing situation described repeatedly, national service members were called upon to perform non-military activities in the specific circumstances described, which was confined to genuine cases of force majeure. In times of peace, national service members did not have any other obligations once they had fulfilled their obligation of service for 18 months. The duration of national service had been prolonged due to unrelenting threats and a protracted state of belligerency by Ethiopia. Therefore, the extended obligations imposed on the population in general and national service members in

particular were compatible with the provisions of Conventions Nos 29 and 105. Neither forced nor compulsory labour had been exacted in the country in violation of the Conventions. In terms of the legal and institutional context of the State, national service constituted an exception to forced labour under article 3(17) of Labour Proclamation No. 118/2001, which provided that normal civic obligations, labour performed as stipulated in the Penal Code and communal or development services rendered in the situation of existential external threats were not considered as forced labour. The legitimacy of the ongoing practice of qualifying military and non-military service as force majeure under Convention No. 29 was thus unambiguous. He emphasized that peace, security, human rights and development were interlinked and constituted a fundamental principle of the international system. The existential external threats faced by Eritrea and the failure of the international community, in particular the UNSC, to address the pertinent threats faced by Eritrea could not be underestimated. The Government of Eritrea categorically rejected the allegations made and reiterated its stated position that the Committee had to consider these objective realities, drop the allegations and continue to expand and strengthen engagement with Eritrea in a meaningful way. Regarding the IOE’s claim that “the illegal occupation of Eritrean territory by Ethiopia does not amount to a genuine situation of emergency and, as such, recourse to compulsory labour couldn’t be justified”, he stated that it negated the concrete reality in the country, the fundamental principle of the international system on the interdependence of peace, security and development, as well as the provisions of Article 1(b) of the Convention. Contrary to the IOE’s assertion, Eritrea did not exploit forced or compulsory labour for economic development as a systemic approach aimed to replace the labour system. All forms of compulsory labour exacted in Eritrea met the criteria of minor communal services. This work, accomplished under the duress of existential threats, was consistent with the parameters provided for in Convention No. 29. Moreover, it also warranted the mobilization of labour for the purpose of economic development in the context of Convention No. 105. In line with the ratified Conventions on forced labour and its abolition, and following the border war with Ethiopia, the Committee had requested Eritrea to provide reports and information, indicating that work exacted from the population as part of compulsory national service in Eritrea was equated to forced labour. The Government of Eritrea had provided several written reports and information to the Conference Committee and the Committee of Experts indicating that no forced labour had been practiced in the Bisha Mine. In conclusion, he hoped that all the efforts made so far, including the information included in this statement, would instil an objective understanding of the prevailing reality leading to the termination of unwarranted allegations of forced labour and related observations. He also reiterated the Government’s commitment to continue its engagement with the relevant bodies in the future.

**The Worker members** recalled the gravity of the issue and the inability of the Government to resolve it satisfactorily, even though the use of forced labour in Eritrea had already been discussed during the 104th Session of the International Labour Conference in 2015, since when the Government had not requested technical assistance from the Office. The alarming events reported in 2015 (murders, torture, kidnappings, inhuman detention conditions) remained the same in 2018 and had been confirmed by many international bodies, such as the United Nations Commission of Inquiry on Human Rights in Eritrea in June 2016, and the Special Rapporteur on the situation of human rights in Eritrea in June 2017. Poor diplomatic relations with Ethiopia could not be used to justify the serious violations that were occurring. It was to be hoped that the Committee’s 2018

discussion would convince the Eritrean Government to make every effort to bring its legislation and practice into line with the Convention. Compulsory national service, pursuant to the Proclamation on National Service No. 82 of 1995 and the 2002 statement concerning the Warsai Yakaalo Development Campaign (WYDC), remained the source of the problem. Although national service was time-limited in theory, the WYDC had allowed conscripts to be mobilized for an unspecified period. Moreover, national service involved various activities, such as construction and agriculture, that were not purely military and therefore fell outside the scope of the exception provided for in Article 2(2) of the Convention. As the Committee of Experts had recalled, that condition was explicitly intended to prevent the requisitioning of conscripts for the performance of public works or development work. However, it had been reported that some conscripts had been made available to private enterprises, particularly in the mining sector. The Abolition of Forced Labour Convention, 1957 (No. 105), also prohibited the exaction of forced labour as a method of mobilizing and using labour for the purpose of economic development. That was how Convention No. 29 should be interpreted. One of the stated objectives of the WYDC was precisely “investing in development work of our people as a potential wealth”, that is, promoting economic development. A further exception to the prohibition of forced or compulsory labour provided for in the Convention was force majeure, defined in a restrictive manner as a sudden, unforeseen happening calling for instant counter-measure. However, in view of the extremely long periods for which the workforce was required, it could not be considered that the Eritrean Government was mobilizing a large proportion of its population to deal with a sudden and unforeseeable event. It could not, therefore, invoke the force majeure exception. The Government took the view that such measures were intended to prevent future instances of force majeure. Such an interpretation, quite apart from being incompatible with the unpredictable nature inherent in force majeure, was unacceptable, as it would allow States to take measures that seriously restricted fundamental rights against the possibility of a hypothetical force majeure, which would set a dangerous precedent.

The institutionalization of forced labour was evidenced by the serious penalties incurred by Eritreans who sought to avoid the obligation, including prison sentences, suspension of rights, reprisals against family members, and non-renewal of trading licences. Forced or compulsory labour was defined in Article 2(1) of the Convention as all work or service which was exacted from any person under the menace of any penalty and for which the said person had not offered himself voluntarily. The Worker members reiterated their concern with regard to the impact of the WYDC on women and children. Although the law stated that national service was to be performed from the age of 18, various reports indicated that almost one third of new conscripts in military training centres were below that age. Students who completed their studies were obliged to submit to intensive military training in SAWA and then to continue their studies under military authority. They were then transferred directly to the national service programme. Very often students had to work in agriculture, sometimes for up to one or two months, in addition to their military training and their studies. Women were particularly vulnerable to harassment and sexual violence. They were also forced to perform domestic work for officers, in addition to their work in the framework of their compulsory military service. It was regrettable that the measures taken to demobilize conscripts and reintegrate them into the public service, including through the determination of a wage scale for those who had fulfilled their obligations and the establishment of a specific status for them, had been abandoned. It was to be hoped that the Government would relaunch that

process. The Government’s statement that the objectives of the WYDC were confined to what was strictly necessary to respond to the requirements of the national situation were tantamount to adding a criterion to the text of the Convention by making use of the concept of proportionality to justify violations of the fundamental rights of the population. However, the issue of proportionality only arose in the context of force majeure, which could not be invoked in the present case. The observations of the Committee of Experts and of the Conference Committee were reinforced by those of other organizations. The Human Rights Council had called on Eritrea to engage in far-reaching legal and institutional reform. In June 2017, the Special Rapporteur had been obliged to note that the Government had not made any effort to give effect to the recommendations of the Commission of Inquiry. The same applied to the recommendations that the Conference Committee had made to the Government in 2015. Compulsory national service, as currently implemented, was a violation of the fundamental rights of the citizens of Eritrea. It was necessary to give effect to the recommendations made by the Committee in 2015, and to those of the Commission of Inquiry of the United Nations Human Rights Council to repeal the 1995 Proclamation on National Service and to bring an end to the WYDC. The Government was invited to consider ratifying the Protocol of 2014 to the Forced Labour Convention, 1930, which would usefully supplement the policy of dismantling forced labour that needed to be adopted.

**The Employer members** recalled that the case essentially involved two national instruments that violated the Convention, namely the Proclamation on National Service No. 82 of 1995 and the 2002 Declaration on the Warsai Yakaalo Development Campaign (WYDC). While conscription into military service was initially limited to 18 months, the war between Eritrea and Ethiopia had led to a lifting of the cap. According to the Government, national service was intended for both military and development purposes. In other words, conscripts could be used in a variety of activities, some of which were purely of a developmental and/or economic nature. However, under the Convention, the use of involuntary labour for non-military work was only permitted in very limited circumstances. When discussing the case in 2015, the Conference Committee had been highly concerned at the continued state of forced labour in Eritrea and urged the Government to seek ILO technical assistance to ensure compliance with the Convention. Following the Committee’s 2015 conclusions, both the IOE and the International Trade Union Confederation (ITUC) had made observations in which they expressed concern at the situation. Noting with regret the Government’s failure to provide a report, the Committee of Experts had strongly urged the Government to take the necessary measures to bring an end to the generalized and systematic practice of the exaction of compulsory labour from the population in the context of the obligation of national service. In 2017, the Committee of Experts had adopted an observation, based on the observations by the IOE and responses thereto provided by the Government. The IOE emphasized the urgency of bringing an end to forced labour in Eritrea, and observed that, despite the commitment to work towards that goal, the Government had not sought ILO technical assistance nor demonstrated any will to cooperate with the ILO. The Government reiterated that demobilization had been interrupted and national service prolonged because of the need to take action vis-à-vis Ethiopia’s state of belligerency. Moreover, the Government was adamant that the work exacted from the population under the WYDC was limited to the benefit of the community, and was not for the profit of private companies or individuals. Consequently, according to the Government, there was no systematic practice of compulsory labour. In its observation, the Committee of Experts noted that, according to the

latest reports of the bodies appointed by the United Nations Human Rights Council, the Government had still not taken steps to reform the national service programmes. The Committee of Experts also noted with deep concern that there was no progress by the Government to harmonize its law and practice with the Convention. While it was understandable that the Government wanted to be prepared to defend its borders, it had ratified Convention No. 29, which placed limits on the permissibility of some actions. National legal instruments needed to be harmonized with the provisions of ratified international labour standards. The Government's statement in reply to the observation confirmed that conscription went beyond the limit of 18 months, and military conscripts were used to perform non-military work or activities, including economic activities supposedly for the benefit of the community. However, the interpretation of the facts was controversial. Both the Conference Committee and the Committee of Experts had repeatedly found that the situation in Eritrea amounted to forced labour and was in conflict with the Convention, whereas the Government believed that the conscription programme and the non-military activities performed under the WYDC were justifiable as exceptions under Article 2 of the Convention. The Government had also highlighted that it had taken steps to reduce national service by enrolling many conscripts into the civil service, with improved remuneration. While the Government's efforts could demonstrate its intention to follow through on its commitments on demobilization, there were still concerns about those who remained in extended national service, and those who were used in compulsory non-military work. If the Government was committed to complying with its obligations under international law, it needed to take the necessary steps to amend or repeal the national instruments that were in conflict with the Convention. Regardless of their justification, the Proclamation on National Service and the WYDC violated the Convention. In conclusion, the delay in harmonizing national law and practice with the Convention, the number of observations and recommendations by the Conference Committee, the Committee of Experts and other international bodies, and the Government's continued failure to seek assistance from the ILO in that regard justified viewing this case as a serious case of non-compliance.

**The Worker member of Eritrea** thanked the Committee for giving him the opportunity to intervene and correct certain misconceptions about his country. He expressed concern at the prescriptive approach taken by the Committee of Experts and the IOE concerning the application of the Convention by Eritrea, without having any discernible evidence of the allegations and without considering the reality in Eritrea. Eritrea's genuine approach on grass-roots indigenous development had not been understood. Without visiting the country, it was virtually impossible to understand the Eritrean reality, the spirit of community belongingness and the people's passion for peace, stability, growth and prosperity. Eritrea had its unique vision for the future. The country was indeed still facing socio-economic development challenges and was ravaged by war and geopolitical agendas. However, despite all the hardship, it had managed to retain the most cherished values – honesty, integrity, hard work, community and civic duties, for sustainable nation building. It was hoped that the success achieved in implementing the Millennium Development Goals would be further extended during the realization of the Sustainable Development Goals. Regarding the allegations of forced labour, it was inconceivable that a country that was born from the painful struggle for its self-determination and human rights could allow the violation of the human rights of its people, including the systematic use of forced labour in contravention of the country's values and the principles of the Convention. Eritrea had ratified all the fundamental ILO Conventions, except the Worst Forms of

Child Labour Convention, 1999 (No. 182), which was under consideration, and was fully committed to their implementation. The principles of the Conventions were enshrined in the Labour Law, No. 118 of 2001. Eritrean trade unions were active, also in cooperation with international confederations and with the ILO, to protect workers' rights. In order to discuss the Decent Work Agenda and in particular forced labour and labour migration in Africa, an International Solidarity Conference had been organized, in collaboration with the ILO, in Asmara in March 2016, which had been attended by more than 25 national trade unions, the ITUC and the Organization of African Trade Union Unity (OATUU). Participants at the conference had visited, inter alia, the Bisha Mine. Following the visit, many of the employees of the Bisha Mining Company had been unionized. He added that a formal response had been provided in response to the report of the Commission of Inquiry on human rights in Eritrea, specifying that, in compliance with Article 25 of the Convention, the illegal exaction of forced labour or compulsory labour was punished as a penal offence in Eritrea under the Penal Code, and that section 3(7) of the Labour Proclamation No. 118/2001 provided that the obligation of national service did not constitute forced labour. Eritrea made use of the exceptions under Article 2(2) of the Convention, which included compulsory military service, as well as work which formed part of the normal civic obligations of Eritrean citizens. Eritrean trade unions also regularly ensured compliance with Article 9 of the Convention. While disagreeing with the observations of the Committee of Experts, which equated national service to forced labour, he reiterated his commitment to preventing any such practice should it occur in future. It was to be hoped that the Committee would engage in genuine dialogue with all partners to obtain real information about the situation in Eritrea.

**The Employer member of Eritrea** stated that it was a procedural violation for the IOE to submit observations on Eritrea to the Committee of Experts without having consulted the Employers Federation of Eritrea (EFE), as a member of the IOE. The allegation therefore had neither legitimacy nor credibility. It was factually baseless. He therefore called on all IOE members to join the EFE in rejecting the unrealistic allegation. The issue of forced labour in the national service programme had been raised in 2015 by the ITUC and then by the IOE in 2017 without substantive information from their respective affiliates. As a matter of fact, the Government was continuously taking measures to mitigate the economic burden of national service members and other employees. At the end of 2015, a new salary scale had been introduced for members of national service, and demobilization was underway. The report of the United Nations Special Rapporteur, on which the Committee of Experts had based its comment, was highly debatable and lacked credibility on many grounds. In general, the allegation was outdated and lacked information on the recent developments regarding the issue under discussion.

**The Government member of Bulgaria**, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Norway, the former Yugoslav Republic of Macedonia and Montenegro, emphasized that the promotion and universal ratification and implementation of the core labour standards was part of the European Action Plan on Human Rights, adopted in July 2015. Eritrea was a Party to the Cotonou agreement, the framework for cooperation with the European Union which required Parties to respect democracy, the rule of law and human rights principles, including the abolition of forced labour. The Proclamation on National Service and the WYDC of 2002 did not comply with the Convention as they established a generalized and systematic practice of the exaction of compulsory labour from the population.

She noted with deep concern that a large part of the population could be forced into conscription, that work could be required for an indefinite and arbitrary period of time, and that much of this work went far beyond the exceptions authorized by the Convention. She deeply regretted that, despite previous recommendations of the Conference Committee and the Committee of Experts, the Government had not taken any measures to amend or repeal the legislation. The threat of war should not be taken as a justification to compel a population to undertake compulsory labour for purposes outside the scope of military service or beyond genuine cases of emergency or force majeure. She urged the Government of Eritrea to tackle this situation and respond positively to the ILO's offer of cooperation and technical assistance and recalled that the EU remained ready to assist Eritrea in meeting its obligations in terms of democratization, human rights and the rule of law, and to support its economic and sustainable development.

**The Worker member of Nigeria**, also speaking on behalf of the Organisation of Trade Unions of West Africa (OTUWA), recalled that Nigeria had operated a one year national service programme which had been instituted after Nigeria's civil war, while that of Eritrea was linked to its conflict with Ethiopia. However, Nigeria's national service programme did not exact forced labour. Its objective was for youth to appreciate the essence of patriotism as well as to consolidate national unity and to provide them with first-hand work experience. The Government of Eritrea was urged to avail itself of ILO assistance to effectively reform and transform its national service legislation and practices to promote youth social and economic empowerment in accordance with the Committee of Experts' recommendations. Nigeria had a similar experience of a disagreement with a neighbouring State, and the conflict had been resolved amicably with the assistance of the international community. In response to the appeals made by Eritrea, he called for robust technical assistance through the ILO to coordinate an inter-UN agency process for effective follow-up to the peace accord to end the situation of "no war no peace".

**The Government member of Sudan** thanked the Government of Eritrea for its great interest in workers and labour matters, as well as in the comments of the Committee of Experts. She affirmed that: (a) the Convention provided that national service was not considered as forced labour when a State was confronted with an emergency; (b) the tripartite constituents in Eritrea had taken action through a number of initiatives taken by the Eritrean Workers' Confederation and sought the resolution of the issue with the Government following the observations made by the ITUC; and (c) it was important to welcome and praise the positive developments undertaken by the Government of Eritrea. She suggested that it would be better to stop raising the issues mentioned in the observation of the Committee of Experts altogether and to work jointly with Eritrea to support it in implementing international labour standards.

**The Worker member of South Africa** echoed the concerns of the Worker members over the indefinite military service for conscripts and the lack of viable socio-economic opportunities for youth. Prolonged national military service was the primary reason for fleeing Eritrea: in 2016 and 2017, Eritrean refugees had constituted the fifth largest group of arrivals in Europe via the Mediterranean Sea. According to the International Organization for Migration, 1,184 Eritreans had arrived by sea in Europe since the beginning of 2018. The United Nations estimated that one tenth of the Eritrean population had fled in recent years. The situation was alarming and the lack of individual and collective economic activities could not be sustained. However, by exploiting conscripts for civil and economic purposes, the Government was contravening international law. Working for up to 15 years, without income, in the context of so-

called civic obligations and national duty and under a façade of perpetual military duties could no longer be tolerated. The 2017 report of the Special Rapporteur on the situation of human rights in Eritrea indicated that Eritrea's national service programmes "continued to be arbitrary, extended, and involuntary in nature, amounting to enslavement, as per the findings of the Commission of Inquiry". The new measures to demobilize conscripts and to rehabilitate them in the national civil service, including the introduction of a salary scale was encouraging, but not sufficient. Such efforts needed to be further strengthened and extended and include the adoption of a broader employment and poverty eradication policy in both the public and private sectors. The Government should therefore be urged to accept the ILO's technical assistance to develop a time-bound plan of action.

**The Government member of Algeria** noted with satisfaction the new measures adopted to organize national service and vocational training within the framework of the country's development programme, in spite of a very difficult situation. He encouraged the Eritrean Government to continue its efforts to meet its obligations under the Convention, in collaboration with the ILO.

**The Worker member of Zambia** stated that allegations of violations of workers' and human rights as serious as forced labour needed to be based on solid facts and information. A team of 25 international trade unionists had travelled to Eritrea in 2016 and visited the Bisha Mine, in relation to which allegations of forced labour had been made. No incidents of forced labour had been observed. However, in view of the serious allegations, the Conference Committee, the Committee of Experts and other interested parties should undertake a fact-finding mission to Eritrea to: (a) gather first-hand information on the current situation; (b) objectively assess the progress made by the country in the area of human and trade union rights; and (c) identify challenges and propose the way forward for further improvement in these areas. All trade unions and international organizations were urged to continue supporting the National Confederation of Eritrean Workers in capacity building and international trade union solidarity.

**The Government representative** called for a complete understanding of the issue which could lead to a real solution. It was sad to hear comments that the force majeure in the country was false, when the issue of the national service programme was directly related to the extensive occupation of Eritrean territory by Ethiopia. Peace was a precondition for implementing international labour standards and occupation did not allow for that to happen. In this context, solidarity was essential for development. The fact that national service members had participated in non-military activities was not denied by the Government. However, it had been performed due to the force majeure, not for the purpose of economic development. Eritrea would not have imposed forced labour on its own population; on the contrary, it wanted to abolish forced labour altogether. However, even if legislation was amended, the root cause of the problem would still remain, namely, the occupation of Ethiopia, which needed to be addressed. The discussion based on the unwarranted allegations did not help Eritrea to apply international labour standards. The Government did not reject any technical assistance, provided that it addressed the root causes of forced labour and led to peace and re-stabilization. Considering the seriousness of the circumstances which were not fully understood by others, Eritrea had had to take unilateral action. Furthermore, Eritrea had started and would continue to improve the situation. In this regard, the measures undertaken included the introduction of an adequate salary scale for members of the national service and the rehabilitation of former national service members within the civil service. The WYDC had only been implemented between 2006 and 2015 and had been terminated

since then. It was also necessary to clarify that the allegation of the involvement of children under 18 years was not true.

**Another Government representative** highlighted the procedural issue regarding the submission of the IOE's observations. The fact that the EFE, as a member of the IOE, had not been consulted before the submission of the observations to the Committee of Experts needed to be taken into consideration. He added that, considering the reconstruction and development process of European countries in history, Eritrea should not be treated differently. Due to the continuation of force majeure, there was no alternative to the national service programme. For the same reason, no specific time frame could be established in this regard. In conclusion, he again underlined that Eritrea was willing to engage with the international community and was open to the technical assistance proposed. However, mutual trust was vital and any cooperation should come with a better understanding of the real situation in Eritrea.

**The Worker members** thanked all speakers and the Government representatives from Eritrea for the information they had provided to the Committee. Although peace, stability and rights were closely linked, it was regrettable that the Eritrean Government had cited in its defence the difficult diplomatic situation with neighbouring Ethiopia to justify its institutional abuses against the Eritrean population and the denial of basic human rights. It was also regrettable that the Government continued to understate and deny the very serious violations in question. It was necessary to put an end to open-ended national service by suspending the WYDC and repealing the Proclamation on National Service. It was also important to end the use of conscripts for work that was not of a strictly military nature. Many reports suggested that conscripts were working for the private sector, which found in them a labour force that was submissive, because they were oppressed and cheap. That must stop. The Government of Eritrea should finally recognize that the situation in the country did not allow it to invoke force majeure to justify the completion of non-military tasks as part of compulsory national service. It should bring an end to the military conscription of children, a practice which was not tenable in the country or acceptable at the international level. The Government should also take urgent measures to protect female conscripts from harassment and sexual violence. The Worker members asked the Government to explain the many allegations of killings, torture, kidnappings and other abuses within the framework of national service. It was critical for Eritrea to change its image as a penitentiary colony. To that end, the Government must shut all secret detention centres, guarantee the safety of detainees, ensure they had access to medical treatment and provide adequate detention conditions, in accordance with international law. It should also put a stop to reprisals against the families of people who had fled the country. An independent mechanism should be established allowing conscripts to file complaints of mistreatment and obtain redress when they had been harmed within the framework of their work obligations. As recommended in 2015, the Government of Eritrea should request the ILO to provide technical assistance with a view to developing an action plan, in consultation with the social partners, to revise military service legislation. It should also put in place a national employment policy and a policy on eradicating poverty.

**The Employer members** concluded that the key to the issue was that the Government recognized that national service was taking place, but justified it as the force majeure exception under the Convention. In view of its continuing non-compliance with the Convention, including with respect to the use of the force majeure exception, the Government was encouraged to avail itself of the technical assistance of the ILO and was urged to cooperate with the

ILO, including by submitting reports based on the recommendations of the Committee.

**The Government representative** raised a point of order and stated that the discussion should be limited to issues raised under Convention No. 29, while some political issues such as those mentioned by the Worker members, did not fall within this scope. He again raised the question of whether the IOE had the right to submit observations without having consulted the EFE. He asked for explanations from the IOE.

**The Employer members** clarified that the IOE had not made a complaint to this Committee in relation to the case under discussion.

### Conclusions

**The Committee took note of the oral information provided by the Government representatives and the discussion that followed relating to the large-scale and systematic practice of imposing compulsory labour on the population for an indefinite period of time within the framework of programmes related to the obligation of national service. These members of the national service also perform other duties, including a whole range of economic activities. The obligation to perform compulsory national service was stipulated in the Proclamation on National Service of 1995 and the Warsai Yakaalo Development Campaign of 2002.**

**The Committee noted that the Government has declared that the Warsai Yakaalo Development Campaign is no longer in force, that a number of conscripts have been demobilized and are now under the civil service with an adequate salary. In view of these specific circumstances, the Government has declared that the exceptions to Article 2(2) of Convention No. 29 relating to cases of emergency justify the prolongation of the duration of conscription beyond the statutory 18 months established in the Proclamation on National Service of 1995.**

**Finally, the Committee noted the Government's statement that it wished to avail itself of technical assistance.**

**Taking into account the Government's submissions and the discussion that followed, the Committee urged the Government to:**

- **amend or revoke the Proclamation on National Service to bring to an end forced labour;**
- **ensure the cessation of the use of conscripts for the execution of forced labour in line with Convention No. 29;**
- **avail itself without delay of technical assistance in order to fully comply with its obligations under Convention No. 29; and**
- **report to the Committee of Experts before 1 September 2018 on its progress in implementing the conclusions of this Committee.**

**The Government representative** indicated that procedurally, his country had been treated in a different way than other countries. As it was not known who had sent observations to the Committee of Experts on the application of the Convention in his country, the allegations should have been discarded from the outset. The Conference Committee had not taken into account the real situation on the ground so as to formulate an accurate opinion on the seriousness of the root causes standing in the way of full implementation of the Convention. Consequently, this genuine case of force majeure which was compatible with the Convention was not being acknowledged as such. The Committee was highly dependent on unrelated and unreliable external sources of information and mistrusted the Government's statements concerning, for example, the obsolescence of the WYDC. There was no appreciation of the mitigating measures taken by the Government, such as for example, the progress made in improving the salary scale of the National Service members and integrating them in the civil service. The Government would consider ILO technical assistance provided the assistance led to addressing the root causes of the problem.

**Labour Inspection Convention, 1947 (No. 81)**  
**Labour Inspection (Agriculture) Convention, 1969 (No. 129)**  
*Republic of Moldova (ratifications: 1996 and 1997)*

His Government believed that human rights were indivisible, interdependent and universal and remained fully committed to them including in the area of labour. Even though his Government was engaged to work jointly with the ILO on all outstanding issues with technical support to mitigate the root causes, he hardly agreed with the conclusions as they were mainly the result of unrealistic information that did not reflect reality.

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**Labour Inspection Convention, 1947 (No. 81)**  
**Labour Inspection (Agriculture) Convention, 1969 (No. 129)**

**REPUBLIC OF MOLDOVA (ratifications: 1996 and 1997)**

A Government representative said that a complex process of reforms was being implemented to bring national legislation, including in the field of labour, into compliance with the instruments referred to in the Association Agreement of 2014 between the European Union (EU) and the Republic of Moldova. During 2016 and 2017, there had been a fundamental reform in the field of state control of entrepreneurial activity, including a reduction from 58 control bodies to 13 authorities and five authorities with regulatory functions. The main purpose of the reform had been to simplify the control procedures, to move to risk-based inspections and to eliminate overlapping competencies among control bodies. As a result of the reform, labour relations had been retained under the competence of the State Labour Inspectorate, while occupational safety and health had been transferred from the State Labour Inspectorate to ten sectoral agencies. The Ministry of Health, Labour and Social Protection was the central body of the public administration responsible for promoting occupational safety and health policy. The State Labour Inspectorate monitored and coordinated compliance, reporting to the central authority the action related to monitoring occupational safety and health carried out by the ten sectoral agencies. Under the reformed institutional framework, employers in all areas of economic activity were monitored in the field of occupational safety and health. In agriculture, this was done by labour inspectors from the National Food Safety Agency. With respect to the allocation of resources, each of the authorities with functions in the field of occupational safety and health were responsible for budgetary planning to ensure the proper implementation of their labour inspectors' activities. The State Labour Inspectorate held training activities for labour inspection, including those with control functions in the field of occupational safety and health, and four inspectors from three agencies had received such training. No interference was permitted in the work of labour inspectors. The Government was in the process of drafting legal acts in order to establish the status of labour inspectors in accordance with ILO Conventions, to be independent of changes of government and of improper external influences. Inspectors in the ten authorities had the right to require and get the support of experts and specialists from other relevant institutions in order to perform occupational safety and health inspections. The State Labour Inspectorate, as a national coordinating body, had the duty to elaborate the labour inspection report, with the participation of the ten competent agencies.

She indicated that labour inspectors with control responsibilities in the field of occupational safety and health had the status of civil servants, except for those who were employees of the National Energy Regulation Agency and the National Regulatory Agency for Electronic Communications and Information Technology. The Government intended to modify the national legislation to include those two agencies. With regard to ensuring a sufficient number of inspectors, 36 personnel out of 43 labour inspectors of the State Labour Inspectorate had been transferred to six

newly established authorities with control functions in the field of occupational safety and health, including the budgets for their salaries. There were a sufficient number of inspectors, and inspectors also had competences in the field of activity of the respective agencies. The majority of agencies with occupational safety and health responsibilities had territorial offices. While the Law No. 131 on state control of entrepreneurial activity stated that a planned control could only be carried out in an enterprise no more than once a year, that did not prevent unannounced controls whenever necessary in order to ensure the application of labour legislation and occupational safety and health standards. Law No. 131 had been amended by Law No. 185 of 21 September 2017, to remove the requirement for prior notification of inspections. The number of infringement reports for violations of labour legislation had decreased following the implementation of Law No. 131 in 2013. A six month moratorium on labour inspection had been declared in 2016. Law No. 185 of 2017 amended the Contravention Code to introduce new fines for employers who were not meeting their occupational safety and health obligations under national legislation. Pursuant to Law No. 140 on state labour inspection of 2001 and the Law on safety and health at work, labour inspectors were required to keep confidential the source of any complaint. The modification of the provisions of Law No. 131 removing the requirement for prior notification would ensure that the fact that a control was carried out following a complaint would not be disclosed. The ILO mission undertaken in December 2017 had assisted in focusing on the main issues requiring improvement in the occupational safety and health system. The Ministry of Health, Labour and Social Protection had already undertaken certain administrative and organizational measures in order to implement the mission's recommendations and accelerate the control process in the area of occupational safety and health.

The Employer members recalled that, following a representation made in 2013 by the National Confederation of Trade Unions of Moldova (CNSM), the Governing Body had set up a tripartite committee, the report of which had been published in March 2015, and that the decision to close the representation at that time had been related to the adoption of national measures to give effect, in particular, to Articles 12 and 16 of Convention No. 81. ILO technical assistance, proposed in 2015, had finally been requested by the Government and had been able to begin in February 2017. The national authorities had wished to verify whether their draft reforms of the labour inspection services were in conformity with ILO standards. Despite the efforts made within the framework of the technical assistance, the Committee of Experts, by proposing to include this national situation on the list of cases of serious failure on the occasion of the present session of the Conference, had given a clear indication of non-conformity. The Employer members expressed concern at the issues raised by the Committee of Experts, namely: the existence of a central authority that was still effective and functional to coordinate the various inspection services in the field of occupational safety and health; the reasons for the significant decline in the number of infringement reports referred to the courts between 2012 and 2016; the restrictions on the power of inspectors to carry out inspections without previous notice; guarantees of confidentiality; the need to take measures to ensure that inspections were possible as often as necessary; the real discretion of inspectors to decide whether or not to initiate immediate legal proceedings; and, finally, the issue of the adequate training for labour inspectors in agriculture. Only inspection services which fulfilled the criteria of independence, quality and equality of treatment for all economic actors made it possible to ensure



good governance in the world of work and were indispensable for effective administration. In a State which respected the rule of law, through labour inspection and an appropriate regulatory framework, the business climate would stabilize, legal and economic security would increase and the social risks for investors would be more limited. A sound labour inspection service, which acted principally on a preventive and advisory basis, was essential to guarantee fair and ethical competition, which encouraged investment, economic growth and the resulting creation of employment. Although labour inspection services, as required by Conventions Nos 81 and 98, needed to function independently and without restriction in order to ensure the effective enforcement of labour regulation, it was also important for them to be impartial and to operate in accordance with the rule of law. For example, labour inspectors should not be dissuaded from imposing fines and effective measures needed to be adopted to ensure the absence of corruption. The independent and unrestricted functioning of labour inspection services was related to guarantees in terms of good governance, transparency and responsibility.

In view of the increasing complexity of labour legislation in many countries, employers were not always in a position to be able to bring themselves immediately into conformity with the whole corpus of social rules. The inspection services therefore needed to endeavour to provide support to enterprises, on a preventive basis, through the provision of information and technical advice on the most effective means of giving effect to the legislation. In addition to their advisory and preventive functions, the second priority in the action of labour inspection services needed to be to combat social fraud. Sufficient human and material resources should be provided to the inspection services for that purpose, as well as the judicious provision of resources to combat economic and social actors which intentionally failed to respect the rules of the game. Moreover, inspectors needed to have the necessary qualifications, as well as the required independence and ethics, to be able to fulfil their role in an effective and appropriate manner. The Employer members added that the criticisms contained in the observations needed to refer to, and be confined to, the specific rights and obligations set out in the respective Conventions. For example, with reference to paragraph 237 of the General Survey of 2006 of the Committee of Experts, they considered that it did not appear to be appropriate to ensure that a larger number of non-routine inspections were undertaken with a view to ensuring the confidentiality of the identity of the complainants. Similarly, with reference to the issue of immediate legal proceedings, they considered, in light of Article 17(1) of Convention No. 81, that the labour inspection services did not necessarily have absolute discretion to initiate legal proceedings against offenders and that, in light of the national legislation, they should give priority to incentive measures, which were generally very effective. Finally, inspections without prior warning had admittedly demonstrated their effectiveness, but they needed to be surrounded by specific rules and should be carried out in compliance with fundamental freedoms and the principle of proportionality. Nevertheless, the Employer members reaffirmed that the legislative framework in the Republic of Moldova did not yet appear to offer all the necessary guarantees. They therefore encouraged the national authorities to provide the information requested, and to carry out the necessary reforms to make their labour inspection services more effective and in compliance with the principles of the Conventions.

**The Worker members**, in the same way as the Employer members, recalled that in June 2013 the CNSM had made a representation under article 24 of the ILO Constitution alleging non-observance by the Republic of Moldova of

Convention No. 81. The representation indicated that, following the adoption of Law No. 131, it was no longer possible for the labour inspection services to carry out inspections without prior warning as a notice period of five days was required. The tripartite committee set up to examine the representation had found, in its report approved by the Governing Body in 2015, that Law No. 131 was incompatible with the aforementioned Convention. Since then, the situation had not improved, and indeed had deteriorated. According to the Committee of Experts, although the Government had taken some measures to adapt the national legislation, it still contained provisions that were incompatible with the Conventions. While the Government planned to introduce some exceptions to the obligation to give five days' notice prior to an inspection, the establishment of exceptions was not in itself sufficient to meet the requirements of the Conventions. It should be noted that Law No. 131 withdrew some supervisory competences and functions in the area of occupational safety and health from the state labour inspectorate and transferred them to ten supervisory bodies, including the National Food Safety Agency, the Consumer Protection Agency and the National Centre of Public Health. The division of supervisory functions relating to occupational safety and health diluted labour inspection into a larger framework and led to the eradication of specific features. While the Conventions did not prevent certain responsibilities regarding labour inspection from being assigned to different departments, that was subject to the condition that the competent authority took measures to ensure that adequate budgetary resources were made available and encouraged cooperation between the different departments. It was therefore the responsibility of the Government to provide detailed responses to the observations of the Committee of Experts in that regard. It was particularly important to ensure: the stability of employment and independence of labour inspection personnel; the collaboration of appropriately qualified experts and technicians; a sufficient number of inspectors to allow for the effective fulfilment of inspection duties; the provision of the necessary resources, such as offices and transport; and the conduct of inspections that were as thorough as necessary to ensure the effective application of existing legal provisions. With regard to the number of infringements referred to the courts between 2012 and 2016, which had decreased significantly from 891 to 165, the Government was requested to provide explanations of the decrease and information on the specific results of the reports referred to the courts.

The reason for the confidentiality of the complaints received by the labour inspection services was to protect victims and ensure that they were not subject to reprisals. As the national legislation provided that enterprises had to be informed of inspections five days in advance, non-routine inspections always followed a complaint, which jeopardized the right to confidentiality. With regard to the frequency of inspections, they recalled that article 15 of Law No. 131 provided that each authority exercising supervisory duties must develop an annual inspection plan which could not be modified and which specified the inspections scheduled for each quarter, without it being possible to conduct inspections that were not scheduled. Although the Government claimed that the Law provided for a maximum of one inspection a year unless, according to the risk-based methodology, a greater frequency was required and that there was no limit on non-routine inspections, it had to be noted, in the same way as the Committee of Experts, that non-routine inspections were only authorized under certain specific conditions. They finally referred to article 4 of Law No. 131 (which provided that inspections carried out during the first three years of operation of an enterprise must be advisory) and article 5 (under which, in the case of

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minor offences, the penalties established by the legislation on administrative and other offences could not be applied). The Worker members considered that such provisions were tantamount to handing enterprises a blank cheque, which allowed them to break the law as they wished, as they were sure that they would not suffer any consequences. It was regrettable that, rather than encouraging the establishment of sound enterprises, which ensured decent jobs in compliance with health and safety standards, the Government preferred in practice to promote means of circumventing laws. It was also clear that such provisions were contrary to the Conventions in question, which provided, subject to certain exceptions, that the violation of legal provisions, which inspectors were responsible for monitoring, gave rise to immediate legal action, without prior notice, and that it was at the discretion of inspectors to assess whether it was necessary to give a warning or advice, or to introduce or recommend prosecution. In conclusion, the Worker members indicated that the legislation on inspection, which had been adopted in 2012, had been strongly influenced by the desire to create an environment conducive to business, which evaded compliance with labour standards. Recalling the purpose of the ILO, they referred to the Preamble of the ILO Constitution, which recalled that “conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled”. There was therefore a link between, on the one hand, poor working conditions – those that were subject to monitoring through inspections – and, on the other, the development of injustice and hardship. The second lesson arising from the Preamble was that poor working conditions prevented any social justice and sustained development for all individuals. That could only be achieved if the right of workers to decent working conditions was respected and monitored through effective inspection. The attainment of those objectives was also conditional on the observance of fundamental labour rights and principles, and first and foremost, freedom of association. Therefore, the dismantling of the labour inspectorate under the pretext of creating a conducive environment for business was a short-term calculation that ran the risk of seriously damaging cohesion and social stability.

**The Employer member of the Republic of Moldova** indicated that in November 2013 the National Confederation of the Employers of the Republic of Moldova (CNPM) had organized a business forum to examine the main obstacles for the business environment in the country and had made a number of recommendations. The information collected had served as a basis for the development of the business environment improvement programme and a memorandum had been signed with the Government which had served as the basis for reforms. Efforts had been made to eliminate business restrictions. In the field of business regulation, there had been a three-fold reduction in the number of approval documents and the process of financial and statistical reporting had been simplified. An institutional reform had been carried out, optimizing the number of institutions with supervisory powers. The goal of the reform was to reduce the burden on economic agents and significantly reduce the number of controls of enterprises with a view to increasing transparency and predictability in the control process. This included a reduction of institutions with supervisory powers; a reduction in the number of approval documents; a simplification of labour relations through the amendment to the Labour Code; and a simplification of financial reporting. With regard to labour inspections, the CNPM had, in consultation with the social partners and the ILO, found that Law No. 131 was not in compliance with Convention No. 81. Certain amendments had to be made. However, for these governmental initiatives to support the

business environment by optimizing the number of institutions, it had been necessary to include the State Labour Inspectorate in the reforms. He referred to a proposal that had been made by the CNPM to create an integrated inspection system comprised of the State Labour Inspectorate and the National Centre of Public Health, as was the case in several other countries, but underlined that the proposal had not been supported. Currently, the Republic of Moldova was going through a number of transformations. In this regard, he eagerly awaited the end of the transitional period in order to assess the outcome of the reforms.

**The Worker member of the Republic of Moldova** emphasized that compliance with Conventions Nos 81 and 129 contributed to saving lives. Limitations on labour inspection functions were unacceptable. Referring to the representation made under article 24 of the ILO Constitution by the CNSM in 2013 and closed in 2015, he recalled the length of time that it had taken for the representation to be examined. Occupational accidents, including fatal accidents, had occurred after the adoption of Law No. 131 which had been related to the absence of labour inspections. The regulation of occupational safety and health by Law No. 131 was in contradiction with the Conventions. The Ministry of Health, Labour and Social Protection had always supported the position of the CNSM and defended compliance with ILO standards. However, the Ministry had not been supported by the Ministry of the Economy or other parts of the Government. The CNSM had been told that the reform had required change and that, following the signing of the Association Agreement of 2014, the country would have to respect international standards. The tripartite committee set up to examine the article 24 representation had found that Law No. 131 was not in compliance with the provisions of Convention No. 81, and had requested measures be taken to ensure the effective implementation of Articles 12 and 16 of the Convention. While the Government had undertaken to bring the national legislation into line with the provisions of Convention No. 81, through the adoption of the Decent Work Country Programme 2013–16, Articles 12 and 16 of the Convention were not implemented in national legislation. Further, the Ministry of Economy had stated that Law No. 131 was in conformity with international standards and further measures were not needed. The absence of appropriate labour inspection had led to the death of three minors in occupational accidents. Moreover, in April 2016, a moratorium on labour inspection had been introduced. The Committee of Experts had stated that such a limitation was a severe violation of Conventions Nos 81 and 129. Moreover, the functions of the state labour inspection had been transferred to other agencies. He welcomed the fact that, very recently, Parliament had amended the national legislation and given back to the labour inspectorate functions relating to the investigation of severe occupational accidents. An ILO technical assistance mission had led to a number of recommendations on compliance with the Conventions, including with respect to the decentralization of the labour inspection system. Further technical assistance should be provided to improve the national legislation and bring it into compliance with the Conventions.

**The Government member of Bulgaria** speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro and Norway, emphasized the fundamental importance of labour inspection for promoting decent work. She confirmed the commitment to political association and economic integration in the framework of the EU–Moldova Association Agreement with its Deep and Comprehensive Free Trade Area (DCFTA), which was based on core values, notably respect for democratic principles, the rule of law, good governance, human rights and fundamental freedoms, and

she welcomed the results of the EU–Moldova Association Council held in May 2018. The issue of labour inspection in the Republic of Moldova had been examined several times by the Committee of Experts, and certain parts of the legislation, particularly Law No. 131, had been found to be in contradiction with Conventions Nos 81 and 129. The reform enacted in 2017, removing occupational safety and health from the mandate of the State Labour Inspectorate, established a complex system that raised many concerns regarding compliance with the Conventions, notably with respect to the overall supervision and coordination of occupational safety and health inspections, the allocation of sufficient budgetary and human resources and the professional qualifications of inspectors, as well as their stability and independence. She expressed concern that the new system would not deliver equal prevention of occupational risks and the protection of health and safety at work to all workers in the country. She also further expressed strong concern at the restrictions on labour inspection contained in Law No. 131, which limited the undertaking of unannounced inspections, as well as the number of inspection visits per year. The Law also weakened the system of penalties and jeopardized the confidentiality of complaints. The number of infringement reports resulting from inspections had also dropped significantly in recent years. The Government was expected to take the necessary steps to bring the national law and practice related to labour inspection, including in agriculture, into conformity with the Conventions, and to avail itself of ILO expertise. The lack of an effective system for the enforcement of labour rights and standards could result in a breach of commitments undertaken by the Republic of Moldova under its Association Agreement (including the DCFTA) with the EU. That included commitments to effectively implement in national law and practice the core labour standards embodied in the ILO fundamental Conventions and to approximate its national legislation to EU law on labour and health and safety at work issues (Article 37 of the Association Agreement). The Republic of Moldova had also undertaken to implement effectively Conventions Nos 81 and 129 in national law and practice pursuant to Article 365 of the Association Agreement. The Republic of Moldova had further committed not to lower levels of protection or to fail to enforce effectively labour law, as an encouragement for trade or investment, pursuant to Article 371 of the Association Agreement. She emphasized the need for the Government, as well as the ILO, to coordinate closely with all relevant international and regional organizations, including the International Monetary Fund, the World Bank and the Organisation for Economic Co-operation and Development to ensure that the measures taken with regard to labour inspection were in accordance with ILO Conventions.

**The Worker member of the United Kingdom**, emphasized that in accordance with Convention No. 81, the existence of adequately funded labour inspectorates was a vital component in the effective supervision and enforcement of the labour legislation, including occupational safety and health standards. Referring to the discussion on the case of the application of Conventions Nos 81 and 129 by Ukraine, she highlighted that governments were increasingly restricting the powers and resources of labour inspectorates, under the pretext that it would improve the business environment and regularize the informal economy. In the Republic of Moldova, the capacity of labour inspectorates had never been strong and the number of labour inspectors was limited. Recent legislative reform had further undermined the effectiveness of the system. The adoption of Law No. 131 substantially reduced the capacity of labour inspectorates by limiting the frequency of inspections in individual firms, requiring the provision of prior notice and imposing limits on unannounced inspections. These changes had led

to a marked increase in workers' complaints of labour violations and accidents in the workplace, by 50 per cent between 2012 and 2013. Ten work-related deaths had been reported in 2013 and there had been a significant increase in serious occupational accidents. The Committee of Experts had concluded that Law No. 131 did not comply with the requirements of Convention No. 81 and had made clear recommendations in that respect, but no amendments had been introduced. Further, in 2016, responsibility for the enforcement of labour law and occupational safety and health had been separated, leading to a fragmentation of occupational safety and health-related enforcement and contributing to the growth in occupational accidents and fatalities. The moratorium imposed in 2016 had also paralyzed the work of the labour inspectorate. Such moratoriums were a clear violation of Convention No. 81. In conclusion, she called on the ILO to provide technical assistance, and for the Government to reform its national legislation to comply with Convention No. 81.

**The Worker member of Sweden**, speaking on behalf of trade unions from the Nordic countries and Germany, stated that they expected countries engaged in close cooperation with the EU and the European Economic Area to comply with international labour standards. Providing for labour inspection was a requirement of Convention No. 81 that had to be respected by all ratifying member States. Legislation designed to protect decent working conditions had to be applied in practice and labour inspection played a vital role in that respect. The application of Convention No. 81 was therefore both important in itself and an important means of ensuring the correct implementation of other labour standards. The Republic of Moldova and the EU had signed the Association Agreement in June 2014 which contained provisions for the creation of a DCFTA over a ten-year transition period. The DCFTA included a number of commitments relating to both labour standards and environmental matters. A weakened State Labour Inspectorate would not enable the country to comply with its obligations to implement ILO Conventions and those created by the Association Agreement with the EU. The Republic of Moldova risked moving away from its commitment to the enforcement of labour standards at the international and European levels, which had also been confirmed through the institutional mechanisms for the implementation of the trade and sustainable development chapter of the DCFTA. The report of the second joint meeting of the Republic of Moldova – European Union Domestic Advisory Group under the DCFTA had expressed growing concern regarding the situation of the State Labour Inspectorate, which raised problems in view of the ILO's standards on labour inspection as well as under EU law. Labour inspection was under threat in many countries. It was a core function that any responsible state needed to carry out. Weakening labour inspection was harmful to a decent societal climate and detrimental to a fair market for goods and services. Therefore, legislation needed to be introduced to ensure compliance with Convention No. 81 and appropriate resources must be provided for the labour inspectorate to enable it to be effective.

**A Government representative** recalled that reform in the field of safety and health at work was a challenge, but that, with the support of the ILO and the social partners, the Government would manage to ensure a functional system in line with ILO standards. As the central authority, the Ministry of Health, Labour and Social Protection would update the national occupational safety and health profile with ILO support. A round-table discussion with the participation of high-level officials from relevant institutions would be organized to discuss and share EU best practices. She expressed appreciation for ILO support offered in adjusting the national framework to achieve compliance with

ILO standards. With ILO expertise and technical support, it would be possible to improve the national occupational safety and health system. It was important to have an efficient occupational safety and health system in accordance with ILO Conventions, and in this respect, the Government would build an effective labour administration and labour inspection systems through strong tripartite social dialogue. The changes of Law No. 131 did not automatically imply that the budget for inspections would be reduced. The Law did not limit the number of unannounced visits of inspectors as the limitations referred only to planned visits. The penalties for violations had also not been weakened. The reason for the reduced number of infringement reports filed in 2016 was the moratorium put in place that year. While the Government had taken many steps to implement the ILO standards, there were still areas for improvement. She said her Government was ready to continue the constructive engagement with its partners, especially the ILO and the EU, in order to address the issues raised.

The **Worker members** thanked the Government and encouraged it to act swiftly to bring the legislation into conformity with the Conventions. Certain problems dated back several years and had already been raised by other supervisory mechanisms, including the provisions which prohibited inspections from being carried out without prior notice. In the context of the reform of the inspection services, they called on the Government to ensure: the stability of employment and independence of inspection personnel; the collaboration of experts and duly qualified technicians; a sufficient number of inspectors for the effective exercise of their inspection functions; and the resources necessary for inspectors to perform their duties, including offices and transport facilities. They also called on the Government to ensure that inspectors had the right to conduct inspections as often as necessary and to guarantee the confidentiality of the complaints. The legislation should also be brought into conformity with the Conventions to allow inspectors the discretion to initiate legal proceedings or simply to issue warnings. Finally, they encouraged the Government to avail itself of ILO technical assistance to give effect to the recommendations.

The **Employer members** thanked the Government for the information and views provided. They recommended the national authorities to take the necessary measures, and engage in appropriate reforms to bring the labour inspection services into conformity with the principles of Conventions Nos 81 and 129, with particular reference to the authority of inspectors to inspect enterprises without prior warning and the need to carry out inspections as often as necessary. They also called on the Government to provide the Committee of Experts with detailed and precise written responses to all the questions raised in its observation by 1 September 2018. They called on the Government to continue availing itself of ILO technical assistance. They also recalled that, in addition to being provided with the resources necessary to function effectively, the labour inspection services required the necessary legal framework to prevent any abuse. All labour inspection services needed to be independent to ensure their credibility and professionalism. Labour inspection services should engage in open dialogue with the enterprises and persons inspected. Inspections should be legitimate and proportionate to their purpose, and should ensure equality of treatment and respect the need for confidentiality so as not to prejudice the interests of enterprises and persons liable to inspection, and the complainants. They also recalled that the priority of the labour inspection services should be prevention and the provision of advice to companies in good faith, and in particular, that they needed to intensify their efforts to combat social fraud in other enterprises. Fraudulent practices were a scourge for the whole of society, for social security, and

also for honest enterprises confronted with grossly unfair economic and social competition.

### **Conclusions**

The **Committee** took note of the oral statements made by the Government representative and the discussion that followed.

The **Committee** noted that the labour inspectorate must be given the necessary means to function effectively and independently, and it shall also be placed under the supervision and control of a central authority.

Taking into account the Government's submissions and the discussion that followed, the **Committee** recommends the Government to:

- take the necessary measures and appropriate reforms to bring their labour inspection services into line with the provisions of Conventions Nos 81 and 129;
- bring national legislation and practice into line with Conventions Nos 81 and 129 to enable labour inspectors to carry out visits to workplaces liable to inspection without prior notice in order to guarantee adequate and effective supervision;
- ensure that inspections are proportionate to the legitimate aim pursued and are possible as often as necessary;
- provide to the Committee of Experts in writing before 1 September 2018, detailed and precise information on:
  - the decentralization of labour inspection services since 2012 in the field of occupational safety and health and on the guarantees of effective operation of labour inspectors throughout the national territory;
  - the reasons for the decrease in the number of inspection reports submitted to the courts between 2012 and 2016;
  - the guarantees of confidentiality of the identity of complainants;
  - the measures taken to ensure that labour inspectors can freely initiate or recommend legal proceedings; and
  - the training provided to inspectors in agriculture, including the level of participation.

The **Committee** invites the Government to continue to avail itself of technical assistance in relation to these recommendations.

### **UKRAINE (ratifications: 2004 and 2004)**

A **Government representative** stated that the commitment for compliance with the Conventions, ratified in 2004, had been reconfirmed by the Government through the European Union (EU)–Ukraine Association Agreement, as well as the free trade agreement between Ukraine and Canada. The Government had taken all the necessary measures to ensure full compliance with these important ILO Conventions, in both law and practice. The measures taken since the discussion in the Conference Committee in 2017 had included, with respect to legal developments: The cancellation of the moratorium on labour inspection visits through the adoption of: (a) the Law of Ukraine on Temporary Peculiarities of Performing State Supervision (Control) Measures in the Sphere of Economic Activity, dated 3 November 2016, No. 1728-VIII; and (b) Ministerial Decree No. 1104 of 18 December 2017 on the approval of the list of supervisory bodies exempt from the scope of the abovementioned law. These amendments had been made to exclude labour inspection, including occupational safety and health (OSH) and mining supervision, from the moratorium on state control. Concerning the Lugansk and Donetsk regions, a moratorium on labour inspection had been introduced for the period of anti-terrorist operations. The

ensuing lack of labour inspections had not only led to a significant increase in wage arrears, but also to the significant deterioration of the social and economic conditions in those areas. The State Level Service (SLS) had established a bill to amend Article 3 of the Law on internal measures for the period of anti-terrorist operations dated 2 September 2014, No. 1669-VII, to exempt labour inspection from the scope of that law. The Government would strongly push for the adoption of those amendments, which were currently before Parliament. The Government had also adopted a new procedure for exercising state supervision of labour legislation, by a resolution which had come into force in May 2017. The Ministry of Social Policy had requested ILO technical comments on the resolution, which had concluded that the draft resolution was not in violation of Conventions Nos 81 and 129. The new labour inspection procedure had established fundamentally new approaches to labour inspection functions. During an inspection, labour inspectors had free and independent access. Concerning the alleged absence of planned control measures, state control was carried out in the form of inspection visits and non-visiting inspections, which by their nature were unscheduled control measures. With reference to policy respecting penalties, employers were given the opportunity to comply with the measures ordered by the labour inspectorate within a certain time limit, except for cases concerning undeclared work and the failure to comply with the payment of wages.

With regard to practical measures, the SLS endeavoured to strike a balance between the promotion of compliance and issuing sanctions. Between January and April 2018, the SLS had conducted more than 3,000 inspections and 137 non-visiting inspections of 3,834 enterprises. During inspections, labour inspectors had detected more than 8,000 cases of non-compliance with labour legislation by almost 2,000 employers. Violations had been detected in 74 per cent of all inspections, with three violations on average per enterprise. The greatest number of violations related to the payment of wages, followed by working hours and rest time. The largest share of violations had been detected in the private sector, mostly in the retail and wholesale services. A total of 2,800 compliance notices had been issued by labour inspectors and almost all of them had been strictly followed by employers. The rights of more than 8,000 workers had been re-established. As a result of inspections, more than 1,000 cases of administrative violations had been referred to court or resolved by the labour inspectorate and had resulted in fines being imposed. More than 200 cases had been referred to the law enforcement agencies and 47 cases had been referred for pre-trial investigation. With regard to preventive activities, labour inspectors had been directly involved in awareness-raising activities and the promotion of labour legislation. In 2018, almost 2,000 events nationwide had been undertaken, including more than 1,000 media events. The SLS had received 160 written requests for advice of complying with legislation and had provided advice to almost 6,000 employers on the most effective ways to comply with labour legislation. In the framework of the ILO technical assistance provided at the request of the Government, the SLS had been one of the main beneficiaries. In this context, reference should be made to the ILO project to strengthen the effectiveness of the labour inspection system and social dialogue mechanisms, including the development and implementation of a gender-responsive policy and measures for the recruitment and retention of labour inspectors. Moreover, the Government was working with the ILO to extend the work of the SLS to the informal economy and to establish a functioning model of tripartite dialogue within the labour administration. Starting in November 2017, the

ILO–EU project “Enhancing labour administration capacity to improve working conditions and tackle undeclared work” had included measures to implement the obligations of Conventions Nos 81 and 129, selected EU Directives, and training on these Conventions and EU Directives. A variety of safety and health standards were also being reviewed with a view to the ratification of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The Government was committed to making efforts to ensure the adaptation of the legislation, the improvement of management mechanisms, the development of better business conditions and safer working conditions.

**The Employer members** welcomed the Government’s detailed statement and comprehensive information on the measures taken to address the situation, including those on capacity building and the training of inspectors as well as on awareness-raising campaigns. The Government was invited to provide that information to the Committee of Experts so that it could be analysed at its next session. Since 2010, the Committee of Experts had made six observations on the application by Ukraine of the Conventions. The case had been discussed by the Conference Committee in 2017 as a double-footnoted case. In 2017, the Conference Committee had noted positively the progress achieved in 2016. It had also noted that the ILO had undertaken a needs assessment of the labour inspection system in response to a request by the Government, and a number of recommendations had been made, as well as the ILO project on the strengthening of the effectiveness of the labour inspection system and social dialogue mechanisms launched from September 2016. They had noted with interest that new legislation had entered into force in May 2017, which had had an impact on state supervision and labour inspection. They also welcomed the information provided on what might trigger inspections, and the organization and feedback on engagement with the ILO, and particularly the training of labour inspectors. The Government was encouraged to continue accepting technical assistance to ensure that new and any existing legislation reflected the provisions of Convention No. 81, in particular the requirement for labour inspectors to be public officials, independent of changes of Government and any external influences. They had finally noted that the moratorium had expired and had not been extended. In its conclusions, the Conference Committee had called upon the Government to: (a) provide detailed information on recent legislation enacted regulating the labour inspection system; (b) promote effective dialogue with employers’ and workers’ organizations concerning labour inspection matters; (c) continue to avail itself of ILO technical assistance in order to strengthen the capacity and resources of the labour inspection system, in particular with regard to the training and capacity building of labour inspectors; (d) ensure that the status and conditions of service of labour inspectors guaranteed their independence and impartiality in line with the Conventions; and (e) ensure that other functions entrusted to labour inspectors did not interfere with their primary duties and impact negatively on the quality of labour inspections.

The Employer members emphasized at the outset the importance of compliance by member States with the two ILO Conventions on labour inspection. In this regard, they urged the Government to: (a) ensure that recent legislative amendments brought the national legislation into conformity with the Conventions; and (b) ensure that inspections were carried out as often as necessary and were not hampered by a strict regulatory timetable, while recalling that the means used should be proportionate to the legitimate aims pursued (under Article 16 of Convention No. 81 and Article 21 of Convention No. 129). Taking into account new legislation enacted in 2017 and the 2018 amendments,

they encouraged the Government to provide detailed information on the measures taken to ensure that the status and conditions of service of labour inspectors guaranteed their independence and impartiality in line with the Conventions; and provide information to the Committee of Experts on how authorized officials working as labour inspectors under the SLS and local authorities were independent from any undue influence, as well as information related to the training received. In this regard, it was important to guarantee the impartiality of inspectors and that their activities were carried out according to law. Therefore, measures to guarantee impartiality should be accompanied by measures to ensure good governance, transparency and accountability of inspectors for their actions. The Government was also encouraged to take measures to ensure that the number of inspectors and the level of resources were appropriate for the effective performance of their duties, as well as measures to strengthen labour inspection in the informal economy. They finally encouraged the Government to continue to avail itself of ILO technical assistance in relation to the ongoing action to strengthen the effectiveness of the labour inspection system and looked forward to receiving information on the results of the ongoing cooperation.

**The Worker members** recalled that, during the discussion of the case in 2017 as a double-footnoted case, the Committee had invited the Government to ensure that the status and conditions of service of labour inspectors enabled them to be independent and impartial, and that the other tasks assigned to them did not prevent them from carrying out their primary duties, or have a negative impact on the quality of inspections. According to the latest comments by the Committee of Experts, even though the Government had refrained from adopting a new moratorium on labour inspection, the situation had not improved. Several legal and regulatory mechanisms adopted in 2017 limited the work of the labour inspectorate and were contrary to the Conventions, such as: the restrictions on the right of inspectors to conduct inspections without prior notice; the limitations on the frequency of inspections and the power of labour inspectors to initiate legal proceedings without advance warning; and the bill submitted to Parliament, which made it an administrative offence to carry out an inspection without prior notice. Such provisions had been adopted despite the fact that the Conventions gave inspectors the right to conduct inspections without prior notice and as often as necessary. The Government should therefore ensure that the restrictions were not implemented. It should also bring its legislation into conformity with the relevant provisions of the Conventions.

Furthermore, and in the light of the Conventions, the argument that advisory tasks should take precedence over inspections was untenable. The two types of tasks were complementary, and inspectors must have the freedom to carry out one or the other, depending on the situation. The requirement for the inspection system to be placed under the direct and exclusive control of a central authority, which was established in the Conventions, made it possible to ensure the independence of the labour inspectorate from the local authorities, and to facilitate the establishment and application of a uniform policy throughout the territory. Nevertheless, the existence of a central authority did not mean that there was no need to ensure the physical presence of inspection services at the regional and local levels. Such a regional presence was important as it allowed the legislation to be applied in the same way throughout the country and all employers and workers to be placed on an equal footing. It was also vital to ensure the allocation of sufficient budgetary resources to different departments when assigning certain responsibilities to them. The competent authority must also ensure that organizational changes were made in accordance with the provisions of

the Conventions. The Worker members recalled the importance of ensuring that inspectors were free from all external influence, and that they had the qualifications and training needed to perform their duties. They asked the Government to provide the information requested by the Committee of Experts on that subject. It was also fundamental to allocate the material and human resources required for inspection, so that inspectors could adequately monitor workplaces. It should be ensured that inspectors were sufficient in number and had adequate resources to perform their tasks efficiently. As emphasized by the Committee of Experts, the issue of material and human resources remained problematic, and the objectives of the Conventions had not been achieved. Ukraine only had 542 inspectors and 223 posts were vacant. The Government should provide the information requested by the Committee of Experts on the subject and take the necessary steps to comply with the Conventions.

**The Worker member of Ukraine** stated that labour inspection was still being restricted by Act No. 877 of 1 January 2017 concerning the fundamental principles of state supervision and monitoring of economic activity, which was in contradiction of the Conventions. In July 2017, the Parliament had approved at its first reading the Bill on amending certain legislative acts of Ukraine regarding the prevention of unreasonable pressure on businesses by measures of State supervision and monitoring on compliance with labour and employment legislation (Bill No. 6489). The Bill was not aimed at improving State control of labour and employment legislation, as its name might suggest. While the authors of the Bill pretended that there was a need to move from punitive inspection to the prevention and rectification of offences, as well as to address undeclared work and abuses by labour inspectors during inspections, the Bill was in fact trying to restrict State labour control and provide businesses with a possibility to avoid penalties for first violations. The proposed legislative changes were an invitation for businesses to employ undeclared workers without having to fear any consequences. As the employment of undeclared workers was always an intentional offence, there should be no warnings, but dissuasive fines. In other countries, employers which did not hire legal workers were criminally liable, whereas the Bill even proposed to suppress administrative liability. The Bill also introduced administrative responsibility for individuals and officials who made groundless complaints to the State supervision and monitoring authorities about labour law violations. Those proposed changes directly contradicted Convention No. 81, under which national legislation should prohibit the disclosure by labour inspectors of the sources of complaints. Fines for such complaints in the Bill ranged from 50–100 times the minimum wage to 150–300 times the minimum wage, in the event of repeated offences. As the minimum wage in the country was equivalent to €122, workers in the informal sector would simply be afraid to make a complaint to the labour inspectorate in order to not lose their jobs. Currently, almost 4.5 million workers were working illegally, without the formalization of their employment relationship, and more than 100,000 workers had received their wages late.

At the end of 2017, the Cabinet of Ministers had prepared and sent to the Supreme Council a Bill on amending certain legislative acts of Ukraine concerning the establishment of proper safe and healthy working conditions (Bill No. 8045), which provided for State supervision of the legislation on labour protection and hygiene, and State mining supervision. The Bill complied with the requirements of the labour inspection Conventions, as it was proposed to lift the moratorium on labour inspection. A sharp increase in the number of deaths and injuries had occurred between 2017 and 2018 as a result of the moratorium. The Bill also

envisaged regulations of on State supervision being issued by the Cabinet of Ministers. In May 2018, the specialized committee of the Supreme Council had recommended to Parliament the adoption of the Bill. He expressed the hope that the Bill would be adopted in the near future. However, attention should also be drawn to the fact that in 2017 the Government had illegally abolished the existing acts on labour protection, which had led to the deterioration of social protection, working conditions and the safety of workers. This was in violation of article 18 of the Act on Labour Protection (Safety and Health) of 14 October 1992, establishing the procedure for the development, adoption and abolition of regulations on labour protection, as the trade unions had not been consulted. The abolition of the laws regulating standards for the issuance of uniforms, special footwear and other personal protective equipment had been made without substituting them with more modern standards. The objective of reducing pressure on business was not justified, in view of the consequences for the health and safety of workers. He expressed the hope that the controversial Bill No. 6489, which was in violation of ILO standards would be withdrawn, and that the regulation of the labour inspectorate would be based on the provisions of Convention No. 81, and not on the interests of a separate group of persons promoting such bills. He pointed out the need to continue and intensify technical assistance to strengthen the capacity of labour inspection, in close cooperation with the social partners.

**The Employer member of Cambodia**, conveying the position of the Joint Representative Body of Employers at the National Level of Ukraine, referred to Act No. 1774 of 2016 amending Article 34 of the Local Self-Government Act, and the procedure for monitoring compliance with labour legislation, approved in connection with that Act. That legislation had empowered the local authorities to monitor compliance with labour and employment legislation within their territorial jurisdiction, conduct inspections and impose penalties for labour violations and had enabled officials working at the local authority to act as labour inspectors. That was not in conformity with the Conventions, in accordance with which labour inspectors had to be public servants and labour inspections were to be conducted under the supervision and control of a central authority; appropriately qualified technical experts and specialists should be involved in inspections and labour inspectors should receive continued training. In reality, the activities of the local self-government officials endowed with the powers of labour inspectors did not meet the requirements of the Conventions. Local self-government officials were neither controlled by, nor accountable to, the SLS. Moreover, there were often conflicts and confrontation in determining the limits on the powers of the local and central inspectors. Local self-government officials did not undergo the relevant qualification selection and were not under the coordination and methodological support of the SLS. Nor were local self-government officials independent. It was therefore impossible to appeal against the actions of local self-government officials or to hold them responsible for misconduct. Furthermore, there was a duplication of the powers of SLS regional branches and local authorities, resulting in double inspections by two different bodies, creating a burden for employers. In conclusion, she emphasized the need to repeal the above legislation which was in contradiction of the provisions of the Conventions and unreasonably extended the discretionary powers of labour inspectors, defined by these Conventions, to officials of local self-government incapable of effectively performing such functions. This problem could be resolved by adopting Bill No. 6489, which would deprive the local self-government of control functions and the power to impose penalties.

**The Government member of Bulgaria**, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro and Norway, reiterated that effective labour inspection was fundamental to human rights, safe workplaces and decent work. She recalled the political association and economic integration in the framework of the EU–Ukraine Association Agreement and its Deep and Comprehensive Free Trade Area (DCFTA). Ukraine had ratified and committed to implement effectively, in law and practice, the ILO governance Conventions on labour inspection. It was regrettable that, although the Committee had discussed this case last year, the issues remained unresolved. Since 2014, the Government had undertaken reforms to strengthen labour inspection services and the SLS, with technical assistance from the ILO and support from the EU. She welcomed the Government’s exemption of the SLS from the general moratorium on inspections for 2018, and strongly encouraged making this exemption permanent. Furthermore, the preparation of new legislation that would permanently abolish the moratorium on labour inspections, was an important precondition for full compliance with ILO Conventions and the EU–Ukraine Association Agreement, which would send a positive signal to workers and employers regarding the Government’s intention to safeguard working standards. However, certain legislative measures were of great concern, namely Act No. 877 of 1 January 2017 concerning the fundamental principles of state supervision and the monitoring of economic activity and Ministerial Decree No. 295 of 26 April 2017 on the procedure for State control and State supervision of compliance with labour legislation, which drastically restricted labour inspectors’ ability to undertake inspections without prior notice, the frequency of inspections and their discretion to initiate prompt legal proceedings without prior notification. Bill No. 6489 would make unscheduled inspections an administrative offence. The Government was called upon to promptly amend Act No. 877 and Ministerial Decree No. 295 to ensure conformity with the Conventions, and to ensure in practice that no restrictions were imposed on the powers of labour inspectors, including limits on unscheduled inspections. Regarding decentralization of the labour inspection system, the Government must ensure close supervision and coordination by the central authority, the allocation of adequate budgetary resources to authorities performing inspections and the provision of sufficient training to inspectors; it must also provide information on how the new system guaranteed the independence of authorized officials working as inspectors. The Government was encouraged to thoroughly assess the new system and to commit to amending it as appropriate, with ILO technical assistance. Given the 223 vacant labour inspection positions, more information was needed on Government measures to improve the budgetary situation of the SLS, and the material and human resources of the labour inspection services. In light of the highly politicized debate on the adoption of the new Labour Code, the Government was strongly encouraged to take due regard of ILO comments, particularly concerning working conditions, OSH and mining. While remaining committed to constructive engagement and partnership with the Government, she expected it to avail itself of ILO expertise in taking the necessary steps to bring the national labour inspection legislation and practice into conformity with the Conventions.

**The Worker member of Sweden**, speaking on behalf of the trade unions of the Nordic countries and the United Kingdom, indicated that countries cooperating closely with the EU were expected to comply with international labour standards, including in times of hardship. As many ILO standards concerned occupational safety and health and working conditions, efficient labour inspection was of two-

fold interest, both in ensuring compliance with the Conventions, and in securing the proper enforcement of other ILO standards. Since the review of this double-footnoted case the previous year, the EU and Ukraine had launched a project within the framework of the EU–Ukraine Association Agreement that was intended to support reforms in such areas as employment policy, labour market and social protection by enhancing the labour administration capacity to improve working conditions and tackle undeclared work. Through this valuable project, lawmakers and the social partners were working closely to align Ukrainian OSH and labour legislation with EU Directives and ILO Conventions, and to strengthen the capacity of the Ministry of Social Policy and the SLS to implement its labour inspection mandate, with a particular focus on undeclared work. It nonetheless remained important for the ILO to continue to provide technical support and to promote the active participation of the social partners. Just one month after the discussion of the case the previous year, Parliament had approved Bill No. 6489, which would eliminate penalties for first violations of labour legislation regarding undeclared work, introduce administrative penalties for unjustified unscheduled inspections, and would limit the access of labour inspectors to workplaces and the sanctions they could apply. She hoped that those provisions would be corrected. Labour inspection was not a mere formality, but an efficient means of ensuring compliance with applicable standards, fair competition, and a safe and healthy work environment. Therefore, the Government was expected to bring national legislation and practice into conformity with Convention No. 81.

**The Government member of the United States** indicated that the discussion of the case in 2017 had highlighted a number of legal constraints that had inhibited the carrying out of labour inspections. While there had been reports that the SLS had conducted some complaint-based labour inspections, including some without prior notice, according to other reports, the labour inspectorate was still unable to conduct inspections of its own initiative. The Committee of Experts had pointed to the significant legal restrictions on the activities of the labour inspection services (limitations on the free initiative of labour inspectors to undertake inspections without prior notice, on the frequency of labour inspections). Moreover, the legislative amendments enacted in 2014 required the SLS to seek approval from the Cabinet of Ministers to conduct inspections of businesses with an annual income of less than US\$750,000 (which corresponded to 80 per cent of businesses). If enacted, Bill No. 6489 would make the conduct of unscheduled inspections visits an administrative offence. Those legal restrictions severely inhibited the capacity of the labour inspectorate to perform its key functions in the way that was required by the Conventions to most effectively protect workers. The Committee had already called upon the Government to adopt a number of measures to strengthen the capacity of the labour inspectorate; undertake legal reforms to ensure compliance with the Conventions; and, more importantly, ensure that the labour inspectorate was in a position to carry out the critical government function of labour law enforcement. He considered that to implement these recommendations, the Government should be urged to take the necessary measures to ensure that provisions creating legal obstacles to labour inspection were brought into conformity with the Conventions; avail itself of ILO technical assistance to ensure that the competent legislative and administrative authorities understood the obligations under the Conventions; and provide sufficient budgetary and other resources to the labour inspectorate, including by filling outstanding vacancies.

**The Worker member of the United States** welcomed the fact that Ukraine was not pursuing a nationwide moratorium on labour inspections. Nonetheless, he expressed concern about what seemed to be a regional trend towards weakening labour inspectorates. He also questioned the slow and excessively complex process of reforming the labour inspectorate, which indicated a reluctance to affirm the role of the State to perform labour inspection. One of the main remaining issues was that unannounced inspections were still prohibited, in spite of the fact that the Conventions provided for the right of labour inspectors to enter freely and without previous notice at any hour of the day or night any workplace subject to inspection. While it was positive that some inspections had been carried out as of February 2018, the requirement of advance permission greatly limited the effectiveness of the labour inspection system. Another issue of concern was Bill No. 6489. While the adoption of the Bill was still pending, it provided for the imposition of penalties for complaints which had been found not to have merit, thereby contradicting the spirit of Convention No. 81. Another matter of concern was that the inspectorate lacked adequate resources and technical capacity. Local unions reported that labour inspectors usually had no capacity to investigate cases of workplace injuries or wage arrears. For those reasons, the labour inspectorate needed to be fully empowered, with a mandate, budget, the capacity and confidence in its stature. A moratorium on inspections continued in the country's conflict zones; those regions were heavily industrialized and the continued moratorium covered a number of particularly dangerous sectors, including the coal, metal and mining sectors, in which hundreds of thousands of workers were employed. The draft legislation to repeal the moratorium had not been approved by Parliament. Ukraine's economy remained very fragile, and could not afford the adverse impact of shortcuts based on poor safety standards. In order to recover from conflict and from the moratorium on inspections, Ukraine should rebuild its institutions responsible for the vital function of labour inspection and professionalize labour inspectors. Those measures were especially important in high-risk sectors, such as mining, that were central to Ukraine's economic life.

**The Government member of Switzerland** supported the statement made on behalf of the European Union and emphasized that the effective functioning of the labour inspection services was essential for labour conditions and workers' rights to be respected. Such effectiveness also contributed to economic development, including fair competition between companies. Ukrainian legislation put several restrictions on the authority of labour inspectors, including on the frequency of inspections and the right to carry out inspections without notice. In addition, more than 223 inspector positions remained unfilled. It was regrettable that the Committee had to discuss the case again. The Government should therefore: ensure the implementation of legislation in accordance with the obligations established in the Conventions; make sure that national labour inspection services had the necessary human and financial resources to carry out their activities without restriction or interference; modernize inspection procedures and harmonize them with international standards. He emphasized that inspection procedures should be reviewed in consultation and cooperation with the social partners and the private sector.

**An observer representing IndustriALL Global Union** stated that the moratorium on labour inspection particularly affected workers in mines, where the rate of fatal accidents made them the country's most dangerous work sector. The 2017 report of the Ukrainian Fund of Social Insurance showed that, as a result of the moratorium on labour inspection, the number of industrial accidents at production



sites had substantially increased since 2016. The moratorium on inspections had seriously undermined and dismantled State labour inspection; the total number of inspectors had decreased and many competent specialists had gone. Even after the removal of the ban on labour safety inspections, time would be needed to restore the service to full strength. The problem of lack of staff, and especially of qualified staff, required urgent attention. He referred to recent examples, including in a steel plant, where 90 per cent of the rolling stock was worn out, and an investigation by the State Safety Inspectorate had found 83 violations, including locomotives without functioning brakes. In April 2018, the lives of 240 mining workers had been endangered when they had been trapped 1,000 metres underground for several hours after the local electricity provider had cut the power supply in a mine. Twice in April, electricity had also been cut in 16 different coalmines. The problem of OSH, which was a result of the moratorium on labour inspection, was aggravated by other work-related issues, such as low wages and arrears in the payment of wages. In April 2018, 12,000 members of an industrial affiliate, the Nuclear Power and Industry Workers' Union of Ukraine, held actions in eight different cities to protest against a State policy of low-energy tariffs, which resulted in low pay for workers. Current wage arrears had amounted to 2.4 billion hryvnias (equal to US\$92 million), of which one third concerned coalminers. Certain estimates had found that arrears in the formal economy, when combined with the shadow economy, could easily be double or even triple that amount. The Government needed to urgently address the situation of safety at work, as well as arrears in wages and low wages, a matter made more urgent by its past failure to implement the Committee's recommendations and observations. Workers expected and demanded appropriate responses from the Government.

The Government representative emphasized that significant progress had been made in resolving the issues regarding labour inspection discussed at the Conference Committee in 2017. Except for the conflict areas of the country, in the rest of the territory, labour inspectors had free access to workplaces and could conduct inspections at any hour of the day or night without previous notice. This was guaranteed by Ministerial Decree No. 295 on certain questions of the implementation of article 259 of the Labour Code and article 34 of the Law on local government of 26 April 2017, as well as legislative changes which had come into effect in 2017. The labour inspection functions carried out by the local authorities were limited to the control of compliance with legal provisions respecting wages. The SLS exercised control in that it had access to the record of the inspection visits carried out by the local authorities (including the workplaces concerned, the actions taken and the penalties imposed). The SLS could not only step in, but had also set up an appeal procedure for enterprises against the actions taken by the local authorities. He emphasized that Bill No. 6489 had been introduced in accordance with the legislative procedure and that other bills existed, including Bill No. 8045 which proposed to lift the moratorium on labour inspection and Bill No. 8101 which proposed to remove the restrictions for labour inspection in the Donetsk and Lugansk regions. These Bills would hopefully soon be considered by Parliament. The late payment of wages in Ukraine was a priority issue for the SLS, and both national labour inspectors and inspectors working in the local authorities were doing all in their power to address that situation. The Government was also currently studying the issue of how to increase the resources for labour inspection, so that labour inspectors could focus on the priority areas of unregistered labour, wage arrears and the failure to pay minimum wages. With regard to the issue of fines, labour inspectors were indeed empowered to issue fines, up to an

amount of more than 10,000 hryvnias (approximately US\$382) with regard to undeclared work. In the current difficult times (including the military conflict and efforts to promote the economic development of the country), the Government was trying to strike a balance between preventive measures and the imposition of penalties, intending to be judicious in applying fines. Replies to all requests for information on the measures taken to fully implement the Conventions would be sent for examination by the Committee of Experts.

The Worker members thanked the Government representative for the explanations provided and recalled that the Government had already made a series of commitments during the previous discussion. Not only had those commitments not been honoured, but a series of new violations had been noted. Consequently, the Government was requested to lift all the restrictions imposed on the labour inspectorate, particularly the restriction on conducting an inspection without prior warning and the limits placed on its discretionary power to commence legal proceedings. The provisions that made the conduct of unannounced inspections an administrative offence must also be amended, as they were incompatible with the Conventions. The Government should also provide information regarding the organization of the inspection services and provide for all the necessary guarantees to ensure the independence of inspectors and their ability to fulfil their duties. The Government should also provide sufficient material resources to the labour inspectorate and ensure their good working conditions, remuneration, transport costs and the provision of offices and office supplies. It was also crucial to take the necessary steps to fill the vacant positions. They invited the Government to continue to accept ILO technical assistance to facilitate the implementation of the Committee's recommendations, in close collaboration with the social partners.

The Employer members welcomed the Government's and responses to a number of issues, as well as the information on the priorities of the SLS, in particular with regard to the implementation of the two Conventions. Notwithstanding the challenges resulting from the military conflict in certain regions, the Government had taken positive measures to bring the law and practice into conformity with the Conventions. The Government was encouraged to allocate adequate resources for labour inspection and to continue capacity-building activities for labour inspectors. However, there was concern over local government officials and their potential capacity to fill the role of labour inspectors. As already mentioned, measures needed to be taken to ensure the independency, transparency and accountability of inspectors for their actions. They urged the Government to provide information to the Committee of Experts on the recent legislation enacted and on the issues raised, in order to fully measure progress in that regard. Effective dialogue was a very important component of that process. The Government also needed to guarantee the independence of labour inspectors in line with the provisions of the Convention and to ensure that other functions did not interfere with their primary duties or impact negatively on the functions performed. They finally urged the Government to continue to avail itself of ILO technical assistance in order to further strengthen the resources allocated to labour inspection, with specific emphasis on training and capacity building of inspectors.

### **Conclusions**

**The Committee took note of the oral statements made by the Government representative and the discussion that followed.**

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

Algeria (ratification: 1962)

The Committee noted that the labour inspectorate must be given the necessary means to function effectively and independently, and it shall also be placed under the supervision and control of a central authority.

Taking into account the Government's submissions and the discussion that followed, the Committee recommends the Government to:

- take the necessary measures and appropriate reforms to bring their labour inspection services into line with the provisions of Conventions Nos 81 and 129;
- provide detailed information regarding the restrictions on the powers of labour inspectors contained in Act No. 877 and Ministerial Decree No. 295 and regarding the recent legislation enacted on the labour inspection system;
- promote effective dialogue with employers' and workers' organizations concerning labour inspection matters;
- ensure that the status and conditions of service of labour inspectors guarantee their independence, transparency, impartiality and accountability in line with the Conventions;
- ensure that the inspection functions of the local authorities are placed under the supervision and control of the State Labour Service; and
- ensure that other functions entrusted to labour inspectors do not interfere with their primary duties and impact negatively on the quality of labour inspections.

The Committee encourages the Government to continue to avail itself of technical assistance in order to strengthen the capacity and resources of the labour inspection system, in particular with regard to the training and capacity building of labour inspectors. The Committee requested that the Government report in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2018.

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

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#### ALGERIA (ratification: 1962)

The Government has provided the following written information.

#### *Requests for the reinstatement of dismissed workers*

The national legislation provides for procedures for the prevention and settlement of individual labour disputes. Act No. 90-04 of 6 February 1990, as amended and supplemented, respecting the settlement of individual labour disputes, establishes procedures for the settlement of individual labour disputes that have to be complied with by each worker and each employer.

In this regard, in the cases of the workers referred to in the conclusions of the 106th Session of the International Labour Conference (ILC), the procedures set out in the above Act were followed, irrespective of the outcome of the settlement of their individual labour dispute.

In this context, it is necessary to recall that the Government has always responded to the requests made by the competent ILO bodies. In this respect, and following verification, it has been found that of the 86 workers, the situations of 76 workers have been settled or are in the course of being settled. The cases are before the competent jurisdictions in six cases and orders are in the course of being given effect in three cases.

With reference to the situation of eight of the remaining ten workers, two have been dismissed, following the completion of all the procedures set out in the laws and regulations, on the grounds of unjustified absence and failure to

comply with the internal enterprise rules, and three workers have been dismissed for serious professional misconduct.

In this regard, the Government observes that examination of the files of the workers shows that on no occasion was it found that it was a penalty on grounds of the exercise of trade union activities, but on the grounds of types of professional misconduct envisaged by the law and the internal enterprise rules. The workers concerned availed themselves of all of the means of recourse envisaged by the law for the settlement of individual labour disputes, including reconciliation through the labour inspection services of the competent jurisdictions. Accordingly, almost all of the workers referred to by name in the conclusions of the 106th Session are in work, with the exception of Mr Habib Benyahia (SNAPAP-CGATA) of the University of Tiaret, who has taken retirement. Moreover, it has also been found that, among these workers, Mr Haddak Arab (SNAPAP-CGATA) has been promoted to the level of administrative officer.

The clerks of court are in employment. The Government attaches all the documents provided by the employer concerning the situation of all the workers referred to in the conclusions.

#### *Case No. 3210 before the Committee on Freedom of Association*

The Government had provided full information on the complaint before the Committee on Freedom of Association made by the Autonomous National Union of Electricity and Gas Workers (SNATEGS) (Case No. 3210) in a communication dated 18 December 2017, in which it informed the ILO of the voluntary dissolution of SNATEGS (copy attached) and the record of the voluntary dissolution of the union. In a communication dated 5 May 2018, in relation to Case No. 3210, the Government called for the case to be closed.

#### *Completion of the reform of the Labour Code*

With regard to the request concerning the completion of the reform of the Labour Code, the Government provided full information on the process of the drawing up of the Labour Code and will spare no effort in the context of the dialogue organized with its economic and social partners for the development of a consensual Labour Code which will reinforce the lessons learnt from the experience of the implementation of the labour legislation that is in force and will respond to the expectations of the economic actors.

#### *Registration of unions*

With regard to the case of the registration of the presumed Autonomous Algerian Union of Transport Workers (SAATT), the documents submitted did not correspond to the conditions set out in the provisions of the Act, and particularly section 2. There was a lack of precision in the determination of the occupational category covered by the by-laws, which did not contain the provisions that have to be included in the by-laws as set out in section 21 of the Act. The persons concerned did not reply or ask for further details on their file.

With regard to the documentation for the Autonomous Union of Attorneys in Algeria (SAAVA), the Government recalls that any request for the establishment of a union is subject to examination of the conformity of its documentation with the law. In this regard, it was found from the examination of the by-laws of the presumed union that there were categories of persons who were salaried employees or employers. The national legislation makes a distinction between a union of salaried employees and an employers' organization. The response was communicated to the persons concerned with an invitation to comply with the provisions of the legislation, but up to now those concerned have not

brought their documentation into conformity with the provisions of the law.

With reference to the documentation of the CGATA, in addition to the information already provided by the Government representative at the 106th Session of the ILC in June 2017, the alleged President of the CGATA was not a member of any legally registered trade union and does not represent any trade union. The Government also informed the ILO through a communication of 22 September 2013, of which a copy is attached, that Mr Rachid Malaoui was dismissed from his job in accordance with the procedures set out in the law and regulations for abandoning his job through unapproved absences. This situation resulted in him losing his position as an employee.

In Algeria, representative unions benefit from prerogatives which enable them, among other functions, to negotiate and conclude accords and collective agreements, to have premises in the employer enterprise, a notice board in appropriate places for their members and leave for trade union purposes in the service of their organization during the period of office of the trade union member. The participation of workers' representatives, through trade union delegates, is a legal requirement for the negotiation of terms and conditions of employment and of work with a view to the conclusion of collective labour accords and agreements. Workers' representatives in enterprise committees or units are designated by the most representative

trade union or, failing that, by the representative committee. Where there is no union or representative committee, they are elected by the workers collectively. It is a requirement for workers' representatives to be associated with any decision concerning the establishment of occupational medical services by the employer. Similarly, representative organizations of workers and employers are represented by twelve (12) workers' representatives and twelve (12) employers' representatives on the national occupational safety and health and medicine board.

Moreover, in the context of the prevention and settlement of collective labour disputes and the exercise of the right to strike, workers' representatives hold regular meetings with employers with a view to undertaking a joint examination of the situation with regard to the socio-occupational relations and general conditions of work of the employer. At the national level, Algeria has acquired great experience of social dialogue through tripartite meetings bringing together the Government and representative organizations of employers and workers. These dialogue and negotiation forums have resulted in agreements on economic and social life, the conclusion of economic and social pacts and the creation of institutions and other bodies. A summary of tripartite and bipartite meetings is attached.

*Cases of workers referred to by name in the conclusions of the 106th Session of the International Labour Conference (June 2017)*

No.	Sector	Case	Remarks
01	Ministry of Higher Education and Scientific Research	1. Mr Nacer KASSA (CGATA), University of Béjaia	Reinstated in his post. Report No. 49 of 27 December 2015. Decision No. 289/17 of 2 July 2017. Currently working.
		2. Mr Haddak ARAB (SNAPAP-CGATA), University of Béjaia	Promoted to administrative officer. Report No. 46 of 27 December 2015. Decision No. 264/17 of 10 June 2017. Currently working.
		3. Mr Habib BENYAHIA (SNAPAP-CGATA), University of Tiaret	Retired on 1 November 2015. (Pension No. F 8Z560143).
		4. Mr Ahmed MANSRI (SNAPAP-CGATA), University of Tiaret	Work certificate No. 19 of 20 February 2018. Payslip (January/February 2018). Currently working.
		5. Mr Fouad HASSANE (CGATA), University of Béjaia	According to the information provided, Mr Hassan is not on the staff of the Ministry of Higher Education and Scientific Research.
02	Ministry of Water Resources	1. Ms Nadia BEDRI (SNAPAP-CGATA)	At her request, Ms Bedri was transferred to a new post on 28 November 2016 in the Water Resources Department of Alger Wilaya (Report No. 2356/2016).
03	Ministry of the Interior, Local Government and Land Planning	1. Ms Hassina BENSALD (CGATA), Tazmelt local council, Béjaia Wilaya	Ms Bensaid is carrying out her duties as normal (titularization decision No. 269/2016 of 26 July 2016 confirming her as a regional administrator).
		2. Mr Nadji HASSANI	On appeal, the Court of Batna issued a ruling on 20 January 2014 overturning the ruling of first instance and ordering the public authorities (G CET Batna) to pay a fine of 100,000 dinars. The authorities paid the fine on 2 February 2016 (payment receipt dated 9 February 2016), cheque No. 7 112 525.
		3. Mr Noureddine MEZIANI	On appeal, the Court issued a ruling dated 21 December 2014 upholding the Tribunal's ruling of 4 December 2013. The claimant's financial claims were settled retroactively up to March 2013 (payslip No. 0059 attached).

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*Algeria (ratification: 1962)*

No.	Sector	Case	Remarks
		4. Mr Messaoud BOUDJELLAL	The Batna Tribunal, social chamber, dismissed the claim. Mr Boudjellal was provided with back-pay up to March 2013 (payslip No. 227 attached).
		5. Abdesamed HAMZA	On appeal, the Court issued a ruling on 10 March 2014 upholding the Tribunal's ruling of 18 November 2013. The claimant's financial claims were settled retroactively up to March 2013 (payslip No. 0041 attached).
		6. Mr Mourad TCHIKOU (UNCP-SNAPAP)	Awaiting the ruling of the Supreme Court.
04	Ministry of Justice	Clerks of court	The clerks of court were reinstated (work certificates attached).
05	Ministry of Posts, Information Technology and Communications	1. Mr Mourad NEKKACHE (SNAP) 2. Mr Khodja Tarek AMMAR (SNAP)	Awaiting information from the employer. Awaiting information from the employer.
06	Ministry of Energy Sonelgaz Group	46 workers SNATEGS	Table attached showing the employment situation of those concerned.
	Total	86 workers	<ul style="list-style-type: none"> <li>– 76 workers: situation has been or is being rectified.</li> <li>– The remaining ten cases are before the competent jurisdictions, with the exception of one case that was dismissed, one person convicted of abuse of trust and three dismissals for serious professional misconduct.</li> </ul>

In addition, before the Committee, a **Government representative** expressed astonishment that Algeria had once again been included among the cases to be examined by the Conference Committee and regretted the recurrent refusal to recognize the progress made in the country in the protection of human rights and freedoms at work. The ratification of 60 ILO Conventions, including the eight fundamental Conventions, mostly since national independence in 1962, illustrated the commitment of his country to base its economic and social development on the principles set out in international Conventions and treaties. The national Constitution also gave importance to the freedoms and rights recognized for all citizens in the world of work, including freedom of association and the right to strike. In 2015 and 2017, the Government had provided all the information requested on specific cases or on the Labour Code. The previous year, when the case had been examined, of the 32 interventions made by members of the Committee, 26 had welcomed the progress made by the Government. The failure to take that into account amounted to a denial of democratic rules. Recalling that all activities had to be undertaken in compliance with the law, as required by Article 8(2) of the Convention, he reiterated the statement made the previous year to the Committee concerning the Autonomous National Union of Electricity and Gas Workers (SNATEGS), to the effect that the union was operating normally and that its members had decided voluntarily on its dissolution, in accordance with the provisions of labour laws and regulations and its by-laws. The authorities had simply noted its dissolution in October 2017. In relation to the cases of the workers referred to in the allegations, he referred to the detailed information provided in writing on that subject and indicated that, of the 86 cases listed, 76 had been resolved through reinstatement in their jobs, assignment to another job, or by retirement at the initiative of the worker concerned. With regard to the allegations of police violence during demonstrations, he recalled that the Government ensured the security and well-being of its citizens and the protection of property. The intervention of the police services was only warranted by the need to maintain public order. Such interventions were carried out in accordance with the law and in conformity with international

practice. However, as globally acknowledged in all countries where regulation existed covering meetings and demonstrations, any action outside the framework authorized by the law was not allowed. Recalling that the finalization of the draft text of the Labour Code would require not only in-depth reflection with the social partners, but also the support of the actors in the world of work, he reiterated the Government's desire to complete the process within the framework of tripartite consultation. However, it needed to be accepted that, to ensure its success, such a process required time. It should also be recalled that over 70 per cent of the comments made by the Office on the initial draft text had been taken into account by the Government.

The trade union landscape in Algeria consisted of 101 representative organizations, including 65 workers' organizations, which were organized in full freedom in accordance with the law. The formalities for the registration of unions were set out in the law. The cases referred to of the establishment of unions, such as the General and Autonomous Confederation of Workers in Algeria (CGATA), the Autonomous Union of Attorneys in Algeria (SAAVA) and the Autonomous Algerian Union of Transport Workers (SAATT), had been the subject of observations by the administration with a view to ensuring compliance with the legal provisions, which had been transmitted to the founding members so that they could clarify certain issues, particularly in relation to the dual status of the founder members or the absence of a status of a salaried employee. Delays in resolving the documentation issues concerned were the responsibility of those seeking registration. The application of the regulations respecting the registration of unions could not therefore be assimilated to an intervention by the public authorities that was of such a nature as to limit or hinder the exercise of the right to organize. Moreover, the legislation that was in force was in full compliance with international standards seeking to promote collective bargaining, under the terms of which measures adapted to national circumstances were to be taken to facilitate social dialogue and collective bargaining. By way of illustration, to date 82 branch collective agreements had been registered and 167 collective accords at the branch level, while

3,817 collective agreements had been concluded at the enterprise level, as well as 17,238 collective enterprise accords. Social dialogue was therefore a real and specific practice in Algeria, as demonstrated by the regular tripartite and bipartite meetings held on economic, social and development issues. The Government and the economic and social partners had also concluded a National Economic and Social Pact and a National Economic and Social Growth Pact, which were an acknowledgement of the social benefits acquired and economic reforms with the support of the social partners. That model of social dialogue and concerted action was being shared, with the support of the Office, with other African countries within the context of South-South cooperation. With a view to providing some light on the follow up to the proposal for a visit to the country by a direct contacts mission contained in the 2017 conclusions of the Conference Committee, he indicated that his Government had given its agreement to such a mission being carried out in February 2018 and had accepted without reservation the composition of the mission. The Office had then proposed terms of reference that had for the most part been accepted by the Government, with two of the 12 proposed points being rejected. The Government had then finalized the schedule of meetings, including with members of the Government, and had prepared to welcome the mission which, in the end, had not been carried out. Following its cancellation, the Government had wished to talk to the Office and the partners to clarify its position, in which context it had explained that it had not been able to approve the persons covered by the two terms of reference that had not been accepted on the grounds that they were engaged in activities that had no legal basis intended to cause the social destabilization of the country. The Government was continuing its consultations with the Office on that subject, for example through the meeting held between the Government delegation, under the leadership of the Minister of Labour, and the Office shortly before the beginning of the Conference. In conclusion, he reaffirmed his Government's support for the reforms advocated by the Director-General, and particularly the promotion of tripartism, which was fundamental to the functioning of the ILO. In that respect, his Government agreed that it was necessary to reform the functioning of the Conference Committee so as to achieve tripartite participation at all stages of the supervisory process with a view to greater transparency and equity and closer compliance with the ILO's fundamental principles.

**The Worker members** emphasized that the present case was being discussed once again simply because the Government had refused to take into account the recommendations made by the Conference Committee the previous year. They questioned the unusual approach adopted by the Government which, in a communication disseminated through the Arab Labour Organization (ALO), had accused the Office of partiality and the Conference Committee of adopting double standards. A look at the statistics of the cases examined by the Committee in recent years was sufficient to show that such accusations were groundless. The Worker members expressed regret that the Government had not acted on the conclusions adopted the previous year by the Conference Committee, in particular regarding the sending of a direct contacts mission before the present session of the Conference and the obligation to report to the Committee of Experts on the progress made. Moreover, no progress had been made with regard to the new Labour Code, which had been at the draft stage since 2011, in relation to which the Government had not indicated which of the comments of the Committee of Experts had been taken into account. Nor had any progress been made in amending section 6 of Act No. 90-14 of 2 June 1990, which restricted the right to establish trade unions to persons who were Algerian nationals by origin or had been for at least ten years.

Although the Government had indicated that a provision under discussion with the social partners would reduce the required period of nationality to five years, that amendment would still not be in conformity with Article 2 of Convention No. 87, which provided that employers and workers, without distinction whatsoever, shall have the right to establish organizations of their own choosing. In that regard, the Committee of Experts recalled in its 2012 General Survey on the fundamental Conventions that this implied that anyone residing in the territory of a State, whether or not they had a residence permit, benefited from the trade union rights provided for by the Convention, without any distinction based on nationality. Lastly, the Government had not reported any progress in the amendment of the provisions that had the effect of limiting the establishment of federations and confederations. The Government had indicated in its statement, as it had done the previous year, that the time taken to make the amendments might appear long but, in view of the importance of the text, there was a need to enlist the widest possible support. Although the Worker members welcomed the importance that the Government appeared to attach to consultation, they wondered why consultations lasting more than 12 years were needed for amendments that were relatively simple to adopt. Moreover, in the current context in which certain organizations were excluded from the consultation frameworks, they considered that the consultations in question were not in conformity with ILO standards. With regard to the registration of trade unions, the Committee of Experts continued to voice its concern at the particularly long periods required to secure registration, or the refusal by the authorities without any justification to register autonomous trade unions. That was a recurrent approach by the authorities. For example, the CGATA had been applying for registration since 2015. After depositing its application, it had received a letter which merely indicated that the application had been rejected on the grounds of non-conformity with the regulations. No response had been made since to its request for justification. The result was that to date, the CGATA had no way of knowing in what way its application for registration supposedly failed to conform to the regulations. In addition, because of that lack of recognition, the CGATA was excluded from tripartite consultation structures, and had not been consulted on the ongoing reform of the Labour Code. The Worker members recalled that certain formalities prior to registration were only compatible with Convention No. 87 if they did not give the authorities discretionary power to refuse the establishment of an organization, and that this requirement should not constitute such an obstacle that it amounted to a straightforward prohibition.

The Worker members reported a number of cases of interference by the authorities in the activities of trade unions: (i) with regard to the case of SNATEGS, they observed that a press release from the Ministry of Labour, dated 3 December 2017, had announced the voluntary dissolution of SNATEGS, in accordance with the provisions of Act No. 90-14 of 1990. Under section 29 of the Act, voluntary dissolution was proclaimed by the members of the trade union, or their regularly designated delegates, in conformity with the provisions of the union's constitution. However, it should be noted that, according to the SNATEGS constitution deposited with the Ministry of Labour, the dissolution of the trade union organization was a decision to be taken by a SNATEGS national congress. The general assembly of 7 October 2017, referred to by the Government in its press release, had therefore neither the competence nor the authority to decide on dissolution. It was regrettable that, following that decision, the bank accounts of SNATEGS had been frozen; (ii) on 4 February 2018, the police had indicated to the Algerian Union of Electronic Press Editors, which was an employers' union

in the process of being established, that its general assembly planned for the following day was illegal because no prior request for authorization had been made. However, there was no legal provision stipulating that prior authorization was required to set up an occupational union in a private space on a weekday. That was simply another example of a violation of freedom of association; (iii) on 6 March 2018, without any legal basis, the Government had issued a request, solely via the website of the Ministry of Labour, Employment and Social Security, to the 65 accredited trade union organizations to prove their representativeness. The formula imposed by the Ministry obliged the trade unions to indicate, among other things, the list of names of their members, their jobs and their social security registration numbers. At the end of the prescribed three-week period, only 30 organizations had been able to provide responses. Of that number, only 17 had met the relevant criteria, according to the Government. The Worker members recalled in that regard that the law contained provisions that made it possible to determine the representativeness of a trade union and that superfluous initiatives by the authorities had been tantamount to yet another violation of freedom of association. Stressing once again the connection between the exercise of freedom of association and respect for civil liberties, the Worker members recalled the cases of harassment and persecution against independent trade union officials affiliated to the CGATA, in particular: (i) Mr Khaddour Chouicha, member of the CGATA executive committee, arrested by the police on a café terrace together with human rights activists on the grounds of unauthorized assembly; (ii) Mr Abdelkader Kouafi, SNATEGS's Secretary-General, and Slimane Benzine, President of the National Federation of Internal Security Workers, both sentenced to imprisonment and fines for objecting to poor conditions of work and to the sexual harassment of women workers; (iii) Mr Raouf Mellal, SNATEGS' President, who had been the subject of several complaints of defamation with a view to his intimidation. In that regard, a court decision handed down in November 2017 ordering his reinstatement in his post and as a trade union official was still awaiting implementation; and (iv) Mr Mekhfi Djeha, who had been dismissed in February 2018, after informing his superiors of his status as a delegate of an independent trade union. In conclusion, the Worker members expressed deep regret at the gulf between the situation of the independent trade union movement in Algeria and the ILO's principles of freedom of association.

**The Employer members** recalled that the case had been discussed by the Conference Committee in 2014, 2015 and 2017. It concerned issues relating to obstacles to the establishment of workers' organizations, including the registration of trade unions in law and practice. The Government had indicated that these issues would be addressed by the new Labour Code. The Employer members had recalled, as they had in 2017, the information on the social dialogue process in the country, the Government's stated commitment to meeting with parties to discuss the issues, and that the draft Labour Code, under preparation since 1990, had not yet been adopted. In 2017, the Conference Committee had made recommendations concerning the registration of trade unions, the removal of obstacles to the establishment by workers' organizations of federations and confederations of their own choosing, the need to ensure that freedom of association could be exercised in a climate free from intimidation and violence, and the need to ensure that the new draft Labour Code was in compliance with the Convention. The Conference Committee had also urged the Government to accept a direct contacts mission before the next session of the Conference. In that respect, the Committee of Experts had noted that the direct contacts mission had not been accepted without restriction. Thanking the Government for its explanation that it had accepted

ten of the 12 points in the terms of reference of the mission, the Employer members nevertheless expressed disappointment that the mission had not been accepted based on the full terms proposed by the Office. If information had been provided to a direct contacts mission, the discussion at the Conference Committee might have been avoided. Without information from a direct contacts mission, the discussion had to be based on the report of the Committee of Experts. Taking into account the conclusions of the Conference Committee of 2017, the Employer members welcomed the Government's expressed commitment to tripartite social dialogue and encouraged the Government to complete the reform of the Labour Code, in consultation with the social partners. That reform should address the requirements to obtain prior authorization and should recognize the right of all workers to establish trade unions and ensure that the registration of trade unions in law and practice conformed to the requirements in the Convention. It should ensure that freedom of association could be exercised in a climate free of intimidation and without violence against workers, trade unions or employers. The Employer members were hopeful that on the basis of straightforward recommendations, it would be possible to move forward and achieve tangible progress on the case. The Government should be urged to provide a full report to the Committee of Experts and to accept a direct contacts mission in the spirit of openness and transparency, so that full information could be gathered with respect to the efforts made to achieve compliance with the Convention.

**The Worker member from Algeria** stated that the International Labour Conference was a global platform for the social partners to assess and identify the extent to which member States were committed to the instruments they had ratified under the conditions of impartiality and objectivity. However, certain cases lacked precisely the elements of objectivity and integrity. Trade unions contributed to workers' awareness and improved the working conditions and lives of the workers. However, the trade union movement was now suffering because of the opportunistic manner in which trade unionism was approached, and was rather used as a tool for purposes that had nothing to do with workers' lives and suffering. This had become a threat to workers and threatened the credibility of the ILO and its mechanisms. The mechanisms and methods of the ILO should be reformed in order to preserve its reputation, credibility, and effectiveness. The campaign against Algeria and certain other countries was based on false arguments. Legislation that had existed for a quarter of a century had suddenly become a target for violating obligations. Efforts were being made to dismantle and weaken the Algerian trade union movement and there were schemes against the original trade union movements in Algeria and elsewhere. This had negative implications for the principle of genuine trade unionism and for the work of the ILO. She urged all those who respected the ILO to plead for the reconsideration of cases and to put an emphasis on the importance of providing material evidence for cases.

**The Employer member of Algeria** expressed surprise at the repeated criticisms made against Algeria for several years considering the significant number of workers' unions that had been registered since the beginning of the 1990s, and the fact that trade union pluralism and the right to strike were enshrined in the country's basic law. Hardly a month passed without a strike being called in Algeria, mostly in violation of the rules governing the right to strike, and which brought vital sectors such as health, education, transport and other economic sectors to a standstill. The public authorities had always favoured dialogue and negotiation to resolve such disputes, and had never adopted repressive measures against the workers and trade unions that called strikes. The penalties imposed on workers were not

related to their trade union activities, but rather to the disruption of public order and the prevention of work at the workplace, which were punishable under all national laws. Algeria had distinguished itself by adopting a policy that favoured dialogue and consultation with the economic and social partners, as demonstrated by the two economic and social pacts concluded in 2006 and 2014, and the number of tripartite and bipartite meetings organized to discuss issues relating to the economic development of the country. Furthermore, hundreds of collective agreements and accords had been signed between the social partners within enterprises. He said that Algeria aspired to build a law-abiding State and therefore ensured the strict application of the law in all fields, including the exercise of freedom of association and the organization of public demonstrations. They were not therefore obstacles affecting freedom of association, but rather compliance with legislative provisions governing trade union activity. The Government had provided such explanations time and again, and the Committee had failed to take them into consideration.

**Another Employer member of Algeria** emphasized the commitment of the Government and employers in her country to compliance with international labour standards and the promotion of social dialogue, both through existing tripartite institutions in the country, the National Economic and Social Pact and the long-standing cooperation between Algeria and the ILO. She had taken note of the work of the Committee of Experts and expressed the desire of her organization, the Business Leaders' Forum, to pursue collaboration that was beneficial for all which stakeholders, however, required objectivity and transparency, in line with ILO values. The reform of the Labour Code was an important, complex and sensitive process that needed to ensure a balance between the different actors within the enterprise, and facilitate the construction of a modern economy. Both employers and workers should support the Government's efforts to conclude that consultation process serenely, and sustainably consolidate economic growth that created wealth, jobs and social peace. With regard to freedom of association and the right to strike, she emphasized that the Algerian Constitution guaranteed all the fundamental freedoms, including the right to freedom of association and the right to strike, within a context of strict compliance with the law. The legal framework implemented under the country's basic law was in conformity with the spirit and letter of the international Conventions and instruments ratified by Algeria. In that context, trade union pluralism that had been set out in the Constitution since 1989 had allowed intense union activity in Algeria in both the public and private sectors. Consequently, as the Government had indicated, the regulatory framework in force and its application in practice respected the principles of the Convention in relation to freedom of association and the exercise of the right to strike. In conclusion, she emphasized that it would be appropriate, prior to the preparation of the report of the Committee of Experts, to organize exchanges with the experts in order to ensure they had accurate information.

**The Government member of Mali** noted with satisfaction the action taken by Algeria to give effect to the Convention. Welcoming the efforts made, particularly the strengthening of social dialogue through tripartite meetings, and forums for consultation and negotiation, she encouraged Algeria to continue its constant efforts to be in compliance with freedom of association.

**An observer representing the International Trade Union Confederation (ITUC)**, speaking on behalf of CGATA, regretted that the Government was the subject of repeated complaints from trade unions, and that it had refused to cooperate with the ILO. Since the previous year, when the present case had been discussed by the Committee, there

had been no improvement and further obstacles were impeding the free exercise of trade union rights. Effect had not been given to any of the Committee of Experts' recommendations on the following issues: the demotion of the dismissed trade unionists who had been reinstated; the registration of trade unions; the revision of the draft Labour Code; and the establishment of an agenda for the ILO follow-up mission that precluded meetings with the leaders of complainant trade unions. Acts of repression were continuing against trade union representatives, and particularly the President of the CGATA (Mr Rachid Malaoui), the President of SNATEGS (Mr Raouf Mellal), the National Coordinator of the Higher Education Teachers' Union (SESS) (Mr Kaddour Chouicha) and the Head of the Federation of Judicial Workers affiliated to the National Autonomous Union of Public Administration Personnel (SNAPAP) (Mr Mourad Ghedia).

**The Government member of Lebanon** noted that the Government was taking measures to fulfil its international obligations and trusted that no effort would be spared in that regard. She expressed appreciation for the measures already taken by Algeria, including the National Economic and Social Growth Pact. The social dialogue that was taking place should be encouraged.

**An observer representing IndustriALL Global Union** said that the trade union pluralism claimed by the Government was in appearance only, as demonstrated by the horrendous campaign of repression against SNATEGS, despite having ratified most of the international Conventions on freedom of association. A total of 1,114 people involved in the trade union had been brought to court, and 12 trade union delegates had been prosecuted on false grounds and threatened with imprisonment for having exercised their right to strike. He referred to his own 18-month prison sentence, and to other examples of arbitrary cases, in the context of which a significant number of trade union leaders had been dismissed. The Ministry of Labour had not only refused to apply section 56 of Act 90-14 on the modalities for the exercise of trade union rights, in accordance with which trade union delegates had to be reinstated in the event of a violation of the law, but it had also dissolved the trade union twice: the first time, through the adoption of a ministerial decree in May 2017; and the second time, by holding a so-called "voluntarily dissolution" meeting. In those two cases, the Ministry of Labour had refused to apply the laws on freedom of association and ridden roughshod over the competence of the judiciary, which alone had the authority to dissolve a trade union in accordance with sections 27 et seq. of Act 90-14. Freedom of association was now an illusion in Algeria, where trade unions were muzzled and anyone who dared to expose the deteriorating social conditions of workers or company mismanagement was sentenced to imprisonment for defamation. Finally, he expressed concern not only at the prison sentences, but also at the dismissals and aggressive policies of the Government in relation to trade union leaders and anyone who tried to engage in trade union activity.

**The Government member of Eritrea** expressed his full support for the position taken by the Government regarding the application of the Convention. The Committee should appreciate the efforts undertaken by the Government to harmonize its legislation with the relevant international labour standards through a process of tripartite consultation, particularly for the ongoing labour law reform. He expressed support for the need to review the working methods of the Conference Committee in order to ensure transparency and inclusiveness, in particular regarding the criteria to select the cases to be included in the list.

**An observer representing Public Services International (PSI)** described the situation experienced by the National Autonomous Union of Public Administration Personnel (SNAPAP), which was an affiliated union. He said that the

authorities had established a trade union that was a clone of SNAPAP, the leader of which was participating in the work of the International Labour Conference. Such a move had been made in order to deceive the members of the Conference Committee. However, at the national level, the original SNAPAP had experienced an interference in its activities, to the extent that each time it attempted to establish a union branch in a specific administration, the potential members were subjected to intimidation by the security services and the local administration in order to make them join the clone trade union. Furthermore, pressure was exerted on SNAPAP from all sides to prevent it from renting trade union premises. He regretted to note that an official from PSI, who was to have carried out a mission with SNAPAP, had been refused a visa by the Algerian authorities.

**The Government member of the Bolivarian Republic of Venezuela** welcomed the information provided by the Government concerning the application of the Convention. The Government's statement had served to highlight the good practices in the field of social dialogue with the aim of promoting industrial relations and the exercise of the right to freedom of association. The Government had expressed concern at the fact that it had repeatedly been requested to reply to questions relating to the right to freedom of association, despite the fact that in 2015 and 2017, it had provided information on specific cases and on the draft Labour Code, and was awaiting an assessment of the progress it had made. The Government of Algeria should be praised for its continuous promotion of decent work and its efforts to strengthen workers' rights within the framework of the Convention. It was also a matter of concern that claims had been made against the Government by people and organizations from outside the world of work. As the Government had observed, there was significant trade union activity, resulting in the signing of numerous collective agreements based on permanent and effective social dialogue that had led to the signing of an Economic and Social Growth Pact and various agreements on the socio-economic matters. Finally, attention should be drawn to the resurgence of an aggressive policy against Algeria that was intended to limit its social progress and deny its values of social justice, all of which should be taken into account by the Committee in its conclusions.

**The Worker member of the United States** recalled that SNATEGS had been dissolved by the Ministry of Labour and that this had not been voluntary. Following peaceful actions in response to that decision, leaders of SNATEGS had been detained. Subsequently, a peaceful protest had been organized by SNATEGS to demand that the Government put a stop to the privatization of national companies, uphold the freedom of association, and reinstate workers and union leaders who had been dismissed from the state-owned energy company, but police detained approximately 1,000 persons from that rally. The detention of union leaders for alleged unauthorized gatherings was not limited to SNATEGS. Mr Kaddour Chouicha, the national coordinator for SESS faced similar charges, and at the university where Mr Chouicha worked, teachers had been locked out. The detention of union leaders, the alleged dissolution of SNATEGS, and the lockout of SESS members were all in violation of the Convention and related to employers that were state-owned. The legislation was being used as an apparatus to deprive workers of their freedom of association by punishing union leaders and members and preventing them from joining together. Reform of the legislation was moving forward at an unacceptably slow pace. It was very concerning that this was occurring in the public sector as the Government was responsible for the slow progress towards the reforms recommended by the Conference Committee and the other actions under discussion. The speaker recommended the adoption of the same conclusions as last

year, with an emphasis on the need for the reforms to occur without undue delay.

**The Employer member of Qatar** recalled that the case of Algeria was a unique situation. Algeria had ratified more than 60 ILO Conventions and had more than 100 active trade unions. As employers, they always viewed stability in the economic environment as the main goal for the development of the economy and any problems in the economic environment of a neighbouring or regional country would negatively affect their own economic environment. Algeria should not merit being among the 25 cases discussed by the Conference Committee. The case should be closed, and the Government should be encouraged to resolve the issues raised through Algerian regulations and legal frameworks.

**The Government member of the Plurinational State of Bolivia** expressed appreciation for the information provided by the Government to the effect that freedom of association was fully protected under the laws of the country. She welcomed the Government's report on the reinstatement of dismissed workers, which should be taken into account by the Committee in its conclusions. In the Plurinational State of Bolivia, trade union rights were recognized as fundamental rights.

**The Worker member of Brazil** deplored the increase in violent attacks by the Algerian Government against workers. In particular, doctors who were members of the Autonomous Committee of Algerian Resident Doctors (CAMRA), who had been on strike for several months, had been brutally repressed by the police during demonstrations held between January and May 2018 in Algiers and Oran. Several doctors had also been arbitrarily detained and released very late at night in isolated locations. On 4 January 2018, after having prohibited doctors from the CAMRA from protesting in front of the Mustafa Pacha University Hospital in Algiers, the police had brutally repressed them, causing serious injuries. Doctors coordinating the demonstration had been arbitrarily arrested. On 20 January 2018, the Algerian police had yet again brutally repressed a peaceful rally organized by the SNATEGS-CGATA and had arrested a large number of peaceful protesters, notably women trade unionists from SNAPAP. He called on the Government to guarantee freedom of association based on tripartite social dialogue.

**The Government member of the United States** noted that the Government continued to report that the process initiated in 2011 to amend the Labour Code was progressing. The dialogue with the Committee of Experts on the draft legislation and the efforts to engage in consultation with tripartite stakeholders showed its commitment. He expressed concern at the cancellation of the ILO direct contacts mission requested by the Conference Committee in 2017, owing to the Government's refusal to guarantee meetings with independent trade union organizations. Unregistered trade unions continued to report registration delays and certain denials of recognition. He encouraged the Government to take action to address those issues. It should accept an ILO tripartite mission and ensure meetings with all relevant stakeholders, including independent trade union organizations. The recommendations of the mission should include a time-bound action plan providing remedies for specific violations of workers' rights. The Government should also ensure the ability of trade unions to operate freely from intimidation, establish a transparent trade union registration process in line with international standards and ensure the expeditious treatment of applications for trade union registration.

**The Government member of Libya** said that the Government's commitment to the application of the Convention was reflected in its national laws supporting freedom of association in Algeria, as well as in article 70 of the Constitution of 2016, which recognized freedom of association to



all citizens. The detailed response of the Government representative confirmed that the Government was in the process of undertaking all necessary and positive action to resolve the individual cases of concern with only a few individual workers' cases remaining, which were the subject of reconciliation efforts by labour inspectors and the competent courts. Moreover, the settlement of 88 per cent of cases had been reported. The National Economic and Social Growth Pact had been signed by the Government and a number of bilateral and tripartite meetings of the social partners had followed. Concerning the completion of the labour reform process, the Government was developing the Labour Code which aimed to strengthen the application of all social laws in force and to respond to the expectations of economic actors. The Conference Committee should take into consideration, in its conclusions, all the positive action undertaken by the Algerian Government to implement the Convention.

**The Worker member of Spain**, speaking on behalf of the trade unions in France, Italy and Spain, referred to the recent report by the European Union (EU), dated 6 April 2018, on the state of relations between the EU and Algeria under the renewed European Neighbourhood Policy which, with regard to the freedom of association, indicated that Algerian autonomous trade unions were experiencing difficulties in registering and holding meetings, despite the ratification by Algeria of the Convention. It added that the promotion of social dialogue, particularly through the development of autonomous trade unions, and in accordance with the recommendations of the ILO, should be among the improvements made to the economy and the labour market. On the basis of those fundamental premises, it was important to recall that little progress had been made in Algeria. Following recent strikes called by the National Council of Autonomous Teachers of the Tertiary Education Sector, the Ministry of Labour had launched a campaign to pressurize the trade unions, which undermined the mechanisms of trade union representation. On 6 March 2018, trade unions had been requested to provide, by 30 March, in other words within 24 days, data to demonstrate their representativeness, including the number of members and the amount of union dues, in accordance with the law. However, they had also been requested to supply data that was not required by law, such as the full name, gender, date of birth, employer, workplace address, job title, date of membership, member's number, the 2017 membership dues and social security number, which was a clear obstruction of the right to freedom of association in the country. Those requirements had served as a pretext to create a list of trade unions that were usually cited by the authorities in an attempt to demonstrate the exercise of freedom of association in Algeria. The trade unions on the list were those that had provided data, thereby excluding those that had not done so. Furthermore, certain organizations had been declared representative which, without having previously been active, had joined the harassment campaign against the National Council. For those and many other reasons, she questioned the criteria used to demonstrate trade union representativeness in Algeria. The Government was still far from complying with the Convention and giving effect to the measures recommended in the EU report referred to above.

**The Government member of Senegal** welcomed the efforts made by Algeria to implement the Convention. Reaffirming her commitment to the universal ideals and objectives of the ILO and the requirement for all member States to ensure respect for trade union rights and freedoms for all workers, she strongly urged the Algerian Government to build on the progress made to improve, with the social partners, national law and practice in relation to compliance with, and the protection of, workers' trade union rights. She also called on the Government to increase cooperation with

the ILO and, if necessary, request its technical assistance with a view to giving full effect to the Convention.

**An observer representing the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)**, announced that Nassira Ghoulane, Secretary-General of the SNAPAP and member of the PSI executive, had been prevented by the Algerian authorities from travelling to Geneva this morning to attend this meeting. He further underlined that independent trade unions were becoming increasingly isolated. In addition to refusing the members of the follow-up mission a meeting with the independent trade unions that were fighting for freedom of association, even when a colleague had been available to attend that morning, the representatives of the ITUC and the European Trade Union Confederation (ETUC) had not been granted a visa to enter Algeria and hold discussions with the leaders of CGATA on the situation of trade unions and the next ITUC conference. It should be recalled, for information purposes, that Mr Mustapha Tlili, head of the Arab branch of the ITUC, had been refused entry on 24 May 2016 when arriving at Algiers airport. The right to organize required freedom of association at all levels, including the international level. There had been an increase in the criminalization of all trade union activities by the judicial system, causing a flood of unfounded prosecutions of trade union leaders. The arbitrary rulings of 27 January 2016 against Mr Raouf Mellal, President of SNATEGS, 2 January 2017 and 28 November 2017, had resulted in prison sentences of up to six months and fines of up to €5,000 for reporting corruption in public bodies and defending victims of sexual harassment. Furthermore, proceedings were in progress against the Secretary-General of SNATEGS, Mr Abdelkader Kouafi. Such measures were creating an atmosphere of fear which weighed heavily on Algerian workers, on civil rights and on freedom of association.

**The Government member of Qatar** referred to the detailed information provided by the Government, in particular the legislative procedures undertaken to ensure the exercise of freedom of association and the establishment of trade union organizations and social dialogue processes with the social partners. The Conference Committee's conclusions should take into consideration the efforts undertaken by the Government as well as its openness to cooperate with the ILO in that respect.

**The Government member of Turkey** welcomed the information provided by the Government on the developments regarding the implementation of the Convention. The Government was committed to solving the problems regarding labour rights in the country and the figures on settled labour disputes clearly indicated the Government's willingness and commitment to continue its efforts to further improve the situation of workers. The Government was also commended for its efforts to draft the Labour Code and achieve consensus, which could be reached by social dialogue, and it was encouraged to continue working closely with the ILO and increase its efforts, especially for the protection of trade union rights.

**The Worker member of Poland** pointed out that the situation of workers in Algeria had not improved since the discussion the previous year by the Conference Committee. On the contrary, new serious violations had recently place. Freedom of association should be guaranteed without discrimination of any kind, particularly based on occupation and nationality, and there should be no prohibitions on the registration of trade unions. There were no guarantees for a rapid registration procedure in Algeria and no specific penalty was foreseen for the authorities, for long registration delays. The labour law reform had been a long process and, accordingly, stronger ILO recommendations were called for. There should be an ILO mission to Algeria. Finally, the Government was urged to amend its legislation,

immediately recognize all legitimate unions and reinstate all workers who had been unlawfully dismissed for their trade union activities.

**The Government member of Zimbabwe**, noting the information submitted by the Government on the cases that had been finalized and those still under consideration, expressed the hope that the cases pending before the internal dispute settlement system would soon be finalized. She noted the Government's willingness to continue cooperating with ILO supervisory bodies in ensuring that all the pending cases were dealt with through domestic remedies. The ILO should continue to provide technical support to strengthen the tripartite and bipartite institutions in Algeria, as those structures were central to dispute settlement in the world of work.

**The Government member of the Islamic Republic of Iran** welcomed the measures adopted by the Government to reinforce the situation of trade unions in the country. Referring to the statistics provided by the Government on the settlement of individual cases, he noted that 76 of 86 cases had been settled or were in the process of being settled. Efforts had been deployed to reach a consensual Labour Code in full consultation with the social partners. He recalled the Government's indication that it had not rejected the recommendations adopted by the Conference Committee in 2017 concerning the direct contacts mission and indicated that further negotiations could pave the way to a solution. He encouraged the Office to provide the necessary assistance to overcome the pending issues.

**The Worker member of Morocco** expressed surprise at the Government's reply in which it described the CGATA as a "quasi union". He emphasized that CGATA was a founding member of the Arab Trade Union Confederation, the Maghreb Social Forum and the World Social Forum, and a member of the ITUC. Furthermore, the General Union of Moroccan Workers was engaged in long-standing cooperation with CGATA, which it considered to be a serious and responsible trade union. Consequently, denying the existence of the union and its representativeness was merely an attempt to favour one union over another, while the correct procedure was to foster cooperation and participation between the main trade unions in the country. That was a crucial element in the promotion of social peace, to which any serious government should aspire. He concluded that any action that prejudiced freedom of association was a clear violation of the ILO Constitution and contravened the provisions of the Convention.

**The Government member of Egypt** said that account should be taken of all the efforts made by the Government in the framework of dialogue with the social partners, to ensure the effective implementation of the Convention. This included preparing labour legislation and other related social laws; ensuring the establishment of trade unions based on pluralism; facilitating the establishment of trade unions at different levels by removing the restrictions and obstacles in this exercise; and providing the necessary guarantees for the establishment of independent trade unions. The Government was encouraged to take additional measures to ensure the full application of the Convention, both in law and practice and to make use of the technical assistance provided by the Office in that respect.

**The Worker member of Mali**, speaking also on behalf of the workers of Guinea and the Congo, indicated that, for the second consecutive year, the Committee was examining the failure of Algeria to comply with the provisions of the Convention. In light of the arguments put forward by the Government and the efforts made to clarify contentious issues, significant progress had been noted regarding in particular: the effective recognition of pluralism, resulting in the registration of several trade unions covering almost all economic branches and the public sector; and the existence of a regulatory framework to facilitate the conclusion

of collective agreements at the enterprise level. In addition to those achievements, a National Economic and Social Growth Pact had been signed, thereby strengthening the promotion of social dialogue and the recognition of the rights of all workers. Social peace was the bedrock of all economic progress and the foundation of the rule of law as it ensured respect for the choice of all workers to freely exercise their activities. In the present case, Algeria was a country engaged in a process of substantial transformation sustained throughout by the values of progress and democracy, for which the ILO was a reference. In that context, the Organization's role was to actively encourage the strengthening of social dialogue as a channel for social peace and cohesion through the recognition of the achievements made since 2017 in relation to trade union rights. The ILO should continue to support Algeria to strengthen the results attained.

**The Government member of Mexico** noted the action taken by the Government in response to the comments of the Committee of Experts, and particularly the progress made in reforming the Labour Code and the political will shown to undertake a broad consultation process with the social partners with a view to drafting legislation that would strengthen the application of laws and practice, so that the challenges in the present case could be overcome. At the same time, the Committee of Experts had noted the allegations aired before the Committee on Freedom of Association, which made it necessary to emphasize the importance of avoiding duplication in the examination of the issues at hand. It was therefore particularly relevant not to prejudge any matters that were still pending before that Committee, so as to ensure coherence in the functioning of the supervisory bodies. He reiterated that respect for fundamental rights at work was an essential component in creating decent work and accordingly, expressed satisfaction at the Government's willingness to work with the supervisory bodies. It was to be hoped that the legislative process under way would be fruitful and that the Committee of Experts would be kept informed of the progress achieved.

**The Worker member of Bahrain** said that there was no doubt that the Government was dealing decisively and transparently with the observations of the Committee of Experts and that it responded in detail to all the issues contained therein. He expressed his surprise at the fact that Algeria had been on the list of cases for years, despite the fact that it had ratified more than 60 international labour Conventions, which confirmed the country's commitment to respect of international labour standards. The Algerian labour movement was dynamic and active, and provided significant material and moral support to Arab and African trade unions. However, he supported the statements made by the Government in that they should be granted freedom in dealing with the draft Labour Code, with the full support of the social partners. He added that the great number of social sectoral agreements reflected the fact that Algeria used social dialogue and collective bargaining as the ideal means to regulate conditions of work. Finally, it was important to acknowledge efforts made in the country, which provided a good example of freedom of association and social dialogue, rather than insist on placing it on the list of cases.

**The Government member of the Russian Federation** noted that the information provided by the Government confirmed its commitment to complying with the Convention. The Government was demonstrating good will and was open to dialogue with the social partners on the issues raised. For a number of years, the Government had been taking specific steps that affirmed its commitment to the fundamental principles and rights at work. The situation should be analysed carefully, and the ongoing social dialogue should be supported. The speaker concluded by en-

couraging the Government's cooperation with the ILO, including in the form of an ILO mission, and to continue to take measures in that respect.

**The Worker member of Sudan** noted that the Convention provided for account to be taken of national laws in the exercise of trade union activities. Algeria had ratified a large number of ILO conventions. It also had an important role in developing the African trade union movement through the Organization of the African Trade Union Unity (OATUU), as well as an active role in the Arab trade union movement through the International Confederation of Arab Trade Unions (ICATU). Algeria's national labour legislation was in conformity with international labour standards, including with respect to trade union pluralism.

**The Government member of Ghana** welcomed the efforts taken by the Government regarding the reinstatement of dismissed workers. The Committee of Experts should bear in mind the distinction between fundamental human rights and trade union rights, as trade union rights also entailed obligations. Algeria had acquired great experience in the use of social dialogue as a tool to reach consensus on important socio-economic issues. The reform of the Labour Code required the participation of major players in the country in order to ensure consensus over a law which addressed existing gaps and takes into account emerging issues in the industrial environment. He urged the Government to strengthen engagement with the social partners and avail itself of ILO technical assistance to make progress in the finalization of the Labour Code reform, in compliance with relevant international labour standards.

**The Government member of Cuba** expressed appreciation of the information that the Government had supplied concerning the Convention. She emphasized that some of the recommendations made by the Committee of Experts had already been implemented and trusted that Algeria would continue to make progress in putting into practice the recommendations made.

**An observer representing the World Federation of Trade Unions (WFTU)** said that the trade unions situation in Algeria was characterized by pluralism, as more than 100 trade unions were registered, including 65 central trade unions. What was lacking in Algeria was ambitious and fair legislation regulating pluralistic trade unions. Some considered that tripartite dialogue necessarily meant the inclusion of only the most representative trade unions and the exclusion of the remaining organizations, when in fact tripartite dialogue should not be restricted but should encompass a number of workers' and employers' organizations at all stages of dialogue. He recommended that the Government of Algeria should work to establish a higher council for social dialogue in which more than one employers' organization and one workers' organization could participate.

**The Government member of Kenya** noted that since the last examination of the case by the Conference Committee in 2017, the Government had put in place a number of measures to address some of the problems regarding the application of the Convention. There had been an increase in the number of cases settled through conciliation or competent courts, most of which related to professional misconduct rather than to the exercise of workers' trade union rights. Consultation and negotiation had also resulted in the signing of a number of economic and social agreements and the creation of institutions to enhance social dialogue. As the process of amending laws and restructuring institutions was time-consuming, the Government should be given more time and technical assistance from the ILO in order to enhance compliance with the Convention.

**The Government member of Nigeria** noted with satisfaction the Government's report on the application of the Convention and considered that much substantial progress had been made. He expressed support for the proposal to revise

the working methods of the Committee to carry out its mission in accordance with the principles of tripartism and ensure full transparency in individual cases. Particular concern remained about the complaints lodged against the Government by some persons and trade unions allegedly lacking official recognition on the pretext that the Government was hindering freedom of association. Trying to force governments to implicitly recognize pseudo-organizations was a practice that undermined a State's sovereignty. Finally, the Government's commitment to meet the requirements of the principles of the Convention was welcomed.

**The Government member of the Syrian Arab Republic** noted the positive measures initiated by the Government. Those measures should continue, as the Government was determined to pursue reforms to ensure the application of the Convention. The delay in finalizing the Labour Code should not be a concern as this legislation required tripartite consultations and dialogue. He hoped that the new law would soon be issued as the tripartite constituents reached consensus.

**The Government representative** emphasized that Algeria was a stable country which respected human rights in general, and freedom of association in particular, as demonstrated by the strikes that had been called, including in some very sensitive sectors, such as national education, health and transport. There were no preconditions for the registration of trade unions, except the procedures set out in the national legislation. Information concerning the processing of applications for trade union registration had always been provided to the ILO on time. He added that one person claiming to represent the workers was no longer a public official and therefore only currently represented herself. The Government had also provided all the evidence concerning the illegal activities of that person, which consisted of inciting rebellion and disobedience, for which there could be no protection under the Convention. He further noted that Algeria had neither refused nor cancelled the direct contacts mission. The country had provided full information on the action and preparations made in that regard and was engaged in consultations with the Office. With regard to the outcomes of individual cases, full information had been provided in a transparent manner and the procedures were well advanced. With regard to the reform of the Labour Code, dialogue and tripartite consultations were in progress, including those concerning the provisions on which comments had been made by the Committee of Experts. Pending the completion of the process, Algerian labour legislation was in conformity with international Conventions, which meant that there was no legal vacuum in the country. He regretted that a number of accusations had been made against his country despite the information previously provided by the Government, which it refuted. It had been indicated that Mr Mellal was no longer in the enterprise in question, but that he was working as a lawyer at the Alger bar. Regarding the legal proceedings in which he was involved, the enterprise had appealed and the courts were continuing to work in full independence. Other persons present in the room claimed to have received prison sentences, although they were able to travel freely outside of the national territory. With regard to the dispute that had arisen within SNAPAP, it should be recalled that the Supreme Court had ruled on the case and that the trade union's leaders had been re-elected at its last congress. On the case relating to CGATA, all the relevant information had been provided to the Office, which could now be examined by the Committee of Experts. Trade union pluralism existed in Algeria, as demonstrated by the significant number of organizations that were active. The dissolution of SNATEGS had been decided upon by its founding members in accordance with the legislation, and the Ministry had confined itself to taking note of that vol-

untary dissolution. With regard to trade union representativeness, the legal framework had been in place since the adoption of the 1990 labour laws. The framework developed that year aimed only to ensure greater transparency and precision in the assessment of trade union representativeness. Twenty-one trade union organizations had complied with the new measures, without their operation being affected. He recalled his country's commitment to tripartism and social dialogue, and underscored his Government's willingness to strengthen cooperation with the Committee and the ILO in general.

**The Worker members** emphasized that the Government had provided further information concerning the observation of the Committee of Experts that the Committee had discussed in 2017, without however responding to the comments made by the Committee of Experts in its latest observation. It would have been better, as the Committee had requested the previous year, for the information to have been sent to the Committee of Experts so that it could have been taken into account in its examination of the case. Sending the information more promptly would also have allowed the necessary verification to have been made. They recalled that currently: (i) the list of reinstated workers sent by the Government included SNAPAP delegates who had only been reinstated on condition that they renounced their trade union functions; (ii) postal workers were included on the list, even though in reality, the post office was still refusing to reinstate them; and (iii) the majority of SNATEGS delegates were not mentioned on the list. It was therefore clear that the Government had only partially given effect to the Committee's recommendation in that regard. With respect to the procedure for the registration of unions, they considered the information supplied by the Government to be a cause for concern. According to the Government, the non-recognition of SAATT was largely attributable to the absence of specification of the categories of workers covered by the organization's statutes, a requirement that ran counter to Article 3 of the Convention, which recognized the right of workers' organizations to draw up their rules freely. With regard to the alleged failure to comply with the provisions of section 21 of Act No. 90-14, they had underlined that the section in question contained requirements that constituted interference by the public authorities, in breach of Article 3(2) of the Convention, and that the Government had not specified exactly the manner in which SAATT had failed to comply with that section. Concerning the reported reinstatement of workers in the public service, the Government had not provided specific information in support of its claims on that point. The Worker members recalled that the Convention contained a series of provisions that had yet to be incorporated into Algerian law. With regard to the registration of trade unions, clear and transparent provisions were needed. In order to avoid registration becoming in effect a request for prior authorization, it would be useful to introduce a legal provision setting a short time limit for the delivery of the receipt of registration and providing for automatic trade union registration if no reasoned reply was received within the set time. More specifically, they called on the Government to: (i) recognize independent trade unions, including the CGATA, as soon as possible and restore the registration receipt of SNATEGS, which had been withdrawn without justification; and (ii) amend the legislation so that all workers, without distinction on grounds of nationality, had the right to establish unions. With regard to the Labour Code that was being prepared, they: (i) requested the Government to ensure that the text was in full conformity with the Convention and expressed regret that the Government had made no explicit commitment in that respect; (ii) pointed out that the document submitted made no reference to the comments of the Committee of Experts; and (iii) requested the Government to send that document to independent

trade unions, including the CGATA, for comment. They also called on the Government to cease any action that hindered freedom of association, so that it could be exercised in a climate free of intimidation and violence. Bearing in mind that the Government had not given any effect to the recommendations made at the previous session of the Committee, they requested it to accept a high-level mission to examine all relevant aspects and, in particular, to hold meetings with the complainant unions.

**The Employer members** expressed appreciation for the information provided to the Conference Committee, including the Government's stated commitment to further cooperate with the ILO and the national social partners. Referring to the conclusions adopted by the Conference Committee in 2017, the Employer members encouraged the Government to work towards completing the reform of the Labour Code, in consultation with the social partners. In that respect, the Employers highlighted the requirement of the Convention to remove obstacles to the establishment, by workers of organizations of their own choosing, including the registration of trade unions, and emphasized the need for a climate free of intimidation and violence. The Employer members welcomed the Government's stated commitment to tripartite social dialogue, which was a necessary component for continued progress. In the spirit of transparency and clarity, and in light of the Committee of Experts' need for the most up-to-date information, a high-level mission should be accepted without reservation to demonstrate commitment to achieving compliance with ratified Conventions.

### **Conclusions**

**The Committee took note of the oral statements made by the Government and the discussion that followed.**

**The Committee expressed concern over the persistence of restrictions on the right of workers to join and establish trade union organizations, federations and confederations of their own choosing. The Committee noted with concern that progress towards compliance with Convention No. 87 remained slow as this case has been discussed for more than a decade and that the Government had yet to bring the draft Labour Code to Parliament for it to be finally passed. The Committee deeply regretted that the Government did not accept the terms of the direct contacts mission without restriction pursuant to the Committee's recommendations in 2017.**

**Taking into account the Government's submission and the discussion that followed, the Committee urged the Government to:**

- ensure that the registration of trade unions in law and in practice is in conformity with Convention No. 87;
- process pending applications for the registration of trade unions which have met the requirements set out by law and allow the free functioning of trade unions;
- ensure that the new draft Labour Code is adopted in consultation with the most representative worker and employer organizations and is in conformity with the text of Convention No. 87;
- amend section 4 of Act No. 90-14 in order to remove obstacles to the establishment by workers of organizations, federations and confederations of their own choosing, irrespective of the sector to which they belong;
- amend section 6 of Act No. 90-14 in order to recognize the right of all workers, without distinction whatsoever, to establish trade unions;
- ensure that freedom of association can be exercised in a climate free of intimidation and without violence against workers, trade unions, employers or employer organizations;
- provide further information on the expedient reinstatement of employees of the Government, terminated based on anti-union discrimination; and

- provide information regarding the decision to dissolve the SNATEGS trade union to the mission noted below.

**The Committee urgently calls on the Government to accept without delay, and before the next meeting of the Committee of Experts, an ILO high-level mission without restriction and report progress to the Committee of Experts in this regard before its next meeting in November 2018.**

The Government representative regretted the decision taken by the Committee, despite all the information and documents provided to the Office. He considered that there were problems relating to the functioning of the Committee in terms of appreciating the effect given to the Convention in his country, which confirmed the need and urgency to reform the Committee's functioning so that the list of individual cases could be drawn up in a transparent manner and the conclusions were tripartite and reflected correctly and faithfully through agreed recommendations the points of view expressed during the discussions. He recalled the readiness of the Minister of Labour to continue consultations concerning the direct contacts mission that was due to visit Algiers, indicating that he had met the Director-General and the Director of the International Labour Standards Department to discuss the mission. He solemnly declared that his Government rejected the substance and form of the Committee's conclusions. He regretted that, instead of taking into account the progress made and providing support and encouragement with the objective of making improvements, the Committee had confined itself to the statements made by two persons and undocumented articles in the press and that it had recommended a high-level mission without taking into consideration in its conclusions the measures, arguments, documents and progress achieved, and the existence of a large number of trade unions. He had emphasized on many occasions at previous sessions of the Conference that such inconsistencies jeopardized the impartiality and credibility of the Committee. Finally, with regard to the representatives of workers' organizations in Morocco and Brazil, he advised them to devote their energies to persuading their countries to ratify the Convention, rather than criticizing Algeria, where trade union pluralism was a constitutional principle, and he took the occasion to remind the Worker spokesperson of the danger that attitudes which were not constructive would push the Committee towards blockage and a dead-end.

#### **BOTSWANA (ratification: 1997)**

A Government representative recalled that in 2017 the Committee had recommended the Government to: take appropriate measures to ensure that the labour and employment legislation granted members of the prison service the rights guaranteed by the Convention; ensure that the Trade Disputes Act (TDA) was in full conformity with the Convention and engage in social dialogue, with further technical assistance of the ILO; amend the Trade Unions and Employers Organisations Act (TUEO Act), in consultation with employers' and workers' organizations, to bring those laws into conformity with the Convention; and develop a time-bound action plan together with the social partners in order to implement the Committee's conclusions. The speaker indicated that since then, consultations had been ongoing between the Government and the representatives of employers and workers on the process to amend the labour laws. In particular, the Government and the social partners had met seven times between July 2017 and April 2018, clearly showing the Government's commitment to move forward. Although the process of reviewing the labour laws had been slow at the beginning, meaningful progress had been made in October 2017 when a tripartite time-bound action plan, as requested by the Committee, had been adopted by the tripartite parties and provided to the ILO Decent Work Team for Eastern and Southern Af-

rica. There had been general consensus among the representatives of the Government and the social partners on the need to review the labour laws to fill the gaps, incorporate various Court decisions and make the legislation compliant with the ILO Conventions ratified by Botswana.

In April 2017, during the mission of the ILO Decent Work Team for Eastern and Southern Africa to Botswana, it had been resolved that the focus of the review would be on the Employment Act and the TUEO Act. However, the tripartite partners had acknowledged that some provisions in those laws could have a bearing on the provisions of other labour laws and it had therefore been agreed that the review could be extended to include such other laws as the Public Service Act (PSA) and the TDA, to the extent necessary, so as to ensure harmonization and consistency. In order to carry out the review, the Government and the social partners had agreed to establish a Labour Law Review Committee (LLRC) consisting of members from the Government, employers and workers, the purpose of which was to spearhead the labour law review process. The tripartite action plan envisaged that the Bills on the amendment of the laws would be submitted to the November 2018 session of Parliament. The Government and the social partners had also agreed to engage an expert to assist in the review process, had developed the Terms of Reference for the Review of the Labour Laws, which had been provided to the ILO in March 2018 and, with the facilitation of the ILO Decent Work Team for Eastern and Southern Africa, had also agreed on the expert to be engaged. During the Government's engagement with employers' and workers' representatives, it had become clear that the amendment of the TDA, in particular the review of the list of essential services, was of critical importance to workers and the Government had therefore deemed it necessary to re-examine the list of essential services. As such, the TDA and the PSA would form part of the laws that would be reviewed. Finally, the speaker emphasized once again that the framework for the review of the labour laws had been agreed with the social partners, that the action plan had been communicated to the ILO, which had facilitated the engagement of an expert, and that the tripartite parties had agreed on the expert and were awaiting confirmation from the ILO on when the expert would commence the task of facilitating the review of the labour laws. He also reiterated the Government's engagement to ensuring that progress was made towards the full implementation of its commitments.

The Worker members recalled the recommendations made by the Committee during the discussion of the case in 2017, and noted that they had not been implemented. The Government had sent no report on the application of the Convention, which had led the Committee of Experts to repeat its previous observation. The situation was regrettable. First, with regard to the recurring issue of prison staff being denied the right to organize, the Government considered that the prison administration was part of the disciplined forces. Such a situation was contrary to Articles 2 and 9 of the Convention. While Article 9 provided for an exception for the armed forces and police, such an exception must be interpreted narrowly. It should be noted that the exception for the army and the police was not based on the fact that they were subjected to discipline, but rather on the nature of their activities. It therefore did not matter whether or not the prison administration was subject to disciplinary regulations. Furthermore, there was no direct link between the different categories (armed forces, police, prison service). Consequently, the Government's argument that prison staff were excluded from the right to organize on the grounds that they were part of the disciplined forces was incompatible with the Convention, even if the Constitutional Court had accepted such an exclusion. The Worker members emphasized that, in other administrations, work-

ers had been pressured into ending their trade union membership. Their employers had threatened to take away their social benefits if they did not give up their trade union membership. Legal action had been taken in this regard.

Second, concerning the right of trade union organizations to organize their activities, and in particular the determination of the list of essential services and the discretionary power of the Minister to declare a service essential, despite the diverging positions on the right to strike, the Employer members and the Worker members had reached a consensus on the subject during the examination of the case in 2017, and had invited the Government to bring its legislation on labour disputes into conformity with the Convention. Also at the legislative level, the issues relating to the conformity of the TUEO Act, which were linked to the provision granting certain facilities only to unions representing at least one third of the employees in the enterprise, had not been resolved. Although the establishment of thresholds of representativity was not in itself contrary to the Convention, this was subject to conditions such as the precise and objective nature of the criteria used, or the distinction being limited to certain privileges. In the case of Botswana, the Act did not establish a minimum number of members as a requirement for the establishment of a trade union, but as a requirement for the granting of certain privileges, such as access to the premises of an enterprise to recruit members, hold meetings or represent members in the event of a complaint, disciplinary measures or dismissal. However, such privileges were fundamental aspects of trade union activity; without them, it would be almost impossible for a trade union to recruit members or establish itself within an enterprise. Sometimes, even if a trade union met the criteria, the employer would refuse to grant it such privileges. Another provision of the TUEO Act that was contrary to Article 3 of the Convention was the one that authorized the registrar of trade unions to inspect the books and documents of a trade union at any reasonable time. In this regard, it was important to recall that organizations needed to benefit from the necessary autonomy and independence. Controls could only constitute an exceptional measure that must be narrowly defined. Lastly, regarding the new draft bill on the public service which, according to the Government, had been the subject of prior consultations with the social partners, it was essential for the Government to provide a copy of the latest version of the draft bill, or a copy of the legislation once it had been adopted. In conclusion, in 2017, the Government representative had stated that it was necessary to wait for the outcome of an open discussion with the social partners in the near future. The Worker members had shared this concern, which was linked to the need to ensure consultation with the social partners, and had recognized the difficulties and hurdles that a government could encounter in its efforts in that regard. Nevertheless, given the fact that the Government's attention had been drawn for 17 years to many of the points under discussion, the amount of time needed to engage in social dialogue could not be used as an excuse for failing to guarantee the basic rights of workers.

**The Employer members** recalled that, although the case had first been discussed by the Conference Committee in 2017, it had previously been subject to nine observations of the Committee of Experts. It was being discussed again because nothing had happened in the meantime, despite the provision of technical assistance by the ILO on a number of occasions. It was noted that a recent change of presidency had had a beneficial effect on the Government's commitment to change. The Committee of Experts' requests to the Government reflected concerns relating to compliance with the Convention in law and practice. With respect to practice, the Committee of Experts had reported violations of the Convention on several occasions, including favouritism towards certain trade unions, dismissals of

striking workers, police repression of pickets and a refusal to allow public sector unions to address their concerns to Parliament. There were several aspects of concern to the Employer members, the first relating to the requirements of Article 3 of the Convention, which permitted workers and employers to set up organizations free from official interference. While favouritism and restrictive criteria for establishment did not meet that standard and should be avoided, that did not mean that there should be no criteria. It was common for unions to be subject to the same criteria as any other not-for-profit organization. Similarly, unilateral access by public authorities to the books and accounts of a union could be regarded as interference by the authorities, in clear contravention of Article 3 of the Convention. Regard should be had to the practice common in many countries of requiring regular reports rather than permitting the authorities' access to trade union records. Acknowledging the establishment of the LLRC, the Employer members urged the Government to make progress in reviewing labour legislation so as to remove any barriers to the free establishment or operation of trade unions.

The reference in the Committee of Experts' observation to instances of repression was more difficult to deal with as, without more evidence, it was difficult to assess whether the instances complained of involved violence or other unlawful acts that would have attracted legitimate attention from the authorities. Consistent with the Employer members' firm view that the Convention did not regulate the right to strike, as well as with the view expressed in the Government statement to the 2015 tripartite meeting on the Convention that the scope and conditions of the right to strike were regulated at the national level, there was little more that the Employer members could add on the subject. The Government was encouraged to ensure that actions taken with respect to protests were commensurate with the source and nature of the protest and the respected national laws that governed them. The same applied to essential services, which could be designated by a country. In many countries, the right to organize and to take industrial action was typically denied to the armed services and the police, which was unequivocally a decision to be taken by the nation concerned. It was also common to designate certain other services as essential because any disruption of them for more than a short period would cause economic harm or endanger the lives, safety and health of the population. Botswana had designated a large number of services as essential and, while that approach did not in itself contravene the Convention, it did raise questions as to why, particularly when those services included banks and diamond operations. The history of the case also related to the Government's designation of the prison services as a "disciplined force" in the same manner as the armed services and the police. The Employer members disagreed with such a designation, as the prison service was not responsible for preserving and maintaining law and order in the constitutional sense as applied to the armed services and the police. Nor, as observed by the Committee of Experts, was the prison service covered by the same legislation as the armed services and the police. However, the Employer members were restricted in commenting further as that was a matter for the national legislature. Similarly, as in 2017, the Government was urged to review the list of essential services and to ensure that any restrictions placed upon them were commensurate with their impact on the health and welfare of the citizens and the economy. With regard to the compliance of national law with the Convention, the Government had previously indicated that it was focused on amending the Employment Act and the TUEO Act, but meaningful dialogue with the social partners had yet to occur. Moreover, both employers and workers had previously expressed deep concern that focusing only on those two Acts would achieve little. In April 2018, the Government

had asked for further assistance from the ILO which would be provided. The speaker welcomed the broadening of the review exercise, encouraged the Government to engage in social dialogue with the representative organizations of employers and workers willing to advance the underlying issues and noted the increased willingness of the Government to do so.

**The Worker member of Botswana** regretted that the Government was not complying with the Convention and had largely not followed the conclusions of the Committee, using delaying tactics and showing a negative attitude towards the supervisory bodies. Upon returning from the 2017 Conference, the Government had held a press conference in which, stopping short of denouncing the ILO, the Minister had stated that its findings were merely advisory and not binding. Despite this position, in July 2017, the trade unions had submitted for tripartite discussion proposals to give effect to the Committee's conclusions. At first, the Government had frustrated those efforts and only in October 2017 had the proposals been discussed and the parties agreed to form a tripartite LLRC, as well as agreeing to a time-bound workplan to complete the review. The LLRC had been given the mandate to agree on the terms of reference for a consultant to assist in reviewing the laws, but the Government had sought in bad faith to unilaterally impose the terms of reference on the social partners, seeking to exclude from the scope of the review the TDA, the PSA and the Prisons Act. The workers' representatives, supported by Business Botswana, had recalled that the Committee's conclusions had called for the review of those Acts, but that the Government had refused to amend them and, as it was not even willing to engage in dialogue on the issue, had referred to its old argument that the prison service belonged to the disciplined forces. In its 25 April 2018 response to a request from the Botswana Federation of Public Sector Unions (BFTU) on the subject, the Government had claimed that unionization implied industrial action and that this would compromise national security. Such flawed reasoning was contrary to Article 9 of the Convention, as well as to national constitutional provisions on civil liberties. Moreover, since the last discussion by the Committee, violations of the Convention had continued. In January 2018, the Government had notified trade unions and federations that it would inspect trade union books, accounts and documents pursuant to section 49 of the TUEO Act and had insisted on such unlawful inspections, despite the BFTU's submission that they were contrary to the Convention and would encroach on the independence and autonomy of trade unions. The BFTU was also deeply concerned at the deregistration of the Public Sector Bargaining Council (PSBC), an institution which nurtured and consolidated industrial democracy. The Government had also published the Public Service Bill (PSB) to amend the PSA without consulting any tripartite body. The PSB undermined the role of the social partners in the appointment of the PSBC secretariat and encroached on union autonomy by dictating who could represent them or negotiate on their behalf. The Committee must therefore request the Government, as a matter of urgency, to halt the continued violations of the Convention and to allow the terms of reference for the labour law review to be subject to tripartite structures and to encompass the various laws the Committee had urged be amended, as well as the PSA, with precise timelines.

**The Employer member of Botswana** stated that the tripartite partners had met to address the recommendations made by the Committee on the Application of Standards in 2017 and a tripartite task force had been established to spearhead a comprehensive review of the labour laws. Although much time had been lost on building consensus on the parameters of the review, there was confidence that the task

force would rapidly oversee the labour law review, especially considering that the country's new leadership was inclined to engage openly with the workers, and that it would report progress to the ILO supervisory bodies. As the review of the labour laws not only offered the opportunity to address the conclusions of the Committee, but also to align the national employment laws and policies with the needs of a modern and competitive economy, the speaker requested the Committee to give the country time to address its recommendations, and expressed the employers' continued availability to work with the Government and workers on the issue. Finally, he sounded a note of caution, as it would not be easy to reach consensus on the classification of prison officers in view of the divergent legal opinions on the matter, but the deep tradition of consultation should allow for progress to be made.

**The Government member of France** drew attention to cases in which freedom of association had been violated, particularly as prison staff were unable to join a union and essential services were defined very broadly, leading to many workers being excluded from exercising the right to strike. In that regard, no information had been provided to suggest that the situation had changed. The speaker underlined the importance that should be attached to the full exercise of the right to freedom of association through effective and balanced social dialogue, and to the protections and facilities that should be provided for workers' representatives. Similarly, it should be emphasized that the right to strike was an essential element of freedom of association within the meaning of the Convention, and that the importance of respecting this right in applying the Convention should be recalled. Freedom of association and the associated right to strike were fundamental labour rights enshrined in the eight core Conventions, universal ratification of which should be promoted. Consequently, the Government of Botswana should take into account the requests made by the Committee of Experts and review its legislation so as to enable workers whose functions could not reasonably be categorized as essential services to carry out trade union activities freely.

**The Worker member of South Africa** expressed concern that the various pieces of legislation identified by the Committee of Experts as requiring urgent and substantive amendments – the TDA, the Prison Services Act and the PSB – were designed to reduce workers' rights, which was injurious to work morale, democratic industrial relations and productivity. It was also worrying that the Government continued to ignore the genuine efforts made by the national social partners, especially the workers, as well as by the Committee of Experts and the Conference Committee. The right of workers to organize, form organizations of their choice and have representation, including collective bargaining rights, constituted the basic minimum for making shared progress. He referred to the example of a trade union from South Africa which had organized workers in the police and prison services and highlighted that the trade union membership and activities of those workers had never posed a threat to the stability and cohesion of the country, or compromised the workers' professionalism in carrying out their official duties. It was therefore not useful for the Government of Botswana to argue that workers in prison services were members of a disciplined force that could not be allowed to organize freely and genuinely. The tendency to systematically and administratively stifle and shrink spaces for civil liberties, including the rights of workers in prison services, was dangerous for economic and societal stability. Therefore, the Committee was strongly urged to call on the Government to preserve and respect the sanctity of the provisions of the Convention, which were unambiguous, persuasive and practical in relation to the rights of workers to freely organize and bargain,

and to take measures to protect those provisions without let or hindrance.

**The Government member of Zimbabwe** thanked the participants for their interventions that focused on the core elements of the issue discussed, which was of a legislative nature. Legislative reforms could not be completed overnight given the plethora of bodies involved, including the tripartite structures, the Cabinet, the Parliament and their relevant subcommittees. The Government had informed the Committee about the roadmap, in particular the work being undertaken by the tripartite LLRC, which it had put in place, together with the social partners, to address the concerns raised by the ILO supervisory bodies. The Government had also stated that it was working together with the ILO field offices, including in relation to the labour law expert to be hired by the ILO to assist in elaborating the labour law reform. While appreciating the collaboration between the Government and the ILO, the speaker urged the latter to continue supporting the Government and the social partners in the reform process, including through its field offices.

**The Worker member of Kenya** indicated that the trade union organizations of the East African Trade Union Confederation (EATUC) understood perfectly the rationale and principles for essential services in the public services. Workers delivering essential services were conscious that their critical services, their professional commitment and willingness to serve people and their communities, contributed to the attainment of individual, community and national aspirations. Nevertheless, like every other worker, they had workplace rights to safeguard, which were not to be frozen, discounted and undermined simply because the workers were providers of essential services. Such rights should be well preserved, respected and enjoyed. However, the Government had continued to do the opposite, as noted in the report of the Committee of Experts. Experience had shown that workers who did not enjoy strike actions undertook efforts to avoid them as much as possible, but they also had the right to withhold their services where such efforts failed, so as not to open the gates for abuses of their other rights. The rationale for classifying essential services as was done in the TDA was incomprehensible, impossible to accept, and did not contribute to industrial relations and workplace harmony. It was difficult to see how diamond sorting, cutting and selling services, government broadcasting services, the Central Bank of Botswana, veterinary services and railway operations constituted essential services, as their interruption would not endanger the life, personal safety or health of all or part of the population. Recalling the Government's assertion to the Conference Committee that legislative amendments would be made to the list, the speaker confirmed with regret that no progress had been made in that regard and asked the Committee to insist on real and tangible progress.

**The Worker member of Ghana**, speaking on behalf of the Organization of Trade Unions of West Africa (OTUWA), expressed concern about the TUEO Act, highlighting in particular its section 43, which provided for the inspection of accounts, books and documents of a trade union by the Registrar at "any reasonable time". The provision was a clear interference by the Government in the internal affairs of trade unions, with the real consequence that union activities would be self-censored to favour the Government and not union members. Even in cases where the unions mustered the courage to assert their rights, there was the real and very high likelihood that the Government would retaliate by instigating false allegations, relying on its broad power to inspect union accounts, books and documents. The speaker also noted previous comments of the Committee of Experts indicating that legislative provisions regulating in detail the internal functioning of workers' and employers' organizations posed a serious risk of interference

and were therefore incompatible with the Convention. For instance, in Ghana, the legal framework allowed unions to enjoy the greatest possible autonomy, with a view to enabling them to function effectively, and the social partners filed their annual financial and other reports with the sole objective of protecting the interests of union members and guaranteeing the union's democratic functioning. Union activities and resources were from and for its members, who had the primary right to scrutinize and hold leaders accountable for running the organization. Governments should not include language in the legislation which could create any second level financial accountability mechanism as a pretext to interfere in legitimate trade union activities, and the Government was called on to amend the relevant legislation.

**An observer representing Public Services International (PSI)** indicated that the PSBC had been established in 2011, pursuant to the PSA, with the mandate to negotiate, conclude and enforce collective agreements. In August 2013, the office of the Director of Public Service Management (DPSM) had sent a letter to a member of the PSBC, the Botswana Federation of Public Service Unions (BOFEPUSU), stating that the Government was withdrawing from the PSBC, thereby rendering it dysfunctional, since the PSBC could only pass a lawful resolution if signed by both the employer and the trade union parties. The BOFEPUSU had taken the matter for review to the High Court, which had held that the withdrawal of the Government (as the employer) prejudiced the BOFEPUSU. Following the decision of the High Court, the Government had deregistered the BOFEPUSU as a Federation. That decision had been appealed and the courts had once again considered the deregistration to be illegal. In May 2017, the BOFEPUSU had withdrawn its membership from the PSBC, following the Government's decision to unilaterally award a 3 per cent salary increase to public servants outside the purview of the PSBC. The High Court had held that the Government was not permitted to grant unilateral wage increases to public servants during the period when wage negotiations were in progress, as this constituted negotiating in bad faith. The High Court had also stated that granting a unilateral increase, in light of the manner in which this had been done, had seriously undermined the trade unions and had damaged their integrity and credibility by demonstrating that union representatives were not effective in bargaining and thereby dissuading employees from joining trade unions. In addition, the High Court had urged the Government and the unions to revisit the situation, so that the fair and inclusive negotiating forum could be reconstituted. Despite the judgment, the Acting Commissioner of Labour and Social Security had dissolved the PSBC in November 2017, even though unions had been collaborating together with the Minister of Employment, Labour Productivity and Skills Development to resume its operations and the Acting Commissioner had been notified of such efforts. The unions had since appealed to the Minister to rescind or revoke the Commissioner's decision to cancel the PSBC, but to no avail. The speaker further recalled that the revision of the labour legislation was a great opportunity for the Government and the social partners to adopt legislation in line with the ILO standards ratified by the country. Nevertheless, the Government's behaviour clearly showed a deliberate attempt to undermine social dialogue and Botswana's obligations under the Convention.

**An observer representing Education International (EI)**, speaking on behalf of the Botswana Secondary Teachers' Union (BOSETU) and the Botswana Teachers' Union (BTU), stated that a high number of employees, including teachers, had been placed under the category of essential services through the amendment of section 46 of the TDA. Such widespread extension of the essential service status to almost 85 per cent of workers in the public service was



meant to freeze their rights to organize and effectively bargain, thereby infringing the Convention. Consequently, teachers and support staff in education would remain not only weak, but also vulnerable, their working conditions would deteriorate and it would have dire consequences on the quality of education, which was a public good. The speaker noted with regret the disagreements over the terms of reference of the tripartite LLRC, which had been established to review the labour laws to ensure their compliance with the Convention. The reasons of the disagreement had been the decision of the Government to exclude the TDA and the PSA from the review, even though section 46 of the TDA on essential services was a key aspect of the case, and it was therefore unacceptable for it to be excluded from the review. In addition, the Government had dissolved the PSBC, the only tripartite bargaining structure available in the public sector. As a result, there was no bargaining in the public service in Botswana. Furthermore, contrary to the Convention, a decision of the authorities to inspect union books had been adopted, which represented an interference in trade union affairs. The Committee was requested to ask the Government to include the TDA, the PSA and the PSB in the labour legislation review.

**An observer representing IndustriALL Global Union** referred to the continued violation of workers' rights in Botswana reported by its affiliates, due to the Government's continued failure to abide by the provisions of the Convention and the Committee's requests. In 2017, the Committee had noted various submissions concerning new amendments to the TDA, but no concrete progress had been reported to date, despite the abundant goodwill and disposition of the social partners, especially the workers. Expressing deep concern at the attitude of the Government, the speaker noted that the TDA had a sweeping broad application across all sectors and this posed a threat to economic and labour peace. Reports from affiliates in the country pointed to members and workers in the diamond and mining industries who were experiencing violations deriving directly from the TDA, including the case of a government-owned mining company which had made 5,702 workers redundant without following the relevant procedures. Economic hardship was no reason to undermine workers' rights. Workers with positions in the bargaining unit in the diamond cutting, sorting and sales services had been abusively re-classified as workers in "essential services", with the effect of denying their right to bargain with their employers and to strike. They had been unable to get an audience with the Commissioner of Labour and Social Security or to have attention paid to their grievances, the administration of disputes related to essential services being treated as an act of magnanimity. The Government was asked to take appropriate measures to ensure that the TDA was in full conformity with the Convention and to engage in genuine social dialogue with national unions.

**The Worker member of Burkina Faso** emphasized that, while information on political change was an indicator to be taken into consideration, it was not sufficient in itself, particularly if account was taken of the principle of continuity of the State and the fact that the Government had stated in a press conference in 2017 that the Committee's conclusions were mere recommendations that were not binding on national authorities. Regarding the process of codifying "living together" through the adoption of standards, the speaker emphasized that the principle of freedom of association was considered to be a central value of the ILO and that Convention No. 87 had been adopted by tripartite consensus to regulate the exercise of freedom of association and trade union rights. In that context, it was important to recall that Conventions were legally binding international treaties and that, through their ratification, countries committed to their application in law and in prac-

tice. All authorities in the country must contribute to respecting international commitments made by the Government through the ratification of a Convention. However, a lack of principled governance regarding respect for international commitments was widespread and constituted a dangerous phenomenon. The workers' movement must act to ensure that trade unions played their role. To that end, it was essential for the Office to produce a simple leaflet, with a reminder of what a Convention was and of the hierarchy of standards for a country that had ratified it, in order to raise awareness among young workers.

**The Government member of Iraq** recalled that the Convention was a fundamental one and referred to fundamental freedoms. The Convention had just been ratified by Iraq. The right to organize and to freedom of association was essential and should be guaranteed even where a small group of workers was concerned. The Government and the social partners should pursue their efforts to better implement the Convention and adopt texts in line with it. The speaker expressed deep gratitude to the ILO and its various bodies for the enormous efforts made in relation to implementation of international labour standards, with a view to meeting the objective of social justice.

**The Government representative** expressed appreciation for the contribution of the various speakers, especially those who had supported the Government in its endeavour to advance in the labour law review process. He also expressed regret at the fact that the observations from the workers had not taken into account the progress made, especially considering that legislative changes could not occur overnight. He emphasized the country's consultative approach to decision-making, as had been mentioned by the Employer member of Botswana. Most of the issues raised in the discussion concerned legislative issues and therefore needed to be subjected to social dialogue, preferably through the LLRC. However, it was unfortunate that some issues that had already been resolved through tripartite means, such as the Terms of Reference for the Review of the Labour Laws that formed the basis for ILO technical assistance, were being denied by workers in Botswana. Furthermore, the Worker member of Botswana had made some statements which were not factual. With regard to the PSBC mentioned by several speakers, the speaker clarified that: (1) the PSBC had been established in 2011 when the Government, as the employer, and the public service unions had created its Constitution through collective bargaining, and one of the powers bestowed on the Council by its Constitution had been the authority to decide which unions it should or should not admit; (2) in May 2017, the BOFEPUSU AJA had given notice of its resignation from the PSBC with immediate effect, as a joint arrangement between four public service unions, which were members of the PSBC; (3) as of May 2017, the Government had become the only member of the PSBC, which could thus not function or carry out its mandate, and the Government had made an application to the Commissioner of Labour to cancel the registration of the PSBC Constitution; (4) the cancellation of the PSBC Constitution had afforded an opportunity to the Government, as the employer, and all public service unions to craft a new constitution through collective bargaining so as to ensure that, in the future, it would not cease to function as a result of the voluntary withdrawal of one of its members; and (5) the Government was hopeful that the new Constitution would be agreed upon and the PSBC would once again be functioning by the end of August 2018. In conclusion, social dialogue was a delicate process that required mutual trust and good faith among the parties involved. As previously mentioned, the Government had met with the social partners on numerous occasions and together they had achieved several milestones, but it appeared from the intervention of the Worker member of Botswana that there were deeper and more serious

**Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**  
*Honduras (ratification: 1956)*

underlying problems that needed to be addressed by the tripartite partners, with the assistance of the ILO expert. However, the formalization and institutionalization of the mechanism for the review of labour laws clearly demonstrated the Government's commitment to implementing the Committee's recommendations, as well as to examining other labour laws, such as the PSA.

The Employer members noted that Botswana had been going through a process of change in Government, in will and in attitude, but that this had not translated into concrete outcomes. Nevertheless, it was appreciated that the Government had sought ILO assistance and hope was expressed that the outcome of such assistance would translate into real progress. Referring to particular aspects of the case, the speaker highlighted that there were many ways of settling the issues at stake. The threshold for setting up unions did not have to be so high, but some thresholds could be set; with regard to the inspection of accounts, books, and documents of a trade union, it would be possible to balance the information the Government deemed necessary with observance of the Convention. The different views expressed on how progress had been achieved showed an absolute need to address the issues in a tripartite manner and the Government was urged to engage in social dialogue with the representative organizations of employers and workers.

The Worker members considered that, in the absence of tangible progress, there was a need to reiterate the requests made in the 2017 discussions. Above all, the Government should be invited to take the appropriate steps to ensure that the labour legislation endowed prison staff with the rights enshrined in the Convention, particularly freedom of association. The Government should also fully align the TDA with the Convention and initiate a social dialogue with renewed technical assistance from the Office. It was also necessary to amend the TUEO Act, in conjunction with the workers' and employers' organizations, to bring it into line with the Convention, particularly by revoking the obligation for organizations to make their books and documents available to the Registrar for examination at any reasonable time. Similarly, it was necessary to withdraw the facilities and benefits granted solely to trade unions that represented at least one third of the employees of the company, since these were not in keeping with the Convention. In view of the lack of progress, the Government should be called upon to take all possible steps to implement the recommendations adopted by the Committee.

**Conclusions**

The Committee took note of the oral statements made by the Government representative and the discussion that followed.

The Committee welcomed the Government's agreement to broaden the scope of the labour law review.

Taking into account the Government's submissions and the discussion that followed, the Committee called upon the Government to:

- take appropriate measures in consultation with the most representative employers' and workers' organizations to ensure that the labour and employment legislation grants members of the prison service that are not considered to be part of the police the rights guaranteed by the Convention;

- amend the Trade Unions and Employers' Organizations Act, in consultation with employers' and workers' organizations, to bring it into conformity with the Convention;
- provide further information on the Court of Appeal ruling on the invalidity of statutory provisions;
- ensure that the registration of trade unions in law and in practice conforms with the Convention; and
- process pending applications for the registration of trade unions, in particular in the public sector, which have met the requirements set out by law.

The Committee called upon the Government to address these recommendations within the framework of the ongoing labour law review and in full consultation with the social partners. The Committee urged the Government to continue availing itself of ILO technical assistance in this regard and to report progress to the Committee of Experts before its next meeting in November 2018.

A Government representative acknowledged the recommendations of the Committee and confirmed that his Government was pursuing labour law review through the tripartite Labour Law Review Committee. The Government was committed to engaging with the social partners with a view to submitting a report to the Committee of Experts' meeting in November 2018 and would continue to resort to the tripartite structures to progress with the legislative agenda and reforms, including the labour law review, during the November sitting of Parliament.

**HONDURAS (ratification: 1956)**

The Government has provided the following written information.

*Trade union rights and civil liberties*

The Government has noted with deep concern the previous and new allegations of "numerous anti-union crimes", including various "homicides and death threats", that occurred between 2010 and 2014. As the international community is aware, violence and insecurity are massive problems with serious consequences for Honduran society. The current administration is therefore making enormous efforts to remove these obstacles, strengthening institutions and implementing various actions and measures, which have combined to enable progress in this respect. Accordingly, in addition to other actions described below, one of the Government's objectives, in the Strategic Institutional Framework (2015–22) of the Ministry of Security (SEDS), is to help reduce impunity by reinforcing the Criminal Investigation Police and the Technical Criminal Investigation Agency (ATIC), and it has made a specialized and exclusive commitment to human rights by pushing to implement the Public Policy and National Plan of Action on Human Rights (PNADH), for which the State Secretariat at the Human Rights Department has been established and has been operational since January 2018. The statistics for homicides as at 2016 show a downward trend, with the homicide rate per 100,000 population falling by 27 points by comparison with 2011. More recent data show that at the end of 2017 the homicide rate stood at 42.7 per 100,000 population.

*Information on the progress of investigations and criminal proceedings corresponding to each specific case*

*Table of cases*

No.	Name of victim	Case No.	Date of death/complaint	Crime	Status of case
1	Alma Yaneth Díaz Ortega	546-/17 Judicial	27 Mar. 2014	Murder	Judicial proceedings
2	Uva Erlinda Castellanos Vigil	546-/17 Judicial	27 Mar. 2014	Murder	Judicial proceedings

No.	Name of victim	Case No.	Date of death/complaint	Crime	Status of case
3	Sonia Landaverde Miranda	Den. 4772-2013/ Lev. 1261-2013	21 June 2013	Homicide	Under investigation
4	Alfredo Misael Ávila Castellanos	0801-2013-0264	12 Dec. 2013	Homicide	Under investigation
5	Evelio Posadas Velásquez	636-20147	27 Feb. 2014	Homicide	Examination to decide on request for proceedings or extension of investigation
6	Juana Suyapa Posadas Bustillo	1819-10	2010	Homicide	Under investigation
7	Maribel Sánchez		2010	Homicide	Under investigation
8	Fredis Omar Rodríguez		27 Nov. 2013	Homicide	Under investigation
9	Claudia Larissa Brizuela	0801-2010	2010	Homicide	Appeal
10	Roger Abraham Vallejo	0801-2009-31202	31 July 2009	Homicide	Under investigation
11	Martin Florencio		2014	Homicide	Under investigation
12	Félix Murillo López		17 Sep. 2009	Homicide	Under investigation
13	José Ángel Flores	139-2016	18 Oct. 2016	Murder	Enforcement of arrest warrants pending
14	Silmer Dionisio George	139-2016	18 Oct. 2016	Murder	Enforcement of arrest warrants pending
15	Moisés Sánchez		15 Apr. 2017	Abduction	Under investigation
16	Hermes Misael Sánchez		15 Apr. 2017	Abduction	Under investigation
17	Miguel Ángel López Murillo	1480968681-2016	5 Dec. 2016	Threats	Protection mechanism
18	Patricia Riera		Aug. 2016	Threats	Filing of complaint pending
19	Ilse Ivania Velásquez Rodríguez	0801-2011-11149	19 Mar. 2011	Culpable homicide	Judgment
20	Víctor Manuel Crespo Murcia	1377-13	14 Sep. 2014	Threats	Under investigation
21	Víctor Manuel Crespo Puerto	11-2014	26 Jan. 2014	Culpable homicide	Concluded
22	Berta Isabel Cáceres Flores	N. 21-2016 (TSJN 3-88-2017, TSJN 4-14-2018)	2 Mar. 2016	Murder	Judicial proceedings

### *Evaluation of progress*

As can be seen, nine cases have entailed judicial proceedings for public order offences, variously involving an appeal, a final ruling, the conclusion of proceedings or the adoption of protection mechanisms; two of these cases involved traffic accidents. Two cases have resulted in the issuing of arrest warrants, which are due to be enforced by the police authority. Three cases involving threats have not resulted in any complaint being filed with the prosecution authorities. Six cases involving public order offences are under investigation. It should also be noted that seven trade union officials are covered and protected by the National Mechanism for the Protection of Human Rights Defenders.

*Article 2 ff. of Convention No. 87 relating to the establishment, autonomy and activities of trade union organizations*

*Reforms to the Labour Code*

*Chronology*

The Government of Honduras states that a process was followed for several years to align reforms to the Labour Code with Conventions Nos 87 and 98. The actions taken towards this end are described below:

- (a) The Labour Code was issued by Decree No. 189 of 19 May 1959, superseding 18 decree-laws governing labour relations and constituting a single body of law.
- (b) Between 1960 and 1993, various sections of the Labour Code were amended to ensure that they were properly applied, with the constant aim of promoting workers' rights.
- (c) In 1993, with advice from the International Labour Organization (ILO), a committee was established comprising: representatives of the Honduran National Business Council (COHEP); representatives of the workers from their three confederations (the Workers' Confederation of Honduras (CTH), the General Confederation of Workers (CGT) and the Single Confederation of Workers of Honduras (CUTH)); and representatives of the Government from the State Secretariat at the Labour and Social Welfare Department. The work of the tripartite committee resulted in the drawing up by consensus of a preliminary draft of new legislation to replace the Labour Code which had been in force since 1959. The preliminary draft was presented by the tripartite committee to the then President of the Republic, Mr Carlos Roberto Reyna.
- (d) The proposed reforms favoured the workers and would improve the application of the provisions of the

Code. Despite consensus being reached on the proposals, the workers subsequently made the accusation that sections of private enterprise were unilaterally seeking to introduce reforms to the labour legislation which were aimed at the flexibilization and deregulation of employment. The Government of that time therefore decided not to submit the reforms to the National Congress. Since the parties had been unable to reach agreement on the reforms and in view of the rejection of the reforms drawn up by the tripartite committee, the process of revising the Labour Code was brought to a standstill.

- (e) June 2013: a technical committee of the Ministry of Labour and Social Security (STSS – Ministry of Labour) drew up proposals to amend 13 sections (articles) of the Labour Code to bring them into line with Convention No. 87 and four sections to align them to Convention No. 98. The Ministry of Labour forwarded the proposed amendments to the ILO Subregional Office in San José, Costa Rica, in order to obtain the technical opinion of the ILO.
- (f) March 2014: the Ministry of Labour received comments from the International Labour Standards Department of the ILO in Geneva on the proposed alignment of the Labour Code with Conventions Nos 87 and 98.
- (g) March–April 2014: the Ministry of Labour submitted the proposal for alignment of the Labour Code individually to the employer and worker sectors (meetings with each of the workers’ confederations (CGT, CTH and CUTH) and with representatives of private enterprise (COHEP)).
- (h) April 2014: the ILO direct contacts mission was received by the Economic and Social Council (CES).
- (i) May 2014: the proposal for aligning the Labour Code with Conventions Nos 87 and 98 was submitted to the CES.
- (j) May 2014: the CES approved the roadmap for discussing and adopting the proposal to align the Labour Code, taking into account the recommendations made by the ILO Committee of Experts.
- (k) September 2014: report of the direct contacts mission – the direct contacts mission was also informed of a communication dated 7 April 2014 in which the CGT, CUTH and CTH, mindful of previous experience, expressed their reservations with regard to the consideration of potential reforms to the Labour Code by the legislative authority and their fear that such reforms would involve “major setbacks for labour rights and gains for big business”.

*Current situation of Labour Code reforms*

- (a) The Government of Honduras reiterates its political will to take the appropriate steps to revise the current Labour Code with a view to harmonizing it with the ILO Conventions it has ratified – a process that has been gradually progressing through social dialogue and on a tripartite basis within the CES, as was the case with chapter III of the Code relating to the new Labour Inspection Act, (Decree No. 178-2016 of 23 January 2017, published in the *Official Gazette*).
- (b) As for the reforms still pending to ensure alignment with Convention No. 87, and recalling what occurred in 2014, when the workers’ confederations expressed reservations, the ILO is already aware that the Ministry of Labour is drafting a new proposal that returns to those sections (articles) left pending in 2014, to serve as a baseline for discussions.
- (c) In that respect the Government is meeting its commitment to raise the issue of pending reforms again for discussion within the CES with a view to drafting a roadmap to allow for further alignment of the Code

with Convention No. 87 and achieve consensus, so that the reforms can be submitted to the National Congress once the Supreme Court of Justice has given its opinion.

- (d) In this instance, the necessary technical assistance and follow-up are once more requested from the Office.

*Application of the Convention in practice  
(new trade union registrations)*

In its previous report (2017), the Government of Honduras reported that various requests for legal personality had been submitted and that 25 had been granted between 2014 and May 2017, as follows:

- (a) In 2014, five private legal persons were registered, while none were registered in the public sector.
- (b) In 2015, six legal persons were registered, all in the private sector.
- (c) In 2016, legal personality was granted to eight entities, six in the private sector and two in the public sector.
- (d) In 2017, six entities were registered in the private sector.

As there were only two new trade union registrations between May 2017 and March 2018, this gives a total of 27 legal persons registered in the period from 2014 to March 2018. Lastly, the Government of Honduras wishes to reiterate that all these efforts demonstrate respect for and observance of the Conventions and labour standards in force and, in particular, that there is no policy of anti-union persecution or violence by the State and that the cases mentioned in the report are unfortunately part of the violence affecting the country in general for a number of reasons.

In addition, a **Government representative** reiterated before the Committee the information which had been provided in writing, stating that, with regard to trade union rights and civil liberties, the Government had noted with deep concern the previous and new allegations of “numerous anti-union crimes”, including homicides and death threats that had occurred between 2010 and 2014. Violence and insecurity were massive problems in Honduran society and efforts had been made within the Strategic Institutional Framework to strengthen institutions and reinforce the police and criminal investigation bodies. According to data for 2017, the homicide rate had decreased and seven trade union officials were covered and protected by the National Mechanism for the Protection of Human Rights Defenders. With regard to Article 2 et seq. of the Convention concerning the establishment, autonomy and activities of trade union organizations, the various proposals to reform the Labour Code, in particular the draft reforms of 1993 and 2014, had not been adopted in the end. Accordingly, the Government was making the commitment to discuss the pending reforms once again in the Economic and Social Council (CES) and also draw up a roadmap to enable the alignment of the Code to the Convention to continue. He also emphasized that, in the assessment of the progress made in relation to the matters on which the Committee of Experts had requested information on the following: (1) as could be seen, there were currently nine cases of breaches of public order which were at the appeal stage, final ruling, closed or subject to protection mechanisms. Two of the cases involved traffic accidents; (2) in two cases, arrest warrants had been issued, which were awaiting execution by the police; (3) in three cases involving threats, no complaints had been filed with the prosecution authorities; and (4) six cases involving public order offences were currently under investigation. Lastly, the Government representative reiterated the request for technical assistance and support from the Office, and reaffirmed that all the efforts made bore witness to the desire to comply with the Convention and with labour standards and, in particular, that there was

no policy of anti-union persecution or violence by the State. The various cases referred to by the Committee of Experts were part of the violence affecting Honduran society in general for a number of reasons.

The **Worker members** indicated that for years the Government had committed serious and systematic violations of the right to freedom of association. The Committee of Experts had made this a double-footnoted case, expressing deep regret at the high degree of anti-union violence and expressing deep concern at the situation of impunity with regard to these crimes and the lack of effective protection for trade unionists threatened with violence. The Government had not taken any specific steps to ensure that its labour legislation was in due conformity with the Convention, nor had it applied the legislation in force effectively. The Government had also recently adopted an amendment to the Penal Code that would potentially criminalize social protests as acts of terrorism. As a result, the workers and the trade unions throughout the country were facing overwhelming obstacles with regard to exercising one of their fundamental rights, namely the right to strike. Honduras was one of the most dangerous countries in the world for workers and trade unionists. Since 2010, a total of 14 trade unionists had been murdered. Between 2015 and 2017, the Network against Anti-Union Violence had documented 46 cases of anti-union violence and a total of 69 victims. Moreover, numerous trade unionists were facing brutal assaults, death threats, forced disappearances and persecution. For example, since 2015, Ms Juarez, president of the Public Sector Workers' Union (SITRASEMCA), lived in constant fear for her life because of receiving threats and having escaped from an attempted abduction in April 2017. The acts of violence were creating a climate of terror, which in practice was stifling worker representation and trade union activities in the country. Trade unionists were also a target for violence in the aftermath of the elections held in 2017. In December, for example, workers participating in a peaceful protest organized by trade unions in the *maquila* (export processing) sector in Colonia Arellano had been attacked by the military police to make them disperse. Three trade unionists had sustained bullet wounds and one had died. The failure by the Government to tackle and prevent anti-union crimes was creating a climate of total impunity. The Government had made no progress in bringing to justice those responsible for the murder of trade unionists. For example, the murders of Sonia Landaverde Miranda, Alfredo Misael Ávila Castellanos, Evelio Posadas Velásquez, Roger Abraham Vallejo and Juana Suyapa Bustillo were still being investigated. Despite the fact that arrest warrants had been issued, nobody had been detained in relation to the murders of Alma Yaneth Díaz Ortega and Uva Erlinda Castellanos Vigil, which had taken place four years earlier. The Government had not supplied any information to the Committee of Experts on what it had done to investigate the murders of Maribel Sánchez, Fredis Omar Rodríguez, Claudia Larissa Brizuela, Martín Florencio and Félix Murillo López. The Worker members deplored the murders of José Ángel Flores and Silmer Dionisios George in 2016, despite the fact that these individuals, in the wake of serious repeated death threats, had been the subject of protective measures from the Inter-American Commission on Human Rights (IACHR). These murders showed clearly that the protection provided by the Government was totally inadequate.

Apart from the anti-union violence, the Government had adopted an amendment to the Penal Code in 2017 which defined a whole range of activities as terrorist offences. A trade union official might be accused of terrorism if his union participated in a social protest that was subsequently considered by a prosecutor to constitute subversion of the constitutional order. Taking account of the events of the last few years, and the recent post-electoral context, in

which the trade unions played a key role in social protests, this legislation which was totally out of line with international instruments relating to the subject of terrorism could easily be used to criminalize any legitimate exercise by trade unions of their right to freedom of association. The situation in the country was aggravated by numerous significant gaps in the national legislation whereby workers had been denied the enjoyment of fundamental trade union rights. For over 30 years, the Committee of Experts had requested that the Labour Code be modified and had indicated that the right to freedom of association had been denied to workers in agricultural undertakings which did not permanently employ more than ten workers. Agriculture was the biggest sector in the country and employed 27 per cent of the workforce (over 1 million workers). The act of organizing these workers was obstructed by the legal requirement to have more than 30 workers to establish a trade union, which prevented the setting up of trade unions in small and medium-sized enterprises. Workers were unable to elect their representatives in full freedom. Trade union representatives had to be of Honduran nationality, participate in the corresponding activity and know how to read and write. The provisions governing strikes were so restrictive that they nullified the right to strike, depriving workers and trade unions of a fundamental means of defending their interests. Those terms included securing a two-thirds majority of the total membership of the trade union, banning federations and confederations from calling strikes, and meeting excessive prior requirements for strikes in public services that were not essential in the strict sense of the term. In practice, workers all over the country were experiencing serious violations of their right to freedom of association. For example, the Union of Agri-Industrial and Allied Workers (STAS) had presented a complaint against an employer in the palm oil sector who was not paying the minimum wage or statutory benefits to the workers. On many occasions, employers had denied labour inspectors access to workplaces, and had dismissed 18 workers who had attempted to form a local branch of the STAS. The dismissals had sparked a strike of 160 workers and in November, the enterprise had dismissed another 80 workers belonging to the union. Numerous striking workers had been assaulted by private security guards and threatened with imprisonment while picketing peacefully in front of the offices of the enterprise. Steps had been taken towards dissolving the union, since the law allowed dissolution as a punishment should a strike be declared illegal, and that also constituted a violation of the Convention. The Government had not dissolved the union but almost all the trade union activists had not been reinstated in their jobs. Lastly, hardly any of the violations cited in the 2012 complaint against Honduras concerning the workers in the *maquila* sector and agriculture in the context of the Central American Free Trade Agreement (CAFTA) with the United States had been resolved. Since 2009, there had been a drastic decrease in trade union membership. The serious and constant violations of trade union rights for years were having a profound impact on labour relations, and left a question mark over the status of democracy and human rights. The Worker members therefore urged the Government: (a) to take immediate and effective steps to protect the lives and safety of trade union activists, members and workers; (b) to speed up investigations into all anti-union offences and crimes and punish the perpetrators; and (c) to update the legislation in accordance with the Convention without further delay, and to protect the right to freedom of association in practice.

The **Employer members** expressed appreciation for the information provided on the application of the Convention and welcomed the presence of high authorities before the Committee. The case had been examined twice since 1987, in 1991 and 1992. Since 1998, the Committee of Experts

had addressed some 20 observations to Honduras concerning its application of the Convention, as well as others on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In its 2017 report of the Committee of Experts, Honduras had been included with a double footnote. In its observations, the Committee of Experts took note of the comments made by the General Confederation of Workers (CGT), the Confederation of Workers of Honduras (CTH), the International Trade Union Confederation (ITUC) and the Honduran National Business Council (COHEP). With regard to trade union rights and civil liberties, the Committee of Experts had noted with concern the large number of anti-union crimes and death threats between 2010 and 2014, and had asked the Government to provide information on the status of the relevant investigations and criminal proceedings. Reports of yet more murders, kidnappings and death threats against trade unionists were greatly to be deplored. The United Nations Human Rights Committee (CCPR/C/SR/3378-3379) had also expressed concern at acts of violence and intimidation against trade unionists in a climate of impunity. As the Government had indicated, violence and insecurity were very serious problems for Honduras and had grave consequences. The Government was making efforts, strengthening institutions and taking a range of measures to make progress on the issue. In that respect, the Strategic Institutional Framework (2015–22) of the Ministry of Security was intended to reduce impunity by strengthening the Criminal Investigation Police, the Technical Agency for Criminal Investigation, and, with respect to human rights, promote a public policy and plan of action on human rights for which a Ministry of Human Rights had been created in January 2018. Furthermore, already in January 2016, a downward trend had been observed in the number of murders: the murder rate per 100,000 inhabitants had fallen by 27 percentage points compared with 2011. In 2017, it had reached 42.7 per 100,000 inhabitants. Moreover, seven trade union leaders were covered by the National Protection Mechanism for Human Rights Defenders. With regard to the murders that had taken place between 2010 and 2014, COHEP had not commented because it was not in full possession of the facts. Between 2016 and 2018, an interview with the Prosecutor-General had been requested but was never granted. The death of Hondurans for unknown reasons was regrettable. The Public Prosecutor's Office was now providing information on criminal cases that had been brought to court, investigated or opened; that were waiting for arrest warrants to be acted upon, in which rulings had been handed down, concluded, or in which protection measures had been ordered. The 2017 Global Peace Index placed Honduras 106th out of 163 countries. The Government did not have a deliberate anti-union policy. Rights to freedom of association could only be exercised by workers and employers in a climate free of violence, pressure and threats, where human rights were respected, and it was for the Government to guarantee respect for those principles, as the Committee on Freedom of Association had pointed out. The Employer members had requested that investigations were urgently needed so that the perpetrators could be located and brought to justice. In addition, measures should be taken to provide prompt and effective protection to trade union leaders at risk, as the case was a serious one.

In relation to Article 2 et seq. of the Convention, relating to the establishment, autonomy and activities of trade unions, it should be noted that the Labour Code had been adopted in 1959. In 1993, under ILO guidance, a tripartite committee had been set up to draft a possible amendment to the Code, which had been submitted to the President of the Republic. Although the reform was favourable to some but not all workers, they had unilaterally accused private enterprises of attempting to weaken labour through flexibilization, so it had not been possible to approve the text.

In 2013, a technical committee of the Ministry of Labour and Social Security had drafted a reform to 13 sections (articles) in order to bring the Code into line with Conventions Nos 87 and 98. The draft had been submitted to the ILO Office in San José, Costa Rica, for technical comments. In April 2014, an ILO direct contacts mission had visited the country and the draft had been submitted to the Economic and Social Council (CES). In September of the same year, the trade union sector let its reservations to the reform be known because, in its words, it would lead to “major setbacks for labour rights and gains for big business”. Social dialogue was needed, as had occurred with the adoption of the new Labour Inspection Act. On the basis of the 2014 draft text, the Ministry of Labour had returned to the sections proposed on that occasion with a view to resubmitting them to the CES and drafting a roadmap for agreeing on how to align the legislation with the Convention. Assistance and technical support had again been requested from the Office. The COHEP was willing to review the labour legislation but since 2014, no meeting of the CES had been convened for the purpose. In April 2018, an email had been sent requesting views on the text of the reform, giving 24 hours to comment, which was unacceptable. Tripartite dialogue required good faith, which had not been demonstrated. The Committee of Experts recalled that for some years it had referred to the need to reform the Labour Code to bring it into line with the Convention. It had referred to the following provisions, among others: (1) the exclusion from the rights and guarantees of the Convention of workers in agricultural and stock-raising enterprises which did not permanently employ more than ten workers; (2) the prohibition of more than one trade union in a single enterprise; (3) the requirement of more than 30 workers to establish a trade union; (4) the requirement that the officers of a trade union must be of Honduran nationality, be engaged in the corresponding activity, and be able to read and write; and (5) the authority of the competent ministry to end disputes in the oil industry services. Moreover, it was worrying that the Experts' observations referred to a number of legislative issues relating to the right to strike. In that regard, the Employers' group reiterated its position that the right to strike was not regulated by the Convention and that there was no basis for discussing the issue within the Committee; that the conclusions in the case could not refer to the right to strike; and that the Government was not obliged to follow the Experts' recommendations on that specific issue. They recalled the joint statement of the Workers' group and the Employers' group and the statement of the Government group (both of 23 February 2015). The latter stated that “the scope and conditions of this right are regulated at the national level”. As such, any request from the Committee of Experts for the Government to align its legislation and practice with its own rules on the “right to strike” was not binding.

**The Worker member of Honduras** expressed concern regarding the Government's failure to take action in response to the murders of, threats against and persecution of trade union leaders, and to provide information on the matter. According to a report by the Committee on Anti-Union Violence (comprising three workers' federations), impunity had prevailed in over 60 cases of anti-union violence in the past three years. The Committee of Experts had expressed regret at the absence of convictions against the perpetrators of anti-union crimes. Its report had referred to 19 murder victims (Sonia Landaverde Miranda, Alfredo Misael Ávila Castellanos, Evelio Posadas Velásquez, Juana Suyapa Bustillo, Alma Yaneth Díaz Ortega, Uva Erlinda Castellanos Vigil, Maribel Sánchez, Fredis Omar Rodríguez, Claudia Larissa Brizuela, Roger Abraham Vallejo, Martín Florencio, Félix Murillo López, Manuel Crespo, José Ángel Flores, Silmer Dionisios George and Ilse Ivania Velásquez

Rodríguez) and five victims of threats, kidnappings, surveillance, persecution and attacks (Miguel López, Nelson Núñez, Patricia Riera, Moisés Sánchez and Hermes Misael Sánchez). It had expressed its deepest concern regarding such crimes, and had emphasized that trade union rights could only be exercised in an environment that was free from violence and when the human rights established in the Constitution were respected. Furthermore, in May 2018, the UN Special Rapporteur had highlighted the vulnerability, criminalization and denigration of human rights defenders in the country. The Government had submitted a proposal to resume discussions of the reform of the Labour Code in the CES, which stated that the agreement of the workers' sector would be required for such discussions. Moreover, the latter had regretted the Government's interpretation of sections 534 and 536 of the Labour Code with regard to the lists of demands and collective agreements of public employees' trade unions, and the consequences for the education sector. It had also expressed concern regarding the Government's acceptance of preliminary drafts of collective agreements proposed by the employers' sector, which weakened labour, social and wage conditions. The speaker called for urgent and immediate action to be taken to ensure: (1) that a direct contacts mission was organized to assess the situation, and that the ILO Regional Office provided assistance to prepare the mission; (2) that the ILO provided technical assistance for the reform of the Labour Code; (3) that the Government provided detailed information on violence against rural leaders, indigenous people, trade unionists, teachers and environmentalists, to promote preventive actions; and (4) that negotiations be resumed on collective agreements by governmental and semi-governmental organizations.

**The Employer member of Honduras** said that, since ratification of the Convention in 1956, there had been various reforms to the Labour Code concerning the fundamental right to freedom of association. The Honduran National Business Council (COHEP), a representative organization, had commented on the application of the Convention, as had the Confederation of Workers of Honduras (CTH) and the CGT. Violent acts against any Honduran citizen were regrettable; with respect to the cases raised, the State should investigate, find out what had happened and punish those responsible. With regard to reforming the Labour Code to bring it into line with the Convention, the COHEP stood ready to engage in tripartite discussions on the proposal for reform in a spirit of cooperation and social dialogue within the CES. The employers' sector in Honduras believed in the right to organize and respect for the self-determination of employers and workers. It was worrying to note that the observation of the Committee of Experts referred to legislative issues relating to the right to strike. In that respect, it must be reiterated that the Employers' group took the position that that right was not regulated by the Convention, and that there was no basis for discussing the issue within the Committee. As such, the conclusions in the case should not refer to the right to strike, and the Government was not obliged to follow the recommendations of the Committee of Experts on that specific issue. Furthermore, it was important to highlight the joint statement of the Workers' group and the Employers' group of 23 February 2015 and the statement of the Government group of the same date, which stated that "the scope and conditions of this right are regulated at the national level". As such, any request from the Committee of Experts for the Government to align its legislation and practice with its own rules on the "right to strike" was not only not binding, but also beyond the scope of standards supervision. The democratization of employers' and workers' organizations, whereby decisions were taken by the majority in conditions of equality and freedom, without any pressure, was im-

portant. Since 1993, the COHEP had supported the decision to undertake an overall reform of the Labour Code, which had fallen behind the times, with the aim of promoting and generating employment in the country. Establishing more than one primary or enterprise-level trade union at a single workplace was also important, but collective bargaining should fall to whichever body united the majority of workers at an enterprise. An effective reform of national legislation to bring it into line with the Conventions was necessary and should be carried out in a tripartite manner, with technical support from the Office, within a specified time frame of no more than three months. It should be done within the CES framework and should take account of all sectors.

**The Government member of Bulgaria**, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Norway, the former Yugoslav Republic of Macedonia, Montenegro and Serbia, stated that the above countries attached great importance to the respect of human rights, including freedom of association of workers and employers and the protection of the right to organize, and recalled the important role played by the ILO. Through the Association Agreement between the EU and Central America, the EU and Honduras had both committed to effectively implement the fundamental ILO Conventions. Although there was progress, high murder rates fueled by the significant presence of organized crime in the country constituted a persistent problem, and the human rights situation remained highly challenging. She expressed deep concern over the recent allegations of new murders, kidnappings and death threats against members of the trade union movement contained in the report of the Committee of Experts and requested more information on the outcome of the investigations in the cases of murders which had occurred between 2010 and 2014. She urged the national authorities to ensure that proper investigation and prosecutions of material and intellectual perpetrators of such crimes were carried out promptly, and requested it to take measures so as to ensure that trade union representatives were duly protected, as the rights of workers' and employers' organizations could only be exercised in a climate free from violence, pressure and threats. Fighting impunity should remain a priority of the Government, and strong support was therefore expressed towards the work of the Organization of American States mission against corruption and impunity in Honduras. Strengthening and ensuring impartiality of the national police and judicial institutions were also considered central to achieve the goal. Freedom of association and collective bargaining constituted a powerful tool to ensure social stability and economic development and although creating an environment conducive to tripartite dialogue and freedom of association was a complex task, it remained the Government's first responsibility. The Committee of Experts had been emphasizing for many years the need to amend certain provisions of the Labour Code which were not in conformity with the Convention, in particular the restrictions to the right to establish a trade union and to the right to strike. In that regard, the speaker welcomed the reform of the Labour Code initiated a few years ago, with the support of the ILO, but expressed regret that no progress had been made since the draft reform had been submitted to the Economic and Social Council (CES) in 2014. While acknowledging the complex and challenging political environment prevailing in the country, the Government was encouraged to organize proper consultations on the reform with the social partners with a view to finalizing it, and submitting a draft to Congress and the social partners were called on to engage in the discussions in a constructive manner. The EU and its Member States would continue to cooperate with, and support the Government in its efforts to comply with ILO Conventions.

**The Government member of Paraguay**, speaking on behalf of a significant majority of Latin American and Caribbean countries, indicated that the composition of the delegation and the information presented demonstrated the State's openness and the commitment of its highest authorities to work to investigate all cases. Any act of aggression, violence or impunity against the integrity or lives of individuals must be rejected and, at the same time, the great efforts made by the Government to reduce rates of violence should be noted. The Government had made progress regarding the protection, promotion and defence of human rights, particularly workers' rights, and regarding criminal investigation (the prosecution of 41 per cent of the aforementioned cases and comprehensive measures to protect seven trade union leaders). Between 2014 and 2018, legal personality had been granted to a significant number of new trade union organizations in both the public and private sectors. The efforts and willingness of the Government to refer the discussion on the Labour Code reforms to the CES and thus continue the joint development of a roadmap to bring the Code into conformity with the Convention were appreciated. Lastly, the speaker encouraged the Government to continue its efforts to fulfil its international commitments on labour, and trusted that it would continue to strengthen dialogue and tripartite consensus.

**The Government member of Panama** expressed his support for the statement made by the Government member of Paraguay. The ongoing process of legislative reform in the country was a demonstration of the Government's efforts to solve the problems related to organized crime, which depended on destabilizing the State, and was not directed at employers' and workers' organizations. He welcomed the assistance provided by the ILO, and encouraged the Government to continue its efforts.

**The Worker member of Spain** expressed his solidarity with all the trade unionists, workers and citizens who put their physical well-being and lives in danger to defend fundamental rights at work in Honduras. Those workers not only suffered from high levels of insecurity, inequality and poverty, but also experienced extraordinary levels of anti-trade union violence, whose sole objective was to undermine and destroy the trade union movement. The illegal detention, kidnapping and murder of trade union members formed part of a deplorable reality, which was a direct consequence of the State's lack of legitimacy, the institutional crisis, and the complete absence of a separation of powers that had existed in Honduras since the coup d'état in 2009. That situation was a confirmation of a clear violation of both the Convention and human rights. The Government had not done enough to comply with the Convention; on the contrary, its action had led it to limit and hamper the legal exercise of the guarantees enshrined therein. In that regard, there had been no progress in the prosecution of those who had murdered trade union leaders and members; in the strengthening of policies to protect and react against anti-trade union behaviour; or in bringing the Labour Code into conformity with the Convention. In view of the above, the speaker supported the demands of the trade union organizations of Honduras and considered that the ILO should send a direct contacts mission to verify observance of the Convention, and provide the necessary technical assistance.

**The Government member of Lebanon** welcomed the information presented by the Government and expressed appreciation of the efforts made and procedures taken with regard to combating impunity at all levels, whether legal, judicial or administrative in order to protect human rights defenders, judges and trade unionists. She also welcomed the reform of the Labour Code to ensure compliance with the Convention, encouraged social dialogue to finalize the amendments, and invited the ILO to provide technical assistance to Honduras, whenever necessary.

**The Employer member of Chile** noted with concern that, despite government efforts to combat violence, the situation remained critical, as reported by the CGT and CTH. Recognizing that impunity was a problem of the utmost seriousness and a dangerous incentive for violence and insecurity, the Government should increase human and material resources to guarantee the life and safety of its population. Furthermore, the Government should amend the Labour Code and align it to current industrial relations and the Convention. Lastly, the request from the Committee of Experts to amend legal provisions on the right to strike was misguided since that right was not specified in any ILO Convention.

**The Worker member of the United States** indicated that the recurring violence against unionists demanded attention and that persistent violations of freedom of association enabled countless labour law violations and impunity to be the norm in Honduras. He further pointed to the utter failure of the governments, including those of Honduras and the United States, in using ILO standards to protect workers' rights in international trade agreements. Although the Central American Free Trade Agreement required the parties to protect freedom of association, Honduras' lack of compliance with the Convention had been recognized for years. In March 2012, a complaint was filed for abuses of labour rights under the labour chapter of the mentioned trade agreement and finally, after almost three years, the Government of the United States found merit in all 17 cases in the complaint. As a result, both Governments negotiated a detailed monitoring plan and consulted with workers and employers to adopt an improved labour inspection law. However, six years after the complaint, not a single trade unionist had been reinstated and not a single union had been restored in any of the mentioned cases. In addition to violence, practices by employers, and inaction by the Government frustrated workers' attempts at forming trade unions and defending labour standards. For instance, in the agriculture sector – the largest industry in Honduras – systematic violations of minimum wage, overtime, health and safety and child labour standards persisted, and those who tried to form an industry-wide union experienced recurring violence and a denial of association rights, including attempts at creating employer-dominated unions, employers' refusal to bargain with workers' representatives and anti-union tactics, such as harassment and isolating workplace leaders, as well as delays by the Government in recognizing local sections of the STAS. Anti-union violence and repression of agricultural workers' freedom of association constituted a strategic denial of rights, in which employers and the Government appeared to collaborate, and did not contribute to decent work and sustainable development. International actors, like Fair Trade USA, also falsely certified that a multinational produce company is complying with labour standards in the midst of dozens of labour violations, some of which had occurred the previous month.

**The Government member of Switzerland** endorsed the statement made on behalf of the EU and regretted that the Committee had to discuss the case once again. Indeed, strong and sustainable working relations and social dialogue based on trust and security were some of the key factors underpinning economically sustainable development. It was deplorable to discover that no perpetrators had been convicted for the murders, kidnappings, violence and threats identified by the Committee of Experts. The violence and insecurity faced by trade unionists as well as impunity seriously impeded the smooth functioning of social dialogue. The Government should be encouraged to respect the basic principle of freedom of association and adopt the necessary measures to ensure that the ongoing procedures were concluded as quickly as possible. The Government should also continue the Labour Code reforms, in conjunction with the social partners, to ensure full



conformity with international labour standards. He encouraged Honduras to continue efforts to promote social dialogue and guarantee the necessary climate of trust.

**The Worker member of the Republic of Korea** stated that in 2015, the Korean Confederation of Trade Unions and other groups visited San Pedro Sula to research on human and trade union rights compliance in Korean companies operating in the city. Workers in a company producing car parts had testified to repeated violations of basic labour rights, including dismissals of elected trade union leaders and the Government's failure to enforce laws to protect those rights, or provide any remedy to workers. After the coming into effect of the new labour inspection law in March 2017, the concerned workers had filed a claim for violations of freedom of association but they were still awaiting a response from the Government and the situation had not improved since then. In October 2017, the Labour Ministry, performed an inspection through its labour inspectorate, on the issue of collective bargaining and although the employers committed to collective bargaining, seven months later, they continued to refuse the union's recognition or to bargain collectively. The mentioned inspection had also revealed that violations of freedom of association and collective bargaining contained in a 2012 complaint continued, and that the employer continued to deny that the violations had occurred, delayed and appealed the charges and delayed justice for the workers. Discrimination against, and the firing of union members also persisted, and the employer used harassment, as well as the changing of work assignments and break times to isolate workplace leaders from their co-workers and union members. The speaker therefore shared the deep concern expressed by the Committee of Experts and urged the Government to take every effort, from legislative to administrative measures, so that workers in Honduras could fully exercise the right to freedom of association and to collective bargaining.

**The Government member of Canada** noted with regret the lack of progress by the Government in making reforms to the Labour Code to bring it into compliance with the Convention, as well as the apparent lack of tripartite consultations associated with the reform. She expressed concern at the human rights violations cited by the Report of the United Nations High Commissioner for Human Rights, as well as the allegations of anti-union murders, kidnappings, violence and death threats, with apparent impunity for offenders, highlighted in the report of the Committee of Experts and discussed in the Conference Committee. The speaker urged the Government to continue to take all necessary measures to ensure that investigations were carried out promptly and in accordance with the rule of law and due process, and emphasized that it was crucial that adequate investigatory, prosecutory and protective measures were undertaken to allow the free exercise of labour rights in the country. The Government was further urged to take, in full consultation with workers' and employers' organizations, all necessary measures to reform the Labour Code in accordance with the principles of the Convention. Finally, the speaker stated that her Government remained committed to supporting respect for human rights in Honduras, including through the full application of international human and labour rights instruments, especially the Convention, and urged the Government to put into action its commitment to implementing and respecting those norms.

**An observer representing Public Services International (PSI)** referred to several violations of freedom of association, such as the failure by the Ministry of the Interior to register the new executive committee of the National Association of Public Sector Employees of Honduras (ANDEPH); the dismissal of the previous president of the association from the Ministry of Health on 13 January

2016, which had led her to file a legal complaint for anti-union dismissal; the dismissal of 700 workers from the Municipality of San Pedro Sula on 30 March 2018, of whom 39 were members of the Trade Union of Employees and Workers of the Municipality of Sampedrana (SIDEYTMS) who, since they had trade union immunity, had taken legal action to be reinstated or receive compensation, and subsequently the refusal of the mayor to sign the new collective agreement; persecution resulting from false allegations made against members of the Trade Union for Medical, Hospital and Allied Workers (SITRAMEDHYS), such as the president of branch No. 3 at the Santa Barbara Hospital and the president of branch No. 34 at the Puerto Cortez Hospital. Furthermore, the presidential palace had put in place a recruitment system for new positions to deal with an excessive workload but was surreptitiously only appointing non-unionized workers. Such cases could be considered trivial compared to the murders of dozens of trade unionists and human rights activists in the country. However, if the Government was incapable of tackling trivial issues, it would be even less able and willing in political terms to resolve the murders of the speaker's colleagues. It was evident that the strategies, national frameworks, specialized ministries and bodies, memorandums of understanding and roadmaps were not working effectively to confront impunity, violence and insecurity. They merely prevented the Government from taking responsibility. Such measures could no longer be considered acceptable ways of responding to the problems in the country. Justice was needed so that Honduran trade unionists could exercise their rights in a climate free from intimidation, violence or death. The Committee's conclusions should reflect the gravity of the situation and call on the Government to achieve immediate and tangible results.

**The Worker member of Colombia** observed that the Government was once again being criticized by the supervisory system for serious violations of the Convention, as denounced by the ITUC, the Trade Union Confederation of the Americas (TUCA), Education International (EI) and the national trade union confederations, in view of the repeated cases of threats, abductions and murders of trade union leaders from various sectors (including education, which was the sector where there were usually the most victims due to the exercise of freedom of association). The absence of the effective investigation of the crimes, the refusal to recognize their trade union origins and the failure to impose exemplary sentences left the way open for crimes against men and women trade union leaders and added to the gravity of the violations of the right to life and personal safety. Recalling that the Committee of Experts had noted very serious obstacles to the exercise of the right to strike, in violation of the Convention, which had also been observed in the case of Colombia, it was regrettable that both countries were ignoring those comments. Indeed, federations and confederations were prohibited from calling strikes, unachievable majorities were required to approve strike action and strikes were prohibited in services that were not essential in the strict sense of the term. Moreover, no amendments were being made to the Labour Code, which did not guarantee freedom of association and continued to impose unacceptable restrictions on its exercise. He expressed concern at the repeated failure of governments to give effect to the recommendations of the Committee of Experts, the Committee on Freedom of Association and the Conference Committee and fully supported the call made by the Worker member of Honduras for a direct contacts mission.

**The Government member of the Dominican Republic** expressed support for the statement by GRULAC and acknowledged the action taken by the Government for the recognition of the legal personality of new unions, the pro-

gress made in relation to security, as supplemented by legislative, judicial and administrative measures for the reinforcement of the institutions responsible for the effective protection of human rights, peaceful coexistence and the full enjoyment of fundamental labour rights and principles.

**An observer representing Education International (EI)** emphasized the role played by branch organizations, unions and the working class in combating the coup d'état in 2009 and its consequences (the dismissal of teachers, murders, the imprisonment and suspension of 18 and 303 teachers, respectively; the cessation of dialogue between primary school teachers and the education authorities and the freezing of the wages of teachers for nine years; the unemployment of 28,000 primary school teachers; the existence of 4,500 and 2,500 schools with a single teacher or two teachers, respectively; the lack of water and electricity in school buildings; the exclusion from the public education system of around 500,000 children and young persons; the exclusion under the terms of the Basic Education Act of teachers and society in general from decision-making bodies for the formulation and monitoring of public education policies; the high rate of illiteracy; the reduction in the education budget; and the adoption of legislation criminalizing public protest). According to the violence observatory of the National Autonomous University of Honduras, since 2009, a total of 83 teachers had been murdered with impunity, as well as 30 students in the first quarter of 2018. In view of the violence, teachers were emigrating to other countries. It had been proposed without success to the Government that a dialogue forum should be established to conclude a social pact for high quality public education. He called for: (1) a direct contacts mission to go to the country to assess the situation; (2) the Government to report on the progress achieved in the governmental and jurisdictional processes; and (3) impunity not to be permitted under any circumstances in respect of the crimes denounced.

**The Government member of Mexico** endorsed the statement by GRULAC and welcomed the information provided and the specific action taken by the Government to give effect to the observation by the Committee of Experts and, in particular, its decision to resubmit to the CES, the principal social dialogue mechanism in the country and the pending 2014 reforms to the Labour Code. She trusted that agreement would be reached on the definition of a roadmap for the harmonization of the Labour Code with the Convention. Respect for fundamental labour rights was an essential aspect of the achievement of decent work, and the openness of the Government and the fact that it was prepared to collaborate with the supervisory bodies was to be welcomed. In view of the good will demonstrated, she encouraged the Government to continue its efforts to meet the challenges indicated by the Committee of Experts and to continue working with the ILO to reinforce dialogue as a fundamental instrument for achieving peaceful labour relations.

**The Worker member of Brazil** noted the deep concern expressed by the trade union confederations of Honduras at the murders, death threats, persecution and surveillance of trade union leaders and the negligence with which the Government treated such cases. No report had been received on the prosecution of those crimes, despite the fact that during the past decade over 300 human rights defenders had been murdered. The Government should be reminded that it was the constitutional obligation of the State to guarantee that the rights of workers' organizations could be exercised in a climate free from violence, pressure or threats, and in which human rights were fully respected. The Government had not responded to the request to revise the Labour Code and had imposed laws which undermined the labour rights set out in the Labour Code and in international Conventions. That was the case of the Hourly Employment Act;

the amendment to section 7 of the Labour Code; and the amendment to section 72 of the Labour Inspection Act. In view of the gravity of the situation, he called on the Government to guarantee full freedom of assembly and demonstration, and to put an immediate end to practices which were in violation of human rights and freedom of association.

**The Government member of Brazil** supported the statement by GRULAC. He further expressed concern at the procedures adopted by the Committee without tripartite consensus. He firmly rejected acts of anti-union violence and encouraged the Government to continue its efforts to make tangible progress in the prevention of violence and in combating impunity. He acknowledged the efforts made, through specific measures and legislative changes, to promote fundamental labour rights and principles, and particularly freedom of association, and to reform and modernize the national labour legislation.

**The Worker member of Canada** stated that the deep concern expressed by the Committee of Experts regarding anti-union crimes and the prevailing context of impunity was situated in a broader systematic context of violence against trade unionists, as well as defenders of human and environmental rights. According to various sources, since 2009, 31 trade unionists had been assassinated, 200 injured in violent attacks, 52 workers killed in confrontations with landowners and the Government, 120 environmental activists killed (since 2010) and attacks and repression of Honduran citizens had continued with 14 deaths (including children) in election-related violence in December 2017. The social conflicts were linked to economic disparities and government policies, including agrarian and investment policies, which often resulted in granting land permits to international corporations, such as Canadian and United States firms, thus superseding the rights of the rural poor. The most vulnerable people affected had limited legal recourse to protect their rights and in doing so, were subjected to smear campaigns, intimidation, threats and attacks, as was the case of an environmental activist and indigenous leader Berta Caceres assassinated two years ago in her home after years of threats against her life. According to the Inter-American Commission on Human Rights, impunity rates ranged between 95 to 98 per cent and justice was thus rarely served. To conclude, the speaker echoed the Committee of Experts' observations that the absence of convictions against those guilty of crimes reinforced the climate of violence and insecurity and was damaging to the exercise of trade union and human rights.

**The Government member of El Salvador** endorsed the statement by GRULAC and welcomed the information provided on the effect given to the Convention. The presence of high-level authorities in the Committee bore witness to the commitment of the Government. Emphasis should be placed on the efforts made in the fields of prevention, protection and investigation in defence of human rights, and particularly workers' rights; the examination by the courts of 41 per cent of the cases referred to; the comprehensive measures for the protection of seven trade union leaders; the submission to the CES of the pending reforms of the Labour Code; and the joint development of a roadmap to bring the Labour Code into conformity with the Convention. She trusted that the Government would continue to take action to ensure the application of the Convention and in so doing to guarantee freedom of association and the right to organize.

**The Worker member of the Bolivarian Republic of Venezuela** recalled that the importance of the Convention, which was one of the fundamental Conventions, lay in the protection of the right of all workers to establish freely unions to promote and defend their labour rights, including freedom of association. The Committee of Experts had noted a series of murders of trade union leaders, primary school

teachers, indigenous persons, rural workers, defenders of human and environmental rights, which bore witness to a disregard for life by those whose interests were affected by the action taken by such men and women. The high number of deaths in the country due to participation in social and political protests, the organization of unions, the defence of the environment or merely reporting corruption was the reason why the case was being discussed by the Committee. It was important to lay emphasis on the total impunity which prevailed in those cases, for which reason it was necessary to call on the Government to establish mechanisms for dialogue with a view to establishing effective programmes for the protection of defenders of human and labour rights. The situation of public sector unions, which were denied access to collective bargaining and wage increases, illustrating the lack of protection of labour rights, was a cause of concern, as was the fear hindering workers from participating in processes for the reform of the Labour Code based on the possibility that their rights might be prejudiced. Social oppression, combined with greater flexibility, was resulting in a loss of labour rights, through reforms that undermined acquired benefits. Legislation which encouraged lower levels of social protection and the failure to give effect to tripartite agreements had resulted in the lack of labour protection being noted at the international level. A direct contacts mission was necessary to assess the information provided by the Government and to consult workers' confederations in Honduras on the real situation with regard to labour-related crime and increased flexibilization of employment, particularly the role of the State as the protector of human and labour rights.

Another Government representative said that security was an ongoing priority of the current administration. Violence and insecurity still presented serious problems and the consequences for Honduran society were serious. Consequently, the Government was making great efforts to remove those obstacles, strengthening institutions and implementing a series of state actions. Together those measures had led to progress in the protection of citizens, demonstrated by the fact that Honduras had reduced its homicide rate to 42.7 per 100,000 inhabitants in five years, a historic achievement for the country and an example for the world considering that in 2011, the figure had been 87.3 per 100,000 inhabitants. Those achievements were a result of the aforementioned progress, such as the protection of trade unionists and human rights defenders, the establishment of a structure within the executive branch to prevent and investigate crime and the subsequent strengthening of that structure. Regarding progress made in combating organized crime, efforts had been intensified. In 2016, a total of 18 extraditions had been carried out; 9,395 arrest warrants had been issued; ten drugs laboratories had been destroyed; 8,350 firearms had been decommissioned; and 1,256 assets of illicit origin had been seized. That progress had been possible thanks to the efforts of the justice system and renewed coordination in the fight against crime. Efforts were continuing for the comprehensive strengthening of criminal investigation: the Public Prosecutor's Office had received more than US\$24 million between 2015 and 2017, allowing that body to boost investigations through the creation of new agencies such as the Special Prosecutor's Office for the Protection of Human Rights Defenders, Journalists, Justice Workers, Defenders of Workers and Social Communicators. It had also allowed the Technical Agency for Criminal Investigation to be strengthened, increasing its budget from US\$1.1 million to \$6.4 million. The Government had also approved the special regulations for the organization and operation of the forensic medicine directorate and the special regulations for the organization and operation of the directorate for combating drug trafficking. Regarding efforts to improve and strengthen the justice system in the country, a series of measures had been

implemented including: (i) an increase in 2017 of more than 10 million lempiras (HNL) in the budget for the judiciary, in comparison with 2016; (ii) the revision of the Special Act on Judicial Bodies with National Territorial Jurisdiction; and (iii) the establishment of special courts with national jurisdiction to hear cases of corruption and extortion; and the establishment of the special commission for the selection of judges and magistrates for those courts, consisting of representatives from civil society, the Supreme Court of Justice and the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH). The aforementioned efforts represented some of the most significant examples in Honduras of the fight against corruption and impunity, with particular emphasis on the establishment of the MACCIH in 2016, thereby the strengthening of investigative work of state institutions. Furthermore, laws facilitating work against corruption and impunity had been adopted including: (i) the establishment of the Special Prosecution Unit to Combat Impunity in Corruption (UFECIC); (ii) the approval of the Act on Financing, Transparency and Inspection of Political Parties in Honduras; and (iii) the introduction of an anti-corruption policy at the Office of the Prosecutor-General. Honduras was progressively moving away from its past marked by the violence of organized crime and was showing a more amiable face to human rights defenders. An important step in that regard was the adoption of the Act for the Protection of Human Rights Defenders, Journalists, Justice Workers, Defenders of Workers and Social Communicators, which established the national protection mechanism that currently provides protection for seven trade union leaders. Regarding the case of Ms Berta Cáceres, nine individuals had been detained and the case was ongoing. The scope of the protective measures prescribed by the Inter-American System for the Protection of Human Rights included the members of the San Isidro Indigenous Council and the Lenca Peace Movement. The UN Special Rapporteur on the situation of human rights defenders had recently visited the country, which sent a clear message of openness and a willingness to continue making improvements to overcome human rights challenges. Lastly, the promotion and protection of human rights in Honduras had been strengthened with the establishment of the State Secretariat at the Human Rights Department, which represented a decisive step by the State towards the protection of human rights. There were currently 211 human rights defenders, judicial workers and trade unionists under protection.

Another Government representative reiterated that all those efforts proved beyond doubt that Honduras was serious about honouring its international commitments to protect the rights guaranteed by the Convention and that there was no state policy of anti-union persecution and violence, but rather that structures had been put in place to fight impunity and protect the rights of trade union leaders. With regard to reforms to the Labour Code and new trade union registrations, the acts of the new Government, and respect for labour rights, Honduras was entering a new phase in which more individual liberties and the exercise of rights were being guaranteed. In that context, the Government reaffirmed its political will to take the steps necessary to reform the Labour Code so as to align it with the Conventions Honduras had ratified, a process that had been taking place gradually through social dialogue and on a tripartite basis within the CES, as had occurred with the new Labour Inspection Act, which had been the most far-reaching reform to the Labour Code since it had first come into force. With regard to progress in applying the new Labour Inspection Act, the Act had enabled a new culture of compliance to be established gradually, with 32,268 inspections carried out to date, benefiting 433,304 workers. Moreover, since the Act had come into force, a total of around US\$1.2 million had been levied in fines for various breaches of labour law,

including a total of US\$62,000 for violations of the right to freedom of association and US\$198,000 for obstructing the work of the inspection services. As for aligning the Labour Code with the Convention, and the reforms still pending, and recalling what had occurred in 2014, when workers' confederations had expressed reservations, the Ministry of Labour was drafting a new proposal to serve as a baseline for discussions. In that respect, the Government was meeting its commitment to raise the issue of pending reforms again for discussion within the CES with a view to drafting a roadmap to enable further alignment of the Code with the Convention and achieve consensus. To that end, the necessary technical assistance and follow-up were once more requested from the Office. Honduras would continue to be a State that respected human rights and where the protection and promotion of those rights was central to all activities. He underlined the fact that the State and the ILO were fighting the same cause, given that they shared values and interests in their eagerness to continue making significant contributions to achieving the international objectives of equitable social justice and a better world of work.

**The Employer members** welcomed the information provided. With regard to trade union rights and civil liberties, they noted with appreciation the Government's efforts to strengthen security institutions. However, further work needed to be done. They urged the Government to accelerate the investigation processes in order to bring the perpetrators to justice, and to provide the Committee of Experts with the results of the investigations and the sentences handed down. Concerning Article 2 et seq. of the Convention relating to the establishment, autonomy and activities of trade union organizations, it was necessary to reform the Labour Code, and bring it into line not only with the Convention but also with new forms of work. It was essential to establish tripartite social dialogue in order to finalize the pending legislative amendments, as had been done for the Labour Inspection Act, and to take into account the informal economy. Tripartite dialogue must be entered into in good faith, and did not necessarily ensure consensus. Needing consensus effectively conferred the power of veto, which was what had happened with the reforms of 1993 and 2014 when progress had been hindered by the trade union sector. The Government could not forsake its obligations. They urged the Government to avail itself of the technical assistance provided by the Office. However, given the time elapsed, deadlines needed to be set, before the next session of the Committee of Experts. They reiterated the request by the Employers' group that the Committee's conclusions should not refer to the right to strike.

**The Worker members**, responding to the comments made by the Employer members on the right to strike, reiterated that their position had not changed. The Convention protected the international right to strike. The right to strike was part of the right to freedom of association, which was a fundamental right, and which ensured that workers' voices, too often ignored by governments and employers, were heard. The Government should follow the recommendations made by the Committee of Experts. Despite the diverging opinions on that matter in particular, the Worker members were continuing to work constructively towards the achievement of consensus-based conclusions, in line with the agreement with the Employers. The situation in the country was extremely serious (comparable to that in countries such as Guatemala and Colombia), with high levels of anti-union violence and almost total impunity for such crimes. It was necessary to resolve the situation immediately. The Government was blatantly and directly responsible for the acts of anti-union violence that had been carried out after the 2017 political elections, when dozens of civilians had been murdered by military and police personnel, and thousands had been injured, arrested, imprisoned or tortured by state officials, and nobody had been

held responsible. The Government was incapable of tackling the cases of impunity and violence against trade unionists, and was participating in the widespread violation of human rights. It was impossible for workers to exercise their fundamental rights, knowing that the authorities went unpunished when they committed a murder. However, the case was not only concerned with anti-union violence. Workers did not have the possibility to exercise their right to freedom of association because of an inadequate Labour Code, a failing labour inspection system (as had been discussed in the Conference Committee in 2016), and a number of employers who broke the law knowing that they would go unpunished. The Worker members expressed their concern regarding the efforts to impede the establishment of trade unions, especially in agriculture, where anti-union discrimination was particularly rampant, including in melon and palm oil production. Workers in the garment industry also faced intense and illegal opposition from their employers, and were often dismissed for establishing trade unions. Such conditions led to an increase in violence. In conclusion, recalling that, for years, the Committee of Experts had observed that the labour legislation was not in conformity with the Convention, the Worker members requested the Government to immediately address, at the very least, priority reforms, by introducing the amendments drafted in collaboration with the social partners. Furthermore, they considered it necessary for an ILO high-level mission to visit the country to observe the progress made before the end of the year.

### **Conclusions**

**The Committee took note of the oral statement made by the Government and the discussion that followed.**

**The Committee deplored the serious allegations of acts of anti-union violence, including physical aggression and murders, and the absence of convictions against those guilty of the crimes, which create a situation of impunity reinforcing the prevalent climate of violence and insecurity.**

**Taking into account the Government's submissions and the discussion that followed, the Committee called upon the Government to:**

- **take without delay all the necessary measures to ensure that the investigations into the murders are carried out promptly in order to determine the persons responsible and to punish those guilty of these crimes;**
- **provide rapid and effective protection to all trade union leaders and members who are under threat to ensure that the lives and physical integrity of persons are effectively protected and to implement measures to prevent further cases of trade union murders and violence;**
- **immediately conduct competent investigations into acts of anti-union violence and prosecute the persons responsible for those crimes;**
- **ensure that the relevant authorities have sufficient resources and personnel to undertake this work effectively; and**
- **take all the necessary measures to create an environment in which workers are able to exercise their right of freedom of association without the threat of violence or other violations of their civil liberties.**

**In consultation with the social partners, bring the Labour Code into conformity with the Convention as regards:**

- **the exclusion of workers' organizations in agricultural and stock-raising enterprises which do not permanently employ more than ten workers (section 2(1));**
- **the prohibition of more than one trade union in a single enterprise (section 472);**
- **the requirement of more than 30 workers to establish a trade union (section 475); and**
- **the requirement that the officers of a trade union must be of Honduran nationality (sections 510(a) and 541(a)),**

be engaged in the corresponding activity (sections 510(c) and 541(c)) and be able to read and write (sections 510(d) and 541(d)).

In this regard, the Committee calls on the Government to avail itself of ILO technical assistance to address these conclusions. The Committee also asked the Government to report in detail on the measures taken to implement these conclusions to the next meeting of the Committee of Experts in November 2018. The Committee urges the Government to accept a direct contacts mission before the next International Labour Conference.

The Government representative expressed his Government's willingness to work to ensure the success of the direct contacts mission that would visit the country, in accordance with the Committee's conclusions, and to receive the requested ILO technical assistance. He reiterated that there was no policy whatsoever of anti-union persecution or violence by the State and that, in addition to the action already taken, about which the Committee had been informed, a follow-up and information group had been established in the Economic and Social Council (CES) on cases of trade union violence. He said, with respect to the reforms of the Labour Code, that they would be subject to further tripartite discussion within the CES, with ILO technical assistance, and that, if no agreement was reached, as had occurred in recent years, the Government's draft reforms would be submitted to the National Congress with a view to bringing the national legislation into line with the Convention.

#### JAPAN (ratification: 1965)

A Government representative indicated that the basic labour rights of national public service employees were, to some extent, restricted. They were, however, compensated by the National Personnel Authority (NPA) Recommendation System and other measures. Specifically, remuneration, working hours, leave and other working conditions were revised through laws adopted by the Diet on the basis of the NPA Recommendations. The NPA was a third party body, independent of employers and employees, which made its own decisions. In particular, with respect to the level of remuneration of national public service employees, the NPA made its Recommendations with the aim of achieving a balance in remuneration levels between the public and private sectors by eliminating the wage gaps between the two sectors. For this purpose, the NPA conducted nationwide surveys in consultation with representatives of employers and workers, and compared in detail remuneration in the public and private sectors. After receiving the NPA's recommendations and following consultation with employees' organizations, the Government revised remuneration scales through bills which were submitted to the Diet for adoption. The Government, in principle, respected the NPA Recommendations. The National Public Service Act had been revised in 2014, establishing the Cabinet Bureau of Personnel Affairs. Even after this amendment, the Government had been revising remuneration in accordance with the NPA's recommendations. While the fiscal conditions remained tight, both base pay and bonuses had been increased every year for the last four years. She was therefore of the view that the NPA continued to provide compensatory measures. The Government was also confident that working conditions for national public employees were appropriately maintained through the deliberation of relevant bills which were prepared by the Government based on the Recommendations by the NPA, a neutral and independent entity. With respect to the issue of the autonomous labour-employer relations system, the Government would continue to have social dialogue with employees' organizations for a careful examination of these issues. In particular, the following concerns needed to be addressed: the cost of negotiation; which might lead

to some confusion, the possible effect of prolonged labour-employer negotiations on the normal operation of services; the risks associated with a failure to reach agreement; and the concerns that it might become standard practice for cases to move to arbitration.

With respect to fire defence personnel, she recalled that the fire defence service was considered to be of a similar nature to the police; thus firefighters did not have the right to organize. The service had been historically part of the police system. In Japan, one of the countries most frequently hit by natural disasters, the fire defence service had to respond under harsh conditions and in close cooperation with the police and the self-defence forces. When the Great East Japan Earthquake had hit in 2011, emergency fire response teams had been mobilized by order of the Commissioner of the Fire and Disaster Management Agency (FDMA) pursuant to the Fire and Disaster Management Organization Act, as amended in 2003. The manner in which the firefighters engaged with the police and defence forces when conducting extremely dangerous operations should be recognized. For these reasons, the right to organize was not granted to the fire defence personnel. However, the Fire Defence Personnel Committee (FDPC) system had been established as an alternative. The role of the FDPC was to examine proposals on working conditions by fire service personnel and to submit its views on them to the chief of the fire service. This system had been introduced by an amendment to the Fire and Disaster Management Organization Act following an agreement between the Minister of Internal Affairs and Communications and the President of the All Japan Prefectural and Municipal Workers Union (JICHIRO) that such a system would be accepted nationally. The system was fully functional for the resolution of problems related to working conditions and other matters. During its 20-year existence, the FDPC had examined some 110,000 proposals and considered about 40 per cent of them to be appropriate for implementation. Over 50 per cent of those had been implemented and dealt with matters considered to be urgent by fire defence personnel, such as the need for measures to deal with harassment or to promote the active participation of women. Thus, the FDPC system contributed to the realization of the demands of the personnel. She emphasized that the Government endeavoured to improve the FDPC system and, to that effect, had conducted an additional survey in January 2018 with a view to identifying areas for improvement. The questionnaire for the special survey had been prepared in close consultation with JICHIRO. On the basis of the results obtained, the Government had been exchanging views with representatives of firefighters, JICHIRO, and employers. All agreed that there was a need to further improve the policy so as to ensure better communication, transparency of procedures and an environment in which the personnel would feel safe expressing their views. The Government intended to produce a plan to improve the FDPC and to revise operational policy of the FDPC system in the summer of 2018, in further consultation with the social partners. In addition to that consultation, the Government will start new regular social dialogue on the FDPC with representatives of firefighters, workers' representatives such as JICHIRO and with employers' representatives. She recalled that Japan had ratified the Convention in 1965 in view of the conclusion of the Committee on Freedom of Association, which had twice indicated that it would cause no problem in the application of the Convention to view the fire service of Japan as "certain services assimilated to the police". Moreover, prison officers were not granted the right to organize, to bargain collectively or to strike, as they fell, for the purpose of this Convention, under the definition of "the police". In the same way as police officials, prison officers were allowed to carry and use weapons. They were responsible for incarcerating people sentenced to imprisonment,

investigating crimes committed in penal institutions, arresting suspects, and carrying out the duties of the judicial police officials in penal institutions. Updated information on the above matters would be provided as much as possible to the Committee of Experts. She concluded by requesting the ILO to take into account the views of the Government and the unique circumstances of the country and to await the conclusion of the national consultations.

**The Employer members** recalled that since 1989, the application of the Convention had been the subject of 19 observations of the Committee of Experts and had been discussed by the Conference Committee in 1989, 1993, 1995, 2001 and 2008. In its 2017 observation, the Committee of Experts had identified two main issues, namely the denial of the right to organize of public service employees, on the one hand, and to prison officers and firefighters, on the other. Considering the need for flexibility in determining the meaning of the term “police” in line with the national context, it appeared reasonable for the Government to consider prison officers in the category of police and thereby exclude them from the right to organize in the form of a trade union. The Government had been requested to consider, in close consultation with the social partners, which categories of prison staff could be considered part of the police – and therefore exempt from the Convention – and which could not. For those not covered by the Convention, the Government could be asked to establish a compensatory scheme; for the others, the Government should ensure the rights provided for in the Convention. Although firefighters had traditionally not been recognized in the exemption from the right to organize for the armed forces, the Government considered them part of the police: in some circumstances of natural disaster, they had similar responsibilities to protect life, health and property. Furthermore, the Government had ratified the Convention on the understanding that firefighters would be considered part of the police: it had also referred to the FDPC system that had been introduced pursuant to a 1995 agreement that had been applied nationwide. The Government was therefore perhaps justified in taking into account the history and circumstances of its ratification, as well as the traditional view of firefighters in Japan. The Employer members had articulated their position on this during the 2008 discussion and, regarding the FDPC, highlighted a new level of engagement on the part of the Government. In order to comply with the Convention, firefighters must have the right to organize, which did not necessarily require the right to form a trade union. Rather, an organization such as the FDPC might satisfy that obligation, provided that firefighters were allowed, not necessarily to form a trade union, but to organize themselves in relation to their occupation. The Government had also set up fact-finding missions about how that system worked. Information should be provided on that initiative, as well as feedback from the fact-finding surveys. On this basis, the Employer members considered that the Japanese context must be carefully assessed in future to better understand the issue.

Finally, the Committee of Experts had identified the denial of the right to organize to public service employees, noting that they should enjoy the right to strike without risk of sanctions. The Employer members reaffirmed that their position had not changed since the 2008 discussion: the right to strike was not an express part of the Convention and therefore did not fall within the scope of issues on which the Committee of Experts should make observations. Whether public service employees had a right to strike was to be determined at the national level. They expressed concern that the Committee of Experts had included it in their observation, and would not elaborate further on the matter. Finally, the Government should continue its constructive engagement with the ILO with regard

to firefighters and prison officers to ensure compliance with the Convention.

**The Worker members** recalled that Japan had ratified the Convention more than 53 years ago. The issues before the Committee, namely the right of firefighters and prison personnel to form genuine workers’ organizations and the right of public servants to organize and exercise their right to strike, had been pending before the ILO supervisory bodies ever since. The Committee had examined the application of the Convention in Japan on numerous occasions and called on the Government to ensure that public servants were guaranteed the rights provided for in the Convention and that firefighters enjoyed the right to organize without interference by the public authorities. Notwithstanding repeated discussions of this case and the very serious and diligent engagement and patience demonstrated by the national trade unions, no progress had been made to ensure that workers could enjoy the rights set out in the Convention. Firefighters and prison staff were excluded from the right to join or establish trade unions under the National Public Service Act (section 108-2) and the Local Public Service Act (section 52(5)). Both Acts dated back to 1948 and excluded these categories of workers from the right to organize and join organizations for the purpose of maintaining and improving working conditions through negotiations with the relevant authorities. The Government had attempted to justify the exclusion of prison staff and firefighters under Article 9(2) of the Convention by arguing that these categories of workers performed duties that were included in the duties of the police. However, the Committee of Experts, as early as 1973, had stated that it did not consider that the functions of fire defence personnel were of such a nature as to warrant their exclusion from the application of the Convention. It had called on the Government to take appropriate steps to ensure that the right to organize was recognized for these categories of workers. The Ministry of Internal Affairs and Communications had issued a report in December 2010 revealing that there were no practical obstacles to granting the right to organize to firefighters. Nevertheless, the Government had decided to drop the Bill on Labour Relations of Local Public Service Employees, which would have had granted this right, and instead had called for a further exchange of views on the subject. The Worker members expressed their deep disappointment at the lack of progress, which cast doubt on the Government’s commitment to genuine, effective and efficient consultations and its commitment to resolve this situation. Furthermore, regarding firefighters, the Government appeared to believe that the FDPC system that it had set up was an appropriate means of allowing participation by staff in the determination of working conditions. However, this system could by no means be considered to be a valid alternative to the right to organize, as these committees were not freely established by workers and had no negotiating or decision-making powers. The outcome of their meetings, in the form of recommendations, were submitted to the FDMA, which enjoyed discretionary powers as to their implementation. While the Government was delaying to taking concrete steps towards giving effect to the Convention, workers were facing the consequences of the denial of their most fundamental rights. The lack of workplace democracy and the restrictions placed on the ability of workers to voice collective concerns had created an abusive working environment in the firefighting services. Incidents of verbal and physical violence and harassment by managers had become commonplace and in one instance had led to a suicide. The Government bore its share of responsibility for such abuses. The Worker members strongly condemned Japan’s failure to guarantee freedom of association to firefighters and prison staff in law and in practice. Japan could not continue to claim to be a free and open society while denying the most basic rights to its

workers and exposing them to abuse. While the Government insisted that granting firefighters the right to organize could interfere with emergency relief operations, it was egregious to deny trade union rights on this account. Indeed, in the event of a state of emergency, firefighters, the Japan Self Defence Forces and the local police were mobilized to save human lives, and firefighters' professionalism had never and should never be compromised because they had joined a union.

There were also limitations and obstacles preventing workers in the public service from enjoying the right to strike. This had been reinforced through the ongoing Government work-style reform initiative. Pursuant to section 98 of the National Public Service Act, public officials could not engage in strike action and section 110 made it a criminal offence, punishable by up to three years imprisonment or a fine of up to 1 million yen, to instigate or incite strikes. Furthermore, the legal framework for promoting autonomous negotiations over working conditions remained inadequate. Only blue-collar public sector employees could engage in collective bargaining. Despite the long-standing nature of these issues and consultations with the social partners, the Government had dropped the package of reform bills, and instead adopted the Amendment Act in April 2014, which provided that the Cabinet Bureau of Personnel Affairs would continue to make efforts to reach an agreement. The Government was still deliberating over the issue and was unable to demonstrate any tangible progress. While tripartite consultations over legislative matters, in particular involving labour relations, were to be encouraged, these were virtually meaningless and could in fact be an obstacle, if they did not lead to any concrete action. The Government appeared to believe that the functions of the NPA were an adequate compensatory measure for the restrictions on the basic labour rights of public sector workers. The NPA was a government agency and its members were selected by the Diet rather than on a tripartite basis. There were no consultations with the most representative workers' or employers' organizations. The NPA had the mandate to ensure working conditions and basic work-related standards for public sector workers by making recommendations to the Government and municipal authorities. The implementation of the recommendations adopted was entirely left to political decisions, and the process for deciding on whether and how recommendations were implemented was not transparent. By failing to ensure that it had the confidence of the social partners and that once decisions had been taken, they were binding and fully and promptly implemented, the NPA fell short of the standard for compensatory measures under the Convention. The Government should take without further delay the necessary measures to demonstrate its respect to fundamental rights of workers and commitment to an open and democratic society.

**The Employer member of Japan** regretted that the workers concerned and the Government had been unable to address the problem and that the latter had been brought before the Committee. Taking the case before the ILO would not necessarily result in finding a solution. Japanese employers fully supported the information provided by the Government. With regard to the situation of firefighters, he recalled that their role was different from those in other countries and considered that national contexts should be taken into consideration. Efforts had been made by all stakeholders concerned. On 1 June 2018, the opposition parties, backed by JTUC-RENGO, had submitted a bill providing for the right to collective bargaining for all workers and abolishing the NPA. Japanese workers needed to convince the population with a view to obtaining their support so that Parliament would be prepared to discuss the bill. While the comments and recommendations from the supervisory bodies were not binding, they could be given full effect if

they took into account national circumstances. This also applied to the rights of prison officers which had never been discussed at the national level. He expressed his strong belief that the parties would address their problem better themselves, rather than relying on international forums.

**The Worker member of Japan** indicated that Japan had continued to violate Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in respect of basic labour rights of public employees. The violations included denial of the right to form organizations without prior approval and the appointment of full-time union officers by the authorities. The right to organize of firefighting personnel and prison officers was denied by law. Attempts to assist in improving the situation had been made through the reports and recommendations of the supervisory bodies, including the Dreyer Commission that had visited Japan with a view to fact-finding and conciliation. The issues remained unresolved. The Government had submitted bills to the Diet to reform the national public service (June 2011) and the local public service (November 2012), drafted in consultation between the Government and the relevant unions including JTUC-RENGO. These bills, if adopted, would have granted the right to organize to firefighting personnel. The bills had lapsed however due to the dissolution of the House of Representatives in November 2012. The Committee of Experts had noted this situation with regret. No legislative measures had been proposed since then. During the recovery and reconstruction process following the Great East Japan Earthquake of 11 March 2011, public service employees, including firefighters, had performed their duties despite a lack of previous experience and sufficient information. This was above all due to their strong sense of duty to protect the lives and property of citizens. The Government and other parties asserted that granting the right to organize would hamper the discharging of the duties of firefighters. However, the performance of duties and guaranteeing the right to organize were entirely separate matters. He called for the immediate granting the right to organize to the fire defence personnel. He also referred to a case of national forest service employees, whose trade union rights had been curtailed. They previously had the right to conclude collective agreements. However, they had lost this right when the source of funding for the national forest service had been changed from a special account to a general account. He recalled the autonomous labour-employer relations system provided for under section 12 of the Basic Act on the Reform of the National Civil Service. Since 2014, the Government had been reiterating that there was a need to continue careful consideration of the situation. To that end, it had conducted surveys and exchanged views on an ad hoc basis. It was to be regretted, however, that no tangible results had been achieved so far. JTUC-RENGO had reported this inaction and the lack of any intention by the Government to resolve the issues raised by the Committee of Experts and the Committee on Freedom of Association. In conclusion, he expressed the hope that the discussion and conclusions of the Committee would lead to a sincere response and commitment by the Government to resolve the issues concerning the basic labour rights of public service employees. JTUC-RENGO reiterated its readiness to make every effort in this regard.

**The Government member of Norway** speaking on behalf of Government members of Denmark, Finland, Iceland, Norway and Sweden, recalled that this was a long-standing case which dealt with the right to organize, especially for firefighters and prison guards, and the right to strike in the public sector. In the Nordic countries, all public employees have the right to organize. The right to organize of public employees was important in order to ensure that there was an independent and strong voice at all levels, including at

the workplace. In the Nordic countries, the processes of collective bargaining and workplace consultations were in many ways the same in the public and private sectors. However, the public service had its own particularities and there were services where the right to strike could be restricted. The Committee of Experts had accepted that the right to strike could be restricted or prohibited in the public service for public servants exercising authority in the name of the State or when a total and prolonged stoppage could result in serious consequences for the public. A negotiated minimum service could be maintained in some cases. In relation to the situation in the Nordic countries, the right to strike in the public sector was extensive, but still met the public interest. There were a few restrictions which were imposed by law, through ad hoc laws or agreed between the social partners in collective agreements. The Government was encouraged to ensure continued social dialogue and progress in this matter.

**The Worker member of Poland** pointed out the lack of progress despite the fact that the Committee had repeatedly examined this case, most recently in 2008, when it had called on the Government to ensure that public servants had the rights guaranteed by the Convention and that firefighters enjoyed the right to organize without interference from the public authorities. Nevertheless, both were still excluded from the right to join or establish trade unions under the Local Public Service Act and the National Public Service Act. Already in 1973, the Committee of Experts had considered that the functions of fire defence personnel were not of such a nature as to exclude this category of workers under Article 9 of the Convention. The exclusion of the police or armed forces could be justified only on the basis of their responsibility for the external and internal security of the State. Furthermore, prison officers, by the nature of their duties, were included in the category of the police and denied the right to organize. That was not in accordance with ILO standards. She condemned the Government's failure to guarantee freedom of association to firefighters and prison staff in law and practice and called on the Government to consult the social partners including the representatives of firefighters and prison officers, with a view to finding a solution.

**The Worker member of Singapore** speaking on behalf of the Worker members of France, the Australian Council of Trade Unions (ACTU), the Cambodian Labour Confederation (CLC), the Confederation of Indonesian Prosperity Trade Union (KSBSI), the Federation of Korean Trade Unions (FKTU), the Korean Confederation of Trade Unions (KCTU), the Malaysian Trade Unions Congress (MTUC), the Confederation of Trade Unions of Myanmar (CTUM), the Pakistan Workers' Federation (PWF), the Federation of Free Workers (FFW) (Philippines), and the Singapore National Trades Union Congress (SNTUC), stated that Japan's public service employees faced restrictions on their basic labour rights. A third-party organization had been established as a compensatory measure to regulate the salaries and working conditions of public employees, matters which would normally be settled through labour-management negotiations. The Committee of Experts had been clear that compensatory mechanisms must ensure impartial and speedy conciliation and arbitration procedures, in which the parties had confidence and could participate at all stages, and in which the awards, once made, were binding and fully and promptly implemented. In that sense, the compensatory measures proposed by the Government fell short. In particular, the NPA, a third-party organization, had been established under the jurisdiction of the Cabinet, which appointed the commissioners. This had resulted in an organization lacking in impartiality. Further, the ability of the parties to participate at all stages of the procedures should not be limited to simply participating in meetings; the parties should be able to exchange opinions, persuade,

consent and make concessions, without which, the confidence of the people concerned could not be earned. In addition, while the NPA made annual salary recommendations, these were not binding on the Government, which was also the employer. In this respect, it should be recalled that while the Government had the financial authority and responsibility, the inseparable issues of salaries and working conditions needed to be settled through labour-management negotiations; thus both parties had a shared responsibility in that regard. In conclusion, she emphasized the importance of basic labour rights, open labour relations and a labour-management relationship in which the parties shared responsibility for the matters of mutual interest for a well-functioning democracy.

**An observer representing Public Services International (PSI)** recalled that, while the right of firefighters to organize had been discussed at length by the Committee on Freedom of Association since 1954, the Committee of Experts since 1973 and this Committee since 1973, no concrete steps towards the full application of the Convention had been taken by the Government. To address the issue, the Government had established the FDPC system in 1996, for the purpose of achieving mutual understanding by eliciting opinions from firefighters. The Government had emphasized the smooth operation of the system and its success in improving wages, working conditions, clothing, equipment and other facilities as a justification for not conferring the right to organize to firefighters. However, the recognition of the right to organize firefighters and attempts to improve current working conditions and the workplace environment were different matters. The Committee of Experts and the Committee on Freedom of Association considered that when the right to engage in labour disputes was restricted, the existence of compensatory measures was a necessary condition. These could not apply to the right to organize, as compensatory measures would assume the denial of the right itself. In other words, the FDPC was not a compensatory mechanism as it denied the right to organize. Although the Committee of Experts and the Committee on Freedom of Association had provided some positive assessments of the operational status and effects of the FDPC system, they continued to call on the Government to ensure that firefighters enjoyed the right to organize and the right to collective bargaining. A tripartite expert meeting, held in April 2018, had confirmed the relevance of the obligations under Conventions Nos 87 and 98 when adopting the ILO Guidelines on decent work in public emergency services, which included firefighters. The Committee's conclusions should therefore be directed at ensuring that the Government complied with the Convention.

**The Worker member of the United Kingdom** stated that freedom of association, as enshrined in the ILO Constitution and recognized by the Declaration of Philadelphia, was essential to any free and open society, and central to dispute resolution and to promoting democracy. The Government's failure to provide firefighters with the right to organize was therefore of serious concern, and had been repeatedly criticized by the ILO supervisory bodies since the early 1970s. In the United Kingdom, the Fire Brigades Union (FBU) negotiated with employers over pay and working conditions through the National Joint Council for Local Authority Fire and Rescue Services. In order to protect the lives and safety of the population, firefighters exercised their right to take industrial action while entering into voluntary agreements to return to work in the event of major incidents. A 2010 Japanese Government survey on the impact of conferring the right to organize on firefighters in 22 countries had identified no adverse effects, suggesting that the current ban was based, not on evidence, but on the Government's own views. It sought to justify those by aligning firefighters with military personnel and the police, given the public nature of their duties. Such arguments



could be self-defeating. In the United Kingdom, effective social partnership had proved vital to improving fire services, as when the FBU had worked with the fire authorities to investigate deaths while on duty in order to prevent future fatalities. Depriving firefighters of the right to organize on such grounds was inconsistent with Article 9 of the Convention. The Government's failure to comply was serious and warranted criticism. She called on the Government to extend the right to join trade unions and to negotiate collectively to the personnel concerned as a matter of urgency.

**An observer representing Education International (EI)** speaking on behalf of the Japan Teachers' Union (Nikyoso), addressed the lack of basic bargaining rights in the public sector, the inadequate system of overtime compensation and the disparities between public and private sector workers in this regard. Teachers and education stakeholders had to be involved in the reforms affecting their sector. Their lack of involvement was detrimental to the quality of education. According to the ILO-UNESCO Recommendation concerning the Status of Teachers (1966) and comments by the ILO-UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART), reforms and decisions regarding the status and working conditions of educational personnel should be negotiated between the unions and the Government. However, in Japan, educational personnel did not enjoy basic labour rights, decisions regarding salaries were left to third-party organizations and overtime was not compensated. A recent survey had shown that 72 per cent of elementary school teachers and 86 per cent of junior high school teachers worked more than 60 hours a week. The restoration of labour rights for all public service employees was necessary so as to ensure the effective application of the Convention, as well as to redress the persistent inequality between public and private sector employees.

**The Government representative** stated that with respect to the autonomous labour-employer relations system, it was essential to gain "the support and trust of the people" as provided for in section 12 of the Civil Service Reform Law. The support and trust of the people had not yet been gained, and the Government needed to continue with the careful examination of the matter. The Government would endeavour to maintain good relations with employees' organizations and to strive for mutual understanding through social dialogue on various matters including the autonomous labour/employer relations system. She recalled the unique background of the fire service in Japan. Fire defence personnel did not have the right to organize because the fire-fighting service was considered to be of a similar nature to the police. The service had historically been part of the police system and played an important role in emergency situations. She also reiterated the usefulness of the FDPC system, a compensatory mechanism for the absence of the right to organize. She also mentioned the effective measures taken by the Government to eliminate harassment in the fire service headquarters, in addition to the FDPC. Consideration was currently being given to improving the FDPC system. The Government had been engaging in social dialogue with representatives of firefighters, labour representatives such as JICHIRO and employers' representatives on the FDPC, and would continue this social dialogue on the FDPC on a regular basis.

**The Worker members** reiterated that firefighters and prison staff continued to be denied their most fundamental right to join or form a trade union. There were also serious limitations on the basic rights of public sector workers, as well as the absence of an autonomous labour-employer relations system. The Government had failed to make the distinction between employees exercising authority in the name of the State and workers engaged in essential services, who would require compensatory guarantees if their

right to strike was legitimately limited, and all other employees in the public services, who should be able to exercise the right to strike. The Government appeared to believe that the institutions set up to represent the interests of workers constituted adequate compensatory measures. However, these institutions lacked autonomy and independence, and were therefore not sufficient to advance the collective rights and interests of workers. Japan's laws and practices were not in conformity with the Convention. The Worker members deplored the fact that no meaningful progress had been made on these issues and expected the Government to finally take the necessary measures to ensure that firefighters and prison staff may form and join organizations of their own choosing. The Government must urgently enter into time-bound consultation with the social partners in order to establish an autonomous labour-employer relations system to ensure the basic labour rights of public service employees. This process must be completed within the next two years. The Government should report progress to the Committee of Experts by 2020. Workers in the public sector who were not exercising authority in the name of the State and who were not working in essential services in the strict sense of the term must have the right to strike and to exercise industrial action without risk of sanction. The procedures of the NPA were flawed and should be reviewed in consultation with the social partners to ensure impartial and speedy conciliation and arbitration procedures in which the parties had confidence. They expressed the hope that this discussion would serve as an important opportunity for the Government to ensure the effective application of this fundamental Convention once and for all. This would require a real commitment by the Government to engage with the social partners in social dialogue to make tangible progress. The Government must fulfil its obligations and report on the measures taken in its next report. The Worker members called on the Government to accept an ILO direct contacts mission to support and assess the progress made.

**The Employer members** recalled the divergence of views with regard to the right to strike and its impact on the discussion of the case. The comments of the Committee of Experts concerning the right to strike of members of essential services, and issues related to that, fell outside the scope of the express provisions of the Conventions. They were to be left to the Government to regulate at the national level. Given the restriction on the right to organize of firefighters, the Government had established the FDPC system as a compensatory scheme. A number of interventions had discussed the effectiveness of that system. In light of the criticism of the functioning of the system by trade unions, the Employer members understood that the Government planned a new initiative which included fact-finding surveys of the operation of the system. The Government should take those steps and provide information in time for examination by the Committee of Experts. Finally, with respect to prison officers, it could be argued that, by the nature of their duties, prison officers were part of the police as they were responsible for the internal security of the State, and were therefore covered by Article 9 of the Convention. The Employer members noted that more information was needed. While certain categories of prison officers could be considered as police officers, others could not. They encouraged the Government to give due consideration to the situation of those prison officers who were exempt from the full application of the Convention, and encouraged it to provide information, before the next meeting, about the compensatory scheme that allowed some participation by prison officers. The Employer members were encouraged by the constructive attitude and stated commitment of the Government to move forward on this issue, and they looked forward to receiving more information.

## Conclusions

The Committee took note of the information provided by the Government representative and of the discussion that followed.

The Committee noted the Government's submissions that a special survey was conducted in January 2018 to identify problems concerning the functioning of the Fire Defence Committee System, that it consulted workers and employers several times on this issue since March 2018 and the Government's stated commitment to produce a plan to improve the functioning of the Fire Defence Committee in continued consultation with employers and workers.

The Committee observed with concern that the Committee of Experts' comments had been referring for decades to discrepancies between the legislation and practice concerning the rights of firefighters and prison officers to establish and join organizations of their own choosing. The Committee noted the lack of meaningful progress in taking necessary measures regarding the autonomous labour-employer relations system.

Taking into account the Government's submissions and the discussion that followed, the Committee called upon the Government to:

- examine carefully the autonomous labour-employer relations system, in consultation with the social partners, taking into account the Government's statement that there are various issues with regard to this system;
- provide information on the initiative discussed above to identify problems concerning the functioning of the Fire Defence Committee System and measures taken as a result;
- hold consultations with the social partners at the national level on the view of the Government that firefighters are considered police and how this view corresponds to the application of the Convention and provide information on the outcome of this consultation;
- consider, in consultation with the social partners, what categories of prison officers are considered part of the police, thus exempted from the right to organize, and those categories that are not considered part of the police, and having the right to organize; and
- consider, in consultation with the social partners, if the procedures of the National Personnel Authority ensure impartial and speedy conciliation and arbitration.

The Committee called upon the Government to develop a time-bound action plan together with the social partners in order to implement these recommendations and report to the Committee of Experts before its next meeting in November 2018.

The Government representative indicated that, regarding the labour-employer system, section 12 of the Civil Service Reform Law prescribed that the Government could not take any steps towards achieving an autonomous labour-employer system unless the people of Japan were confident that it was necessary. As currently such confidence was lacking, the Government would need to be cautious in this regard. The Government, as an employer, promised to engage in a continuous effort to maintain appropriate working conditions of public service employees under the current system. She also indicated that the Government would improve the operation of the FDPC system as an alternative to granting the right to organize.

## MEXICO (ratification: 1950)

The Government has provided the following information.

The Government of Mexico has duly complied with the provisions of Convention No. 87 and has provided information on this at the appropriate time to the International Labour Organization (ILO) by reporting on its application. Moreover, it has replied to the requests for information from the Committee on Freedom of Association.

### Part 1. Civil liberties and trade union rights

*Regarding the allegations of the ITUC and IndustriALL concerning violence against trade unionists in the context of a collective dispute in the education sector in Oaxaca*

The Government of Mexico regrets and condemns the events but denies categorically that they constitute acts of violence against trade unionists, let alone a violation of ILO Convention No. 87.

In support of our position, we are providing the Committee with reports on the Nochixtlán case prepared by a special commission of the Senate of the Republic – the sovereign and independent authority of the Government of Mexico – and the National Human Rights Commission, an independent advisory body, which were published on 31 August 2016 and 17 October 2017, respectively.

These documents both agree that underlying the events is a conflict of a socio-political nature involving the excessive use of force, which has been recognized and addressed by the Mexican State.

We express our concern at the fact that cases of this type, despite being unrelated to violations of freedom of association and protection of the right to organize, should be used to lend an air of gravity to alleged non-observance of Convention No. 87.

### Part 2. Reform of labour justice

This section addresses the points raised by the CEACR in its observations to the Government of Mexico regarding: (i) the communication from the ITUC, received on 1 September 2017, indicating that the constitutional reform was approved without holding any kind of consultations with the social partners; (ii) tripartite consultations on legislative developments relating to the constitutional reform; (iii) developments in the secondary legislation for applying the constitutional reform; and (iv) the impact of the constitutional reform and the establishment of the decentralized body.

(i) Consultations on constitutional reform. The Government of Mexico states that the constitutional reform was presented by the President of the Republic as a result of the analysis "Dialogues for day-to-day justice: Joint diagnoses and solutions"<sup>1</sup> prepared by the Centre for Economic Research and Teaching, one of the most prestigious research centres in the country. Preparation thereof involved nine working groups, including on labour, and the participation of more than 200 specialists and 26 institutions for 14 weeks, with 123 meetings held.

This constitutional reform was unanimously approved in the Senate, while in the Chamber of Deputies it was approved by 377 votes in favour to only 2 votes against, which represents a 99.5 approval rate from all votes cast.

(ii) Tripartite consultations concerning legislative developments relating to the reform. This year, the Ministry of Labour and Social Welfare has held 91 meetings with representatives of workers, employers, academics and associations of lawyers in order to reach the consensus required for approval of the reform. Additionally, the Joint Commissions on Labour and Social Security; Equity and Gender; and Legislative Studies

<sup>1</sup> Available at: [https://www.gob.mx/cms/uploads/attachment/file/79028/Di\\_logos\\_Justicia\\_Cotidiana.pdf](https://www.gob.mx/cms/uploads/attachment/file/79028/Di_logos_Justicia_Cotidiana.pdf).

of the Senate of the Republic agreed, on 27 April 2018, to hold public hearings to receive the suggestions, observations and proposals of workers, employers, academics and civil society organizations regarding the preliminary draft opinion for the secondary legislation. These public hearings will be held at four regional offices with the attendance of the labour sector stakeholders.

- (iii) Developments in secondary legislation. Since the approval of the constitutional reform, four proposals to reform the secondary legislation relating to labour justice<sup>2</sup> have been presented to the Senate. The first was presented on 7 December 2017 by Senators Tereso Medina and Isafas González of the Institutional Revolutionary Party; the second was presented on 14 December 2017 by Senator Luis Sánchez, of the Democratic Revolution Party; the third was presented on 22 February 2018 by Senator María del Pilar Ortega, of the National Action Party; and the fourth was presented on 24 April 2018 by Senator Alejandro Encinas Rodríguez, an independent.

To continue the legislative process, the proposals were submitted to the Joint Commissions on Labour and Social Security; Equity and Gender; and Legislative Studies, within which the aforementioned public hearings for their discussion and subsequent approval will be held.

At the local level, nine states have modified their Constitutions to bring them into line with the Federal Constitution: (i) Campeche; (ii) Chiapas; (iii) Mexico State; (iv) Guanajuato; (v) Hidalgo; (vi) Morelos; (vii) Nuevo León; (viii) Quintana Roo; and (ix) Sonora. Furthermore, two states (Chihuahua and Hidalgo) have approved laws establishing conciliation centres.

- (iv) Impact of the constitutional reform and the establishment of the decentralized body. This is an historic labour reform, which has transformed the system for ensuring labour justice that has been in place for more than 100 years.

Regarding the establishment of the decentralized public body for conciliation in disputes under federal jurisdiction and the national register of trade union organizations and collective labour agreements, the Ministry of Labour and Social Welfare has devised a number of administrative, organizational, technological and logistical tools for its implementation.

As regards the establishment of labour courts, the Federal Judiciary has established the Unit for the Implementation of Labour Justice Reform with a budget of 324 million pesos. At the local level, in May 2017 the National Committee on High Courts and the Supreme Court of Justice agreed on the establishment of a labour committee to monitor the implementation of the reform.

### Part 3. Union representativeness and transparency

This section addresses the points raised by the CEACR in its observations and direct request to the Government of Mexico concerning the ITUC communication received on 1 September 2017, which refers to: (i) the large number of “employer protection agreements” and the complicity of the labour authorities in the registration of such agreements; (ii) legislative measures and practices to resolve what the ITUC refers to as the phenomenon of “protection unions and protection contracts” (protection agreements), including in relation to the registration of trade unions;

- (iii) the publication of trade union registrations and constitutions; and (iv) the application of the labour inspection protocol on free collective bargaining.

- (i) “Employer protection agreements”. We reiterate our concern at the fact that observations are being made based on generic allegations that do not refer to specific cases or provide objective details for suspecting the existence of a “customary” practice that undermines the right to freedom of association and collective bargaining, let alone for suspecting that the Government is complicit in encouraging that practice.

The Government of Mexico has continuously reported on the specific steps taken to guarantee trade union representativeness. These measures include: the constitutional reform of 2017 – which was welcomed by the CEACR – and its future implementation; the agreements issued by the National Conference of Labour Ministers (CONASETRA); and the issuing and application of the “Operational protocol on free collective bargaining”. The Government has reported on these measures at every opportunity.

It is important to recognize that, in cases concerning specific situations of alleged violations relating to the existence of “protection agreements”, the Government of Mexico has always provided relevant and timely information, carrying out the appropriate investigations and providing information that will help to ensure labour justice. This issue has been considered within the Committee on Freedom of Association, specifically in relation to Case No. 2694.

In this regard, the Committee on Freedom of Association, in its 382nd Report of June 2017 (paragraphs 128–130), decided not to pursue its examination of the alleged extensive practice of “employer protection collective agreements”. On the contrary, the Committee on Freedom of Association decided to focus exclusively on examining the specific allegations regarding individual sectors or unions and the specific situations in which the existence of protection agreements was alleged.

- (ii) Legislative and practical measures to address the issue of protection unions and protection agreements. With the aim of identifying instances of bogus agreements and checking that workers are made aware of collective agreements at their workplaces, a labour inspection protocol on free collective bargaining has been in use since 2016. This protocol allows labour inspectors to verify that collective agreements are being publicized and that labour relations conform to the agreed terms and conditions.

In legislative terms, attention should be drawn to the fact that, as part of the constitutional reform on labour justice, a paragraph has been added to part XVIII of article 123(A), ensuring protection for worker representation.

Furthermore, paragraph XXIIbis has been added to the same article to safeguard the principles of trade union representativeness, along with certainty in signing, registering and depositing collective agreements. This paragraph also ensures that workers are given an individual, free and secret vote when it comes to resolving disputes between trade unions, requesting the conclusion of collective agreements and electing trade union officials.

<sup>2</sup> Available at: [http://www.senado.gob.mx/sgsp/gaceta/63/3/2017-12-07-1/assets/documentos/Inic\\_Justicia-Laboral\\_07122017.pdf](http://www.senado.gob.mx/sgsp/gaceta/63/3/2017-12-07-1/assets/documentos/Inic_Justicia-Laboral_07122017.pdf); [http://www.senado.gob.mx/sgsp/gaceta/63/3/2017-12-14-1/assets/documentos/Inic\\_PRD\\_Ley\\_Amaparo\\_y\\_Ley\\_Trab.pdf](http://www.senado.gob.mx/sgsp/gaceta/63/3/2017-12-14-1/assets/documentos/Inic_PRD_Ley_Amaparo_y_Ley_Trab.pdf);

[http://www.senado.gob.mx/sgsp/gaceta/63/3/2018-02-22-1/assets/documentos/Inic\\_PAN\\_Justicia\\_Laboral.pdf](http://www.senado.gob.mx/sgsp/gaceta/63/3/2018-02-22-1/assets/documentos/Inic_PAN_Justicia_Laboral.pdf);  
[http://www.senado.gob.mx/sgsp/gaceta/63/3/2018-04-25-1/assets/documentos/Ini\\_Encinas\\_LFT.pdf](http://www.senado.gob.mx/sgsp/gaceta/63/3/2018-04-25-1/assets/documentos/Ini_Encinas_LFT.pdf).

(iii) Publication of trade union registrations and constitutions. As a step forward, we can report that, by 30 April this year, information on 3,422 trade union organizations (unions, federations and confederations) registered with the federal authorities had been published through the “trade union consultation system”. To date, the system has recorded 254,512 consultations.

With regard to registrations at local level, it is worth noting that the Conciliation and Arbitration Boards are meeting their obligations in terms of transparency through the various mechanisms provided for in section 124(V) of the General Act on Transparency and Access to Public Information. These obligations will rest with the decentralized public body following the adoption and entry into force of secondary legislation, in accordance with the provisions of the constitutional reform to the effect that their actions shall be governed, *inter alia*, by the principles of transparency and disclosure.

(iv) Application of the labour inspection protocol on free collective bargaining. We can report that, from the date on which the protocol entered into force until April 2018, 196 inspections have been carried out resulting in 528 technical measures, benefiting 68,285 workers.

*Part 4. Legislative provisions and practical measures noted by the CEACR*

This section addresses the points raised in the CEACR’s comments to the Government of Mexico concerning:

(i) trade union pluralism and the re-election of union officials; (ii) measures to amend paragraph II of section 372 of the Federal Labour Act; and (iii) information on the participation of foreign nationals in trade union executive committees.

(i) With regard to trade union pluralism in Government offices and the re-election of union officials, the Government of Mexico reports that, from 2013 to the present, five reform initiatives have been submitted to the Congress of the Union concerning trade union pluralism, together with a further two on the re-election of union officials in civil service workers’ unions, but that so far no decision has been taken. However, it should be noted that the Federal Tribunal for Conciliation and Arbitration, guaranteeing trade union autonomy, has invariably granted accreditation when notified of any change in leadership.

(ii) With regard to the comment on amending section 372 of the Federal Labour Act, the Government of Mexico reiterates that the prohibition on foreign nationals serving on trade union executive committees is not applied in practice. Moreover, no specific case of this has been confirmed and the Government is not aware of any complaint or claim in this regard. On the contrary, some trade union constitutions expressly recognize the possibility of foreign nationals serving on trade union executive committees.

In addition, before the Committee, a **Government representative** reaffirmed his country’s commitment to social dialogue and described the progress that had been achieved in relation to the requests made by the Committee of Experts. With reference to the allegations of violence against trade unionists in the education sector, in the context of the dispute that had occurred on 19 June 2016 in the municipality of Asunción Nochixtlán, Oaxaca, while regretting and condemning those events, he categorically denied that they constituted acts of violence against trade unionists and amounted to a violation of the Convention. Based on the information gathered by a special commission of the Senate of the Republic and the National Human Rights Commission, which had been published on 31 August 2016 and

17 October 2017, respectively, and regretting that this type of information had been used to attract the attention of the Committee, he emphasized that it was in practice a socio-political dispute, and not a trade union conflict, as neither of the two reports referred to above had noted any link between the acts of violence and any possible restriction on freedom of association, or the fact that the victims were members of a union. With regard to the constitutional reform of the system of labour justice, he welcomed the fact that in its report the Committee of Experts recognized the importance of the reform introduced in February 2017. It was indeed a historic transformation, as it established a new paradigm for labour justice in Mexico, developed through a broad process of consultation. As part of its implementation, it was progressing consistently at the local level in the states of the Republic, many of which had already amended their constitutions with a view to bringing them into conformity with the Federal Constitution, while two other states had adopted legislation for the establishment of their Conciliation Centres. With a view to developing secondary legislation in relation to labour justice, the Senate was examining four initiatives submitted by parliamentary groups with different ideological leanings, and particular attention was being given to ensuring that the secondary legislation was developed in a participatory and inclusive manner, with the social partners and civil society organizations. The Secretary of Labour and Social Welfare had commenced the development of nine forums for the establishment of federal and local decentralized public bodies. At the federal level, one institution would be responsible for the provision of conciliation services which workers and employers would be required to use prior to initiating labour procedures, with a view to the rapid settlement of disputes. The institution would also be responsible for the registration of unions, collective labour contracts and the related administrative procedures at the national level. The new constitutional mandate would also strengthen the Federal Judicial Authority and the Higher Courts of Justice of the states of the Republic, making it easier for them to resolve collective and individual labour disputes through the creation of labour tribunals. With a view to contributing to giving effect to the mandate of the constitutional reform, the Secretary of Labour had initiated a process of the analysis of the labour records of all the Federal and Local Conciliation and Arbitration Boards in each of the 32 states of the country. The Judicial Authority of the Federation, with a view to the creation of labour tribunals, had established the Unit for the Implementation of the Labour Justice Reform. For that purpose, it had been allocated a budget of 324 million pesos for 2018. At the local level, the National Commission for High and Supreme Courts of Justice had agreed to the establishment of a Labour Commission to follow up the implementation of the reform.

With reference to the observations made by the International Trade Union Confederation (ITUC) on 1 September 2017, according to which there were a high number of employers’ protection agreements or contracts and that they had their origins in the complicity of the labour authorities in their registration, the Government representative reiterated his concern at the fact that such observations were based on general allegations, and not on specific cases. He also emphasized the Government’s commitment to labour justice, based on the adoption of new laws and specific action intended to guarantee trade union representativity. He indicated that in cases in which indications had been provided of specific cases of alleged violations relating to the existence of so-called “protection contracts”, the Government had always acted in a cooperative manner, conducting the relevant investigations and providing information to contribute to labour justice. Recalling that the allega-

tions of the ITUC had been made in the context of the Committee on Freedom of Association, and particularly in relation to Case No. 2694, he reaffirmed the Government's will to continue providing information to the Committee on Freedom of Association in relation to allegations concerning specific situations. The Government would also provide updated information to the Committee of Experts on legislative developments with a view to giving effect to the constitutional reform, and on the practical measures taken to guarantee trade union representativity and free collective bargaining. With regard to the provisions respecting trade union transparency adopted under the reform of the Federal Labour Act in 2012, he indicated that, on 30 April 2018, the registration of 3,422 union organizations, including unions, federations and confederations, had been published in the "Trade Union Consultation System", and over half a million consultations had been reported. With a view to detecting false contracting practices and ensuring that workers were aware of the collective contract in their workplace, the Labour Inspection Protocol on Free Collective Bargaining had been implemented since 2016. The Protocol allowed labour inspectors to ensure that collective contracts had been published and that workers were aware of their content, and that the employment relationship was performed in accordance with the terms and conditions set out in the contract. In relation to the question of the possibility of trade union pluralism in state bodies and the possibility to re-elect trade union leaders, he indicated that since 2013 five reform initiatives had been submitted to the Congress of the Union in relation to trade union pluralism, as well as two initiatives relating to the re-election of trade union leaders in public service unions, of which three initiatives were under examination by the Congress of the Union. With regard to the last point in the observations of the Committee of Experts, in which the Government was requested to take measures to amend section 372 of the Federal Labour Act with a view to removing the prohibition on foreign nationals from being members of trade union executive bodies, he recalled that the prohibition was not applied in practice, as Mexican nationality was not a requirement for the registration of trade union executive bodies. Moreover, no specific case had been reported in that regard, and there had been no complaints or charges. Indeed, some union by-laws explicitly recognized the possibility for foreign nationals to be members of their executive bodies.

The Worker members stated that the repeated failure by the Government to comply with the Convention had led to the discussion of the case in the Committee on three occasions in recent years. During the most recent discussion in 2016, the Committee had called on the Government to enact the proposed reforms to the Constitution and the Federal Labour Act and to reinforce social dialogue through the adoption of complementary legislation. They recalled that their criticism had focused on protection contract unions, which were employer-dominated unions that had undermined the labour relations system in Mexico. Those unions negotiated "employer protection contracts", without the involvement or even knowledge of the workers that the union was supposed to represent. Those contracts fixed low wages and "protected" employers from having independent unions in the workplace. Tragically, that had meant that millions of Mexican workers had no effective means to defend their rights at work. Once the protection contract union was established, it was extremely difficult for workers to form an independent union. When workers did attempt to rid themselves of a protection contract union through a recount election, the employer, the protection contract union and the Government often colluded to intimidate the workers through delays, verbal threats, physical violence and dismissal. That situation had remained the same. As the Committee of Experts had noted, in February 2017, the

Government had enacted meaningful reforms to the Constitution. Those reforms addressed some of the key criticisms raised by the ILO and the global trade union movement and had given some hope for change. But as the Committee of Experts had also noted, the Government still had to enact secondary legislation. Unfortunately, the proposals that the Government had put forward undermined both the letter and spirit of the Constitution and the Convention. For much of 2017, the Government had worked behind closed doors with business leaders on amendments to labour law, ostensibly to give effect to the constitutional reform – without independent union leaders being consulted during that process. In early 2018, a bill had failed to pass in Congress, but the Government was trying to push through the same legislation during a special session of Congress in June 2018. While the Government had claimed that it was undertaking consultations, the only proposal under consideration remained the Bill rejected by Congress, which showed that the Government had capitulated to entrenched interests, including the protection contract union confederations, whose leaders had introduced the legislation in the Senate. Addressing their concerns point by point, the Workers members first referred to the Conciliation and Arbitration Boards (CABs) which for many years had been widely criticized for their inefficiency, political bias and corruption. The constitutional reform was proposed to abolish the CABs and: (i) transfer the legal functions of the CABs to the judicial branch, foreseeing a process of conciliation by "specialized and impartial" federal and local level conciliation centres before the referral of cases to the courts; and (ii) transfer the administrative functions of the CABs, such as union registration, to the new decentralized and autonomous federal entity whose president would be voted on by the Senate. The current bill before the Senate proposed to create: (i) the new Federal Institute of Labour Conciliation and Registration; and (ii) a new "Technical Council" which would have broad powers over the programme, budget and staff. While the autonomy of the Federal Institute could end the firm hold of the protection contract unions over the union registration process, collective bargaining and collective conflicts, the proposed tripartite control through the Technical Council would include the same protection contract unions that had perpetuated protection contracts through the CABs. Moreover, the Secretary of Labour had stated that the independent labour tribunals would not begin to operate until the CABs had resolved all pending cases. Their number was in the thousands and would take many years to clear. Independent unions would therefore continue to suffer under the existing corrupt system and would have to wait years before the promise of neutral labour justice would be realized. That undermined previous commitments to an early transition to the new constitutional arrangements on labour justice. Additional concerns related to the proposal in the Bill that an agreement would take automatic effect if the Federal Institute did not take a decision to register a collective agreement within 20 days. That would provide employers with a mechanism to register collective agreements that did not comply with new legal requirements. It would allow employers to continue colluding with "protection unions" of their own choosing rather than engaging in good-faith bargaining with independent unions.

The second problem with the draft legislation concerned the so-called *recuento* procedure. The Bill made it practically impossible for workers to replace unrepresentative unions through a ballot by imposing new evidentiary requirements which had to be satisfied through a lengthy administrative process before a date for a vote was even granted. That would make the process needlessly burdensome. As that procedure was the only means for workers to establish an independent union where an illegitimate union

already existed, the new process would ensure that undemocratic unions could continue to deny workers the representatives of their choice. As the new Institute would be controlled by employers and protection contract unions, workers also had good reason to be concerned that employers would retaliate and dismiss them. Thirdly, in Mexico the General Act on transparency and access to public information provided for the publication of trade union registration certificates and their statutes. Workers and the public could access information about unions, including their internal structure, leadership and any existing collective agreements. Such transparency was essential to ensure workers could access information about the entities that claimed to represent them, and any agreements those entities might have with employers. It was a vital tool in the fight against protection contract unions. The Government had reported that it had made progress in this area, claiming an 85 per cent compliance rate. If true, that would be a positive development. But the Bill would have the effect of significantly weakening those transparency provisions, including the requirement to disclose information about union registration and existing collective agreements, and would continue to deprive the vast majority of Mexican workers covered by collective agreements of the right to obtain a copy. Fourthly, under the constitutional reform, workers had to approve collective agreements by a secret ballot. That measure had been introduced to ensure agreements could not be signed without the consent or knowledge of the workers concerned. But the proposed implementing Bill would not require inspectors to verify that workers had approved the collective agreement by a secret ballot. Instead, the Bill contained a vague requirement that entities claiming to represent the workers should prove there was support, but failed to set out any specific criteria. The proposal also gave the Institute broad discretion to decide whether or not there was evidence. Those provisions were all the more worrying as current labour law provided that collective agreements were automatically renewed if neither party sought modifications. Those rules would apply equally to the protection contracts, which could thus evade the minimal requirements regarding representation. But the issue of protection contract unions and the flawed secondary legislation were not the only problems. As the Committee of Experts had once again highlighted, the prevalence of anti-union violence was a serious concern. And new acts of anti-union violence had occurred since the Committee of Experts had last met. In November 2017, mine workers had gone on strike to demand their right to join a legitimate and democratic union. Dozens of armed police had taken over the mine. An armed group had attacked the strikers and killed two trade unionists on mine property. In January 2018, a labour activist who had been travelling to meet the strikers had been beaten and threatened with further violence if he continued to advocate a new trade union and a new contract. He had been murdered later that month. Finally, the 2012 amendments to the Labour Act had greatly expanded the use of outsourcing, although the Act provided that companies could not outsource a worker who was assigned work that was a core function of the company. Although illegal, the Government had done nothing to stop such practices. The use of outsourcing was a common tactic to prevent workers from forming a union or to bust unions by replacing the workforce with contracted workers. The Worker members urged the Government to withdraw the existing proposal. As national elections were imminent, the next Government should decide that issue following consultations so that the views of all stakeholders were taken into consideration.

The Employer members recalled that the case had already been examined on three occasions, two of which were in 2015 and 2016, when emphasis had been placed on the pro-

gress that was being made by the Government with the expectation that the constitutional reform would be adopted. The reform had been completed, which had produced a change. The Conference Committee was examining the case of the application by Mexico of Convention No. 87, but the country had not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). There were aspects of the case that were related to freedom of association and the establishment of unions. Nevertheless, the Conference Committee, with reference to the observation of the Committee of Experts, needed to be careful in its examination not to provide guidance on an instrument that had not been ratified. The same applied to Articles 2 and 3 of the Convention, which were fairly general provisions, on which the Committee of Experts had entered into a series of details that could be considered to have gone beyond the scope of those provisions. Article 2 provided that workers, without distinction whatsoever and without previous authorization, had the right to establish and join organizations of their own choosing, subject only to the rules of the organization concerned. Article 3 provided that workers' organizations had the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes. That was the framework for the discussion of the case. In the first place, the complainant organizations in the present case were of an international nature, and were not the organizations of Mexican workers. It should therefore be borne in mind that their vision of the situation in the country might be broader than the manner in which the social partners acted at the domestic level, with particular reference to trade unions. With regard to the subject of public liberties and trade union rights, the Employer members rejected any action that endangered human life. Nevertheless, within the framework of the ILO, there needed to be a connection with freedom of association. In its response, the Government had indicated that two special commissions had found that the acts in question had no union origins, but were of a socio-political nature and involved the excessive use of force, which had been recognized and dealt with by the Government. As such, it was a case that, while deplorable from the viewpoint of human life, should not be examined in greater depth or detail by the Conference Committee, the Committee of Experts or any other ILO supervisory body.

Secondly, with regard to conciliation, arbitration and labour justice, the constitutional reform established that it would be the corresponding branch of the public authorities that would be responsible for a series of elements, for which reason the Committee of Experts had noted "with satisfaction" its adoption and entry into force. In that respect, it was important to recall the significance of "noting with satisfaction", which occurred fairly rarely and was of great relevance for the Organization. The Committee of Experts noted with satisfaction cases in which governments had 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. The Committee of Experts also expressed satisfaction when it was indicating to governments and the social partners that a particular matter had been resolved and that it could provide a model or example for other countries. The reform offered legal security for the following reasons: (1) labour justice would be imparted by bodies of the federal and local judicial authorities; (2) conciliation procedures would be more flexible and effective; (3) the federal conciliation body would be a decentralized institution; and (4) new legislation would be adopted on the procedures and the decentralized bodies of the conciliation service. As indicated by the Government representative, that was what was happening in Mexico, where the Congress was examining a series of legislative initiatives. It was undoubtedly

good for there to be consultations on all of those legislative changes. In the previous conclusions of the Conference Committee on the case, the call had been made to establish broad social dialogue on the subject. In that regard, the Government had provided information on the decision by Congress to open up participation through four regional fora with broad participation, and that the fora that had been adopted had been subject to widespread discussion. The Employer members trusted that the reforms would continue to be undertaken in an appropriate manner.

Thirdly, with reference to trade union representativity and protection contracts, they indicated that it was necessary to be very prudent. It was one thing to establish unions which could be considered to be protection unions, that is which enjoyed the prerogative of exclusive collective bargaining, but collective negotiations for protection were quite another matter. Reference should not be made to the latter subject, as it was typically covered by Convention No. 98, which had not been ratified by Mexico. Moreover, the Committee of Experts at the time had noted with interest a series of proposals in light of the amendment of the Federal Labour Act in 2012. In that regard, the Committee of Experts had requested the Government to indicate why it had not provided more detailed information. Although the Government had not replied on that point, and should do so in its second intervention, it had perhaps not done so because it had not ratified Convention No. 98. The Employer members emphasized that great care was needed with the approach adopted and did not agree with the views expressed by the Committee of Experts when it noted with concern the observations made by the ITUC on other matters raised in general terms, concerning which it would be interesting to be provided with greater detail, if indeed additional information pointed to a different conclusion. However, in the meantime, there were no grounds for a request for further information on the subject. With regard to the publication and registration of trade unions, the Government indicated that there was a new information system, which provided detailed figures of the number of unions in Mexico. The Government had also provided an adequate response in document D.10 to the request that had been made at the time. With reference to trade union pluralism and the re-election of union leaders, the Committee of Experts had referred to legislative matters which could be considered not to be in conformity with the Convention. Nevertheless, it was noted both in the comments of the Committee of Experts and the reply by the Government that the case law of the Supreme Court of Justice, and the practice followed, meant that the provisions in question were not applicable. The situation bore some similarity with the situation of obsolete ILO standards which had not been abrogated. Some standards had been abrogated the previous year, and others this year. And yet the Cartier Working Party had identified around 65 obsolete standards which were in force, but not applicable. Accordingly, the concept of applicability, which was entertained in the Organization, should also be taken into consideration in the case of member States, as the Government had said. There would be no violation of freedom of association if certain existing provisions were not applied, as recognized by the judicial authorities in Mexico. That had also been recognized by the Government, which had indicated that the freedom to elect trade union representatives, including foreign nationals, existed and that there had been no complaints or specific cases in that regard. The Government had also indicated that there were unions which recognized in their by-laws the possibility to elect foreign nationals as representatives. In that regard, the Employer members questioned the need to raise concerns in relation to legislation that was not applicable. If it was not applicable, the Committee could be certain that in Mexico that particular freedom was broadly permitted, in accordance with the

views of organizations such as the ITUC, IndustriALL and the Committee of Experts when it examined such cases. For that reason, the requests made concerning the number and positions of foreign nationals who were members of unions could be considered excessive, as the Government had already indicated that there had not been a single complaint. The subject had probably been raised for the sake of international observers, but there were no grounds for it in practice, as no difficulties had arisen in that regard. The Employer members considered that, in the analysis of the case, there were points that had been resolved and would have merited being noted with satisfaction. They were of the view that the policy adopted by the Government in its legislative changes was correct and that the expectations had been met on matters on which, a long time ago, the Committee had expressed concern, as the Committee on Freedom of Association had done in Case No. 2694.

**The Employer member of Mexico** expressed appreciation for the information provided by the Government on the issues raised by the Committee of Experts and, regretting the lack of objective information provided by the Worker members, said that his country was free of harassment and dismissals, that there were over 20 million workers in the formal economy, collective bargaining existed and, despite challenges, it enjoyed labour and social peace. The reform had been considered satisfactory by the Committee of Experts and had not generated any open opposition at the national level. In 2012, the Federal Labour Act had been amended and the constitutional reform had been undertaken between 2015 and 2017. Regulations were being examined in the Senate on the basis of various initiatives submitted by various groups with different views. In accordance with the constitutional framework, discussion and consultation forums had been organized and it had been agreed to hold public hearings, thereby engaging in social dialogue and complying with the call made by the Conference Committee in 2016. Moreover, complex and far-reaching issues had been included in relation to labour law, trade union transparency and collective bargaining, and secret ballots for workers. The changes that were under way required efforts to be made in the areas of legislation, the budget and infrastructure, and training and capacity building. The registration of trade unions and collective agreements would be the responsibility of a decentralized public authority headed by a person proposed by the executive authorities and approved by the Senate, thereby ensuring full independence. Similarly, conciliation bodies would be set up in federated bodies for the effective resolution of disputes, in accordance with the Convention. The replacement of conciliation and arbitration boards with tribunals under the judicial authorities was in line with a proposal made by the Conference Committee. The constitutional reform had set aside a period of one year, which had now passed, for regulations to be adopted. However, some elements had come into force the day after the promulgation of the reform, including the obligation to grant accreditation to workers' representatives for the purpose of concluding collective labour agreements and the provisions of Article 123(XXIIbis) of the Constitution. That showed that the procedures and requirements established in law to safeguard freedom of collective bargaining and the legitimate interests of workers and employers should guarantee: (a) the principles of the representativity of trade unions; and (b) certainty in the conclusion, registration and deposit of collective agreements. In addition, workers' ballots would be individual, free and secret for the resolution of disputes between trade unions, as well as requests to conclude collective agreements and the election of union officials. The judicial authorities and the reform process would abide by the established constitutional precepts. The situation should serve as an example for other countries and, although it would be desirable to conclude the legislative

process, its complexity meant that it was still a work in progress. The Government should be encouraged to finalize what remained pending and the achievements made should be recognized. The case should be recorded in the Committee's conclusions as a case of progress.

**The Worker member of Mexico** emphasized the importance of recalling the context in which Mexico's labour reforms were being discussed. It should be emphasized that two significant reforms had been made: the labour reform of 2012 and the constitutional reform that had entered into force in 2017. The latter was the result of a series of prior consultations carried out by the Centre for Economic Research and Education, at the explicit request of the federal executive authorities, involving legal experts, academics and a representative sample of civil society. However, in the absence of the participation of workers' organizations, which had not even been invited to participate, their views had not been taken into account. As result of the consultation, in April 2016, the Office of the President had submitted the corresponding legislative initiative, known as "day-to-day justice", to the Congress of the Union. It entailed substantial changes to the Constitution, particularly on labour matters. He recalled that, in his statement in 2016, he had rejected the reforms and expressed concern at various elements thereof: (a) the transfer of labour jurisdiction to the federal or local judicial authorities, thereby losing the social balance offered by tripartism; (b) the implementation of conciliation as a compulsory and prejudicial process through specialized independent conciliation centres; and (c) the establishment of a decentralized institution responsible for registering collective agreements and trade unions and performing conciliation functions at the federal level, with the head of the institution being appointed by the federal executive authorities. As the final outcome of the series of amendments, on 13 October 2016 the constitutional reform had been adopted unanimously, prompting an unprecedented sea change in Mexican labour law. The labour reform proposed most recently in Mexico was a consequence of that constitutional reform. Attention should be drawn to the consultations announced on 27 April 2018 by the Senate. Trade union organizations and their leaders had the role of moving in a responsible and informed way towards the new model of labour justice to give those they represented real legal certainty of the defence of their rights. In conclusion, he urged the Government to offer every guarantee that the Federal Labour Act would be the product of dialogue and agreement among the tripartite partners.

**Another Worker member of Mexico** recalled that the amendment to article 123 of the Constitution had entered into force on 24 February 2017. The reform took into account several recommendations. For example, the labour justice system was no longer in the hands of the executive authorities following the abolition of conciliation and arbitration boards and the establishment of labour courts. Mandatory conciliation had also been introduced prior to referral to labour courts. Similarly, a decentralized body had been established at the federal level which was responsible for ensuring conciliation, the registration of all collective labour agreements and trade unions, and all related administrative procedures. However, he was concerned by the delay in amending the Act implementing article 123, the deadline for which had been 24 February 2018. The deadline had expired without the Government having paid due attention to it, and there was therefore a great deal of uncertainty concerning the labour justice system and the current situation. In April 2018, the Senate had adopted an agreement with the social partners, although it had done so after the deadline. It was a matter of concern that the Government had not adopted the necessary measures to initiate the legislative amendment process. Finally, he called on the

new Government, which had been elected through a democratic and popular vote, to adopt the necessary measures to bring the labour legislation into conformity with the principles of the Convention and to ensure that effect was given to the observations of the Committee of Experts with a view to eliminating the malpractices affecting Mexican workers and bringing an end to the persecution of trade union leaders and the death of workers.

**Another Worker member of Mexico** indicated that, following almost 30 years of the implementation of the neoliberal policies of financial institutions such as the International Monetary Fund (IMF), World Bank (WB) and Trilateral Commission, the labour conditions of workers throughout the world had become more precarious, and Mexico was no exception. He denounced the abuse of outsourcing, which not only undermined the application of the Convention, but also the Mexican Constitution and human rights, as it negated the right to organize, collective bargaining and the right to strike. The national Constitution provided that Mexican nationals had the right to health, nutritious food, housing, culture, sport, education and socially useful work. Outsourcing violated those rights. There were national owners of micro, small and medium-sized enterprises who complied with all their obligations respecting work-related benefits and social security, but others evaded them. Such abuse caused social problems, which would only get worse in the near future, especially in the case of pensions since, if social security contributions were not paid, future generations would not have the right to housing, health or a decent pension. Outsourcing also involved processes being carried out in the name of another company to ensure that, in the case of a labour dispute, workers had no protection when claiming their legal entitlements.

**The Government member of Paraguay**, speaking on behalf of the vast majority of Latin American and Caribbean countries welcomed the information provided by the Government in recent years regarding the action taken and measures adopted to address the observations of the Committee of Experts. In 2016, the Committee of Experts had noted with satisfaction the adoption and entry into force of the constitutional reform, which established, among other measures, that labour justice was the responsibility of the judicial authorities, and was no longer dependent on the executive authorities. It also had the objective of strengthening conciliation machinery and the creation of an autonomous body responsible at the national level for the registration of collective agreements and trade unions. The Government had also provided information on the consultation processes and round tables that had been held with a view to harmonizing the legislation to give full effect to the constitutional reform, and particularly the approval by the Senate of the holding of public hearings to gather suggestions, observations and proposals from workers, employers, academics and civil society organizations on the draft secondary legislation. Taking into account the willingness expressed and the results achieved, she wished the Government every success in its ambitious reform process and in the historic transformation of the administration of labour justice.

**The Government member of Panama** endorsed the statement of the Government member of Paraguay and expressed appreciation of the efforts and interest demonstrated by the Government in continuously providing updated information on compliance with the Convention. Emphasis should be placed on the judicialization of labour procedures, which had been the responsibility of the executive authorities in Mexico. The observations of the Committee of Experts were relevant, as they assessed positively the progress made by the Government in terms of labour justice, which was in line with ILO principles. The transformation had been introduced taking into account the tripartite partners in the country, thereby demonstrating the



relevance of social dialogue as an essential tool for freedom of association and the pursuit of social justice. He reiterated his support for the Government in the process of ensuring continuous improvements, and emphasized the importance of ILO tripartism for the achievement of the common good.

**An observer representing the International Trade Union Confederation (ITUC)** said that in February 2017 a decree had been issued to amend article 123 of the Constitution with regard to labour justice, which was the most important development in the 100 years since the Constitution had been in force. In 2016, the Committee had offered technical assistance to the Government and had called on it to engage in social dialogue for the preparation of secondary legislation. However, the Government had failed to promote social dialogue and to request technical assistance. Consequently, the senators who were members of the Confederation of Workers of Mexico (CTM) and the Revolutionary Confederation of Rural Workers (CROC) had put forward a reform initiative, which had been considered unconstitutional and which would derogate from Mexican labour law, as it did not regulate all of the matters envisaged in the constitutional reform. The initiative had proposed to restore the false tripartism of the conciliation and arbitration boards and to grant judicial powers to decentralized administrative bodies, including hearing cases on the right to strike, for which only jurisdictional bodies were responsible in accordance with article 123(XX) of the Constitution. Furthermore, the Senate had also issued a draft decree to approve the initiative. The previous week, the Senate had called on the alleged social partners to give their opinion on the decree. In that way, other initiatives put forward by other senators for the appropriate regulation of the constitutional reform had not been considered. To achieve social justice and peace, it was necessary to replace the corrupt legislative process relating to the secondary reforms that was being followed by the Government.

**The Government member of Honduras** welcomed the action and measures adopted by the Government in the field of labour justice since February 2017 as part of the ongoing reform process. However, he expressed concern with regard to the cases that, despite not appearing to be violations of the Convention, could be considered acts of violence against trade unionists. Finally, he urged the Government to continue promoting new inter-institutional dialogue mechanisms, in accordance with the Convention and workers' fundamental rights, to guarantee respect for freedom of association in the country.

**The Worker member of Germany** stated that the progress referred to by the Government in the implementation of the Convention was merely progress on paper and that little had changed in practice. The constitution of independent unions and their work was alarmingly hampered by a fatal combination of: (i) an arbitrary registration procedure; (ii) the prevalence of protection contracts; and (iii) the absence of publication of both the registration of unions and the agreements concluded. The consultation and arbitration boards (CABs), which were still the competent authorities at the federal and state level, were not independent and impartial, as demonstrated by their composition, and were always finding new ways to obstruct the registration and work of independent unions. Protection contracts were negotiated without the knowledge of workers, in some cases including German companies, even before a plant had been built or a company had started its work. If a company was already in the hands of a so-called protection union or if a protection contract existed, the CABs had many opportunities to reject applications from independent unions. To enforce a real collective agreement against a "protection union" was practically impossible. The process was overshadowed by a lack of transparency, bureaucratic hurdles, lay-offs, threats, intimidation and violence. In order to

demonstrate progress towards compliance with the Convention, it was no longer sufficient for the Government to refer to lengthy reform processes, discussions between the various stakeholders and secondary legislation that had not yet come into force and which was designed to counteract the fundamental demands of the constitutional reform. She therefore called on the Government to comply fully with the findings of the ILO supervisory bodies and to that end: (i) to demonstrate, by means of concrete actions, how it ensured the swift and independent registration of trade unions; (ii) provide evidence of the publication of collective agreements, registration, recognition and other trade union statutes; (iii) explain in detail the specific measures taken to address all the problems arising in connection with the protection contracts (not only measures on paper); and (iv) consider a statutory obligation for employers to make the applicable collective agreement known in the workplace.

**The Government member of Algeria** expressed support for the Government's efforts to reform the labour justice system, strengthen conciliation bodies and promote the right to organize and collective bargaining. All the necessary measures and procedural guarantees had been adopted to ensure compliance with fundamental rights, including freedom of expression and association, and the powers of the labour inspection system had been strengthened. There was no evidence of violations of freedom of association. He welcomed the progress made in strengthening the existing national instruments to give full effect to the constitutional reform and hoped that the Committee would take into account the progress achieved.

**The Worker member of the United States** said that CABs impeded the freedom of association of workers. One example was the strike by the independent union of miners initiated in 2008, on the legality of which the federal CAB had never ruled. In 2013, a company union run by the owner of the mine had applied for collective bargaining rights and had occupied the mine in an effort to end the strike. Rather than protecting the strike, the CAB had accepted the illegal application of the company union, and had allowed elections in 2017, in which both the employer and company union had submitted identical lists of eligible voters to the CAB. The lists had included not only miners recruited by the company to vote in its favour, but also workers who should not have been eligible to vote (including retired miners, those who had received severance pay and even miners who had died). In spite of the irregularities (collusion between company union and the employer as evidenced by the identical lists, and the failure to demonstrate who was an active worker eligible to vote), the CAB had allowed the election, which the company union had won. In January 2018, however, a court had reversed the election and had forced the company union to abandon its claim for collective bargaining rights, finally offering some protection for the lawful strike by the independent union. That example demonstrated the problems with the CABs: (i) they were not impartial, and were actually biased against independent unions; and (ii) they had close ties with both protection unions and employers. At the time when the federal CAB had decided to allow the second election, the secretary of the board for collective matters was a person who had formerly been employed as an attorney for the company and was currently in that position again. In addition, workers had to wait years before being afforded protection of their freedom of association rights. As promised in the constitutional reform, the CABs had to be replaced by a labour justice system that was fully independent of the executive branch and allowed workers full freedom of association. Those changes had to occur before any renegotiated North American Free Trade Agreement (NAFTA) or other free trade agreements, or even Mexico itself, could comply with the Convention.

The Government member of Uruguay supported the statement made by the Government member of Paraguay and highlighted, among the measures adopted by the Government, the procedural labour reform of 2012 and the promotion of a reform process. The full implementation of such laws took time and generally required several amendments to achieve the intended objectives. The labour reform had led to a reduction of more than 60 per cent in the normal duration of labour proceedings, which represented a clear benefit for complainants, who had access to more rapid and efficient justice. However, some minor aspects of the reform still needed to be adjusted. It was reasonable to request an adequate time frame for its full adaptation and implementation. In that regard, and taking into account Uruguay's experience in that area, he offered technical cooperation to the Government and encouraged it to continue along the path of social dialogue.

The Worker member of Colombia criticized Mexico for the violations of freedom of association, especially those arising out of the existence of employer protection agreements or contracts. All of the ILO supervisory bodies agreed that employer protection contracts constituted a violation of rights. The gravity and repeated nature of those violations required drastic action by the ILO. The legal reform of 2012 and the constitutional reform of 2017, instead of eliminating a practice which in itself distorted trade unions and the objectives of bargaining, had reformed registration, publication, ballots and other provisions. Consequently, five years after the legal reform and 15 months after the constitutional reform, conciliation and arbitration boards were continuing to register protection unions and employer protection contracts. The Government needed to act on the recommendations and observations of the ILO supervisory bodies with regard to protection unions and employer protection contracts and stop such practices being possible through laws adopted following genuine and effective consultations with the representative organizations of workers and effective control by the authorities to prevent non-democratic trade unions and simulated negotiations.

Another Worker member of Colombia emphasized that all factors that restricted freedom of association, especially in relation to the Convention, were entirely unacceptable. Trade unionism free from any kind of pressure was crucial for a country's development. Consequently, he requested more detailed information on protection contracts from the social partners in Mexico. He also urged the Government, together with the trade unions and employers, to consult on the Federal Labour Act in order to avoid manipulative practices that were detrimental to the Convention.

The Government member of Brazil welcomed the progress made by the Government, as recognized in the report of the Committee of Experts, in the modernization of the administration of labour justice, as well as the support expressed by the Chamber of Deputies and the Senate for the constitutional reform. He also emphasized the legislative and practical measures adopted to resolve "the issue of protection unions and protection contracts" and highlighted the ambitious consultation processes and round-table meetings carried out by the Government to give full effect to the constitutional reform through secondary legislation. With regard to the representativity of trade unions and transparency, he indicated that observations had been made on the basis of general allegations that did not refer to specific cases. It was unacceptable for the supervisory bodies to make comments that were not objective. Furthermore, Mexico had not ratified Convention No. 98, so the Committee could not examine comments about the country in relation to that Convention. The discussions of the Committee should be limited to the technical aspects of the application of the Convention. In conclusion, he encouraged

the Government to continue pursuing its objectives of labour reform, in line with its international commitments.

The Worker member of Argentina noted that on several occasions the Mexican Government had provided information to the Committee on progress that had not been achieved in practice. The Federal Act on Government employees was an example of those delaying tactics. The Act had been adopted in 1963 and five years later the Committee of Experts had noted that the Government was reconsidering the aspects of the Act that were contrary to the Convention. Fifty years later, those aspects of the Act were still in force. The Government had noted that the provisions in question were not applicable under the case law of the Supreme Court of Justice. However, the findings of the Court did not mean that the sections of the Act that were contrary to the Convention had been repealed and workers continued to lodge complaints in that regard. That situation was a clear example of a persistent violation of the Convention. Violations of freedom of association also affected education workers who were combating the "education reform" that restricted freedom of association and bargaining. Those protesting against the reform were subject to repression, as had been the case in the state of Oaxaca in 2016. That repression had led to the death of ten people, the detention of 30 and 100 injuries. And yet, those acts were still unpunished, as was the case of the disappearance of 43 students from Ayotzinapa. The Government should take specific action to adapt national law and practice to the Convention. Furthermore, the Committee should urge the Government to cease its decades-old practices that violated freedom of association.

The Worker member of Paraguay noted that some of the recommendations of the Committee of Experts had been taken into account by the Government, while others had not. Mexico had undertaken constitutional reform in relation to labour, as a result of which the conciliation and arbitration boards had disappeared and labour courts had been established. However, the deadline to amend the Act regulating those bodies and courts had passed and the Mexican Congress had suspended the reform process to hold consultations with the partners. The process was not being implemented within the constitutional time frame. He recalled that the reforms needed to guarantee the representativity of trade unions and transparency in the conclusion, registration and deposit of collective labour agreements to ensure that they were concluded by organizations that genuinely represented the interests and rights of workers. Mechanisms were needed that facilitated the exercise of union activities and the right to strike. He therefore called on the Mexican Government and Congress to adopt, through dialogue with the most representative organizations of workers and employers, the necessary measures to bring the legislation into conformity with the principles set out in the Convention.

The Worker member of Canada regretted the widespread use of illegitimate collective bargaining agreements signed between an employer and an employer-dominated union with the blessing of the government authorities. Workers trying to organize independent and democratic trade unions were harassed, threatened and assassinated: in November 2017, Victor and Marcelino Shaunitla Peña had been murdered while participating in a work stoppage at a gold mine, refusing to join a union imposed upon them by the company. This had shone the spotlight on Mexico's corrupt and anti-democratic labour relations system of protection contracts. In January 2018, Quintin Salgado had been murdered after being threatened if he kept advocating a change of unions. There had been no investigation of these murders. Also in January 2018, after receiving threats from the corporate union, Eli Manuel Robelleo, a mine worker, had seen his house burned down. A few days later, another

worker, Monica Lopez, had been beaten and left unconscious. No investigations had been carried out. She recalled that rights of workers' organizations could only be exercised in a climate free from violence and that it was the responsibility of governments to ensure that this principle was respected. The free choice of workers to establish and join organizations was so fundamental to freedom of association as a whole that it could not be compromised by delays and simulated reforms. She called on the Government to reform and enforce the rule of law in order to protect workers' demands for democratic unions, better wages and working conditions, and health and safety at work. Mexico was under the obligation to change its law and practice in order to restore workers' rights, in compliance with the Convention, before any free trade agreement could be signed.

**An observer representing the International Transport Workers' Federation (ITF)** stated that protection contracts presented the most serious obstacle to the exercise of freedom of association in Mexico. The Conference Committee, the Committee of Experts and the Committee on Freedom of Association had all urged the Government to effectively abolish the protection contract system but there had been no real change. That system deprived workers of any right to safe working conditions, labour inspections, compensation or social security and was designed to dismantle genuine and democratic trade unionism. Unfortunately, this had been achieved in the road transport and port sectors. The constitutional reform required the enactment of secondary legislation. However, the proposed legislation undermined the spirit of this reform and contained numerous provisions that would negatively affect workers, including the amendment to section 388 of the Federal Labour Act. Unions representing workers in the aviation sector had been frustrated by protection unions that had claimed to represent all workers and sought to negotiate a single agreement. The proposed amendment to section 388 would exacerbate that problem in prohibiting professional unions from negotiating separate agreements with a common employer. That was inconsistent with the obligation to promote free and voluntary collective bargaining. The ILO supervisory bodies had made it clear that in order to satisfy trade union plurality where a single agreement policy was in place, minority or professional unions should at a minimum be able to conclude collective agreements on behalf of their members. That principle was particularly important in Mexico due to the impact of protection contracts. The speaker called on the Government to withdraw the proposed secondary legislation to bring its labour laws into conformity with the Convention.

**An observer representing IndustriALL Global Union** indicated that protection contracts had been a vital part of the state policy and economy for a long time. This model had spread to cover all industrial sectors: it guaranteed the lowest labour costs and prevented any negotiation with workers. Following the privatization of the energy and gas sectors, the concession and exploration contracts contained specific clauses mentioning the chosen union, thus depriving workers of any choice. Despite promises on the international scene, the Mexican Government had not done anything to eradicate these protection contracts. Every new investment announced, be it in the auto sector, energy, electronics, textile, comes with "the cherry on the cake", a protection contract already signed with the accomplice corporate unions, long before the plant was built and any worker appeared. The previous week, approximately 50 women workers in the textile sector had been dismissed for defending their rights: the management had said that there would be no other union than the one already in place in the plant. Only the official corporate unions could obtain a collective bargaining agreement: a request for union elections by the union "Mineros", an affiliate of IndustriALL,

had been blocked for 6 years by the government authorities, the company and the protection contract union. And even when it had won elections in a mining site in April 2016, the company and the protection contract union had refused to abide by the official ruling published and continued to occupy the union facilities. She concluded that the Government had the obligation to respect Mexican workers' rights and to implement freedom of association.

**An observer speaking on behalf of the Confederation of University Workers in the Americas (CONTUA)** said that there were persistent and serious government practices that were in violation of the Convention. Since 2015, the Committee had been asking the Government to resolve the issue of protection unions and to include the social partners in discussions on the subject. In 2017, the Committee had once again requested the Government to consult the social partners as serious concerns had been raised regarding the unclear measures that were being implemented. Again today, the Government needed to provide explanations to the Committee on why it was repeatedly failing to hold authentic, institutionalized and permanent tripartite consultations with the context of the transition process of the constitutional reform of the labour justice system, which was in violation of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The obligation to hold tripartite consultations was the responsibility of the Government, which could not invoke national law to justify non-compliance with the Convention. Similarly, it could not claim to have organized consultations for the establishment of social dialogue with the most representative organizations of workers in view of the habitual, persistent and repeated corporative and anti-democratic trade union practices which were contrary to the interests of the workers. Consultations of that type did not reflect the real labour situation in Mexico. According to the official journal of the Senate, public hearings were to be held in May and June 2018, but in practice no public hearings were envisaged in the four regional offices. The hearings were supposed to contribute to the initiative submitted by the Government on 7 December 2017, through the CTM and the CROC, overlooking the other three legislative initiatives that had also been put forward, without any official measures being taken to convene the meeting. Proof of the Government's deceitful practices was to be found in the request made by the President of the National Union of Workers (UNT) and the Secretary-General of the Union of Workers of the National Autonomous University of Mexico (STUNAM) who, in May 2018, had requested the Senate to indicate the place, date and time of the public hearing on the preliminary draft decree on the labour justice system, to which no reply had yet been received. The initiative would bring back the false system of tripartism, as it proposed the establishment of a Federal Institute of Labour Conciliation and Registration, a government body that would be composed of the following 12 members: four Government representatives, four worker representatives and four employer representatives. The institute would therefore reaffirm total corporative control, as four of the 12 members would be from national workers' organizations, but only from those that were supposedly "most representative". In other words, the Government of Mexico was persisting in the reinforcement of a protectionist and undemocratic type of unionism, which favoured some sectors while excluding the representation of others, which was contrary to the fundamental principles of the ILO, and particularly the Convention. Such actions perpetuated a system that undermined the well-being of Mexican workers, through the promotion by force of law of practices that were in violation of freedom of association. Finally, he urged the Government to ratify Convention No. 98 immediately.

The Government representative emphasized that many of the interventions had focused on the process of labour reform. Although the part of the constitutional reform that had already been adopted involved responsibilities for the various actors, including the federal Government and state governments, it was also true that the implementation of the secondary legislation would require the adoption of texts to enable both the judicial authorities (in relation to labour justice) and the decentralized body and conciliation centres to fulfil their functions. That process was under examination by the Senate, through four initiatives, which had not been rejected at the parliamentary level. The decision of the Senate, at the petition of many groups in Mexico, had been opened up for consultation, not only through the work of the legislative commissions, but also through the holding of consultation meetings. The measures taken to convene such meetings were to be decided on by the Senate. Nevertheless, the Government was committed to holding tripartite consultations with a view to the preparation of the secondary legislation, as a minimum level of agreement needed to be achieved in respect of that legislation to carry out the reform under the best conditions. For that purpose, during the course of 2018, the Secretariat of Labour, under the leadership of the Secretary of Labour, had held over 91 meetings with organizations of employers and workers. The will of the Government and of the State was to develop consensus with workers, employers and civil society organizations on the most appropriate approaches to the labour reform, taking constantly into account the rights of workers. However, he recalled that another fundamental aspect of the discussion lay in the reiterated references to the existence of protection agreements or contracts. Mexico had been cooperative in the specific cases in which problems of that type had arisen. In that regard, he emphasized that in the constitutional reform the issue of the origins of protection contracts had been taken into consideration and their relation to the Federal Labour Act, thereby avoiding problems such as recourse to strike action through the use of extortion. With reference to the registration of unions, he indicated that, in contrast with the indications provided by participants in their interventions, the federal authorities were currently responding to applications for registration within three or four days, which had resulted in the greatest increase known in Mexico in the number of union associations. There was also an online system at the federal level which included over 3,400 registrations of associations. In conclusion, he gave thanks to the members of the Group of Latin American and Caribbean countries for the efforts that had been made, which offered an incentive to continue making progress and to try and achieve as much as possible, within the context of compliance with the provisions of the Convention.

The Workers members welcomed the willingness of the Government to work to bring its law and practice in line with the Convention and hoped that this would be translated into concrete action. It was nevertheless regrettable that the Government did not accept the serious shortcomings of its current regulations and legislative proposals with regard to the Convention. The numerous problems encountered were rooted in the protection contracts system. In response to the comments made by the Government that it had for many years submitted detailed information and evidence to the Committee of Experts and the Conference Committee, the current discussion had once again provided specific examples demonstrating the impact of protection contract unions. That system had for many years seriously impeded the exercise of freedom of association and the freedom to bargain collectively. They challenged the statement that the issue of protection contract unions did not fall within the scope of the Convention. In fact, that phenomenon was closely linked to both Conventions Nos 98 and 87. The existence of protection contract unions constituted an

obstacle to the establishment of free and independent unions. A member State was not in compliance with the Convention if it put in place or retained regulations which prevented workers from challenging the presence of protection contract unions and which restricted their ability to elect democratic and independent unions of their choice. The ability for workers to form and join a trade union of their choice and the ability of that trade union to represent, defend and promote the interests of its members through collective bargaining was at the heart of the Convention. The Government therefore needed to take all the necessary measures to put an end to the use of protection contracts. In that respect, they made a number of recommendations to the Government: (i) they invited the Government to submit information on the proposed legislation aimed at implementing the constitutional reform. It was essential for there to be consultation with all the social partners on that legislation, including independent trade unions. The Bill significantly affected the exercise of the right to freedom of association and its impact would be felt throughout the country and indeed the region; (ii) as the CABs had been incapable of guaranteeing freedom of association and the right to collective bargaining, they should be replaced by genuinely independent and impartial bodies to settle labour disputes and register unions and their collective agreements. The Government should also provide information on how it would guarantee the establishment of truly independent institutions, as well as the measures planned to ensure an efficient transition from the CABs to new independent bodies; (iii) the Government had to ensure that there was transparency and genuine access to information regarding the registration of trade union organizations and the collective agreements concluded. The Government should communicate any information in this respect; (iv) workers wishing to exercise their right to freedom of association and to collective bargaining had to be able to do so and, where appropriate, effectively and expeditiously challenge the validity of protection contract unions and the agreements they had negotiated; (v) they urged the Government to apply the existing law and ensure that outsourced workers were not used to interfere with the exercise of the right to freedom of association and the right to collective bargaining; (vi) the proposed legislation also removed basic safeguards concerning dismissals and redundancy. The Government had to protect workers from arbitrary dismissals and retaliation for their trade union activities. The same was true for collective redundancies; and (vii) the Government should explicitly repeal the restrictions on trade union pluralism and the free election of trade union leaders. Finally, they urged the Government to put an end to violence against trade unionists, including those engaging in social and political issues, which was part of their function as trade unionists, by ending the reign of impunity for those crimes. Those responsible, both the material and intellectual authors, had to be arrested and brought to justice. Failure to do so only further invited the use of violence, including murder, by some employers and their agents in industrial disputes. In order to comply with those recommendations, and given the significance of the issues being discussed, they urged the Government to seek technical assistance from the ILO on the draft legislation and to accept a direct contacts mission. This case should be included in a special paragraph of the Committee's report.

The Employer members thanked all those who had spoken during the discussion, which had been rich in information and diverse in opinions, thereby demonstrating the option of putting forward open and frank positions on the various aspects of the case. The additional responses provided by the Government had reaffirmed many of the points contained in its initial statement, and had also clarified points made previously by the Employer members. The positions of various Worker representatives reflected

a number of viewpoints and approaches which, as the Employers had noted previously, might go beyond the scope of the Convention. The Committee of Experts had referred in its observation to Case No. 2694 of the Committee on Freedom of Association. In its June 2017 report, the Committee on Freedom of Association had drawn a distinction between general issues and specific allegations. The general issues covered all the legislative aspects that were before the Committee of Experts and the Conference Committee, and which had indeed been discussed today. However, the specific aspects that might be connected with Convention No. 98 were being analysed by the Committee on Freedom of Association in a more detailed evaluation of many of the aspects that had been referred to today by the representatives of the different sides. Hence, neither the Conference Committee nor the Committee of Experts needed to address aspects relating to the principles of collective bargaining. For that reason, the subject of collective bargaining systems was not part of the discussion and should be completely excluded from the considerations and conclusions of the Conference Committee. The Government had referred to a labour inspection protocol on free collective bargaining, which enabled labour inspectors to perform many different duties and provided protection for many workers in Mexico. Moreover, the Government had referred to the trade union consultation system, indicating that it had received over 1 million visits and contained detailed information on over 3,400 union associations, which responded to the Committee's concerns regarding the registration and information system. The Government has also indicated that a decentralized public body was being established as part of the constitutional reform, which would include administrative, organizational, technological and logistical tools for its implementation. In addition, more than 91 meetings had been held with representatives of workers, employers, academics and associations of lawyers, as well as the public hearings decided upon by the Senate to give effect to the new legislation and the four legislative initiatives or proposals. A whole process of change was taking place through extensive social dialogue, as promoted by the ILO. The establishment of independent labour tribunals, with a specific budget for their operation, was all part of a process involving the implementation of clear and specific measures. The Government had responded repeatedly to the various concerns expressed by both the Committee of Experts and the Conference Committee. With regard to civil liberties and trade union rights, the Government had provided information from a number of independent bodies on various acts of violence that were unrelated to freedom of association, which meant that there was no need to provide further details. Consequently, with regard to the request by the Committee of Experts for the Government to provide comments on those acts of violence, it should be considered that the information had already been provided, and that no further information was required. Concerning the constitutional reform and the recommendation for the Government to take further measures and to hold tripartite consultations on the reform, the Employer members considered that it would be appropriate for the Government to include that subject in the report to be submitted under article 22 of the ILO Constitution, but not in an additional report or in one to be provided earlier than usual. The subject of representation and protection agreements or contracts would be analysed by the Committee on Freedom of Association, and the Government should refer to that Committee for further detail. The Employer members therefore considered that the conclusion concerning the possibility of the Government adopting measures for that purpose in conjunction with the social partners was a matter to be addressed by the Committee on Freedom of Association, not the Conference Committee. With reference to the publica-

tion of trade union registrations, the information system already existed and provided comprehensive information. The conclusion calling on the Government to continue providing information on compliance with its obligation to publish information on trade union registrations and constitutions was also not therefore indispensable. Finally, the Employer members considered that many issues relating to the legislative reform, in light of the Government's explanations and the case law, were no longer applicable and that the request by the Committee of Experts for the Government to take steps to amend the restrictive provisions of the Federal Act on State Employees was no longer required. Nor was it appropriate to call for measures to be taken to amend section 372 of the Federal Labour Act, which prohibited foreign nationals from being members of trade union executive bodies, in order to ensure that right was set out explicitly. The conclusions should therefore be aimed at ensuring the provision of additional information as part of the regular reporting in accordance with the general procedures relating to the supervision of any Convention. The Employer members considered that the case could be closed.

### Conclusions

**The Committee took note of the written and oral information made by the Government representative and the discussion that followed.**

**The Committee also noted the prior discussion of this case in the Committee, most recently in 2016.**

**Taking into account the Government's submissions and the discussion that followed, the Committee encouraged the Government to:**

- **continue to pursue further legislative action envisaged in the context of the Constitutional reform in continued consultation with the social partners at national level;**
- **ensure, in consultation with the social partners, that the secondary legislation required to enact the reforms to the Constitution and federal labour law are in conformity with the Convention;**
- **continue to fulfil its existing legal obligation to publish the registration and statutes of trade unions, as well as existing collective agreements; and**
- **ensure that trade unions are able to exercise their right to freedom of association in law and practice.**

**The Committee invited the Government to report in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2018.**

The Government representative expressed appreciation to the Committee for the constructive and open dialogue that had taken place. She had listened particularly carefully to the comments made and issues raised during the debate and to the conclusions presented, which would be duly evaluated and taken into account by the authorities. She also reaffirmed the Government's commitment to fundamental principles and rights at work and to the promotion and attainment of decent work. Social dialogue was the best tool to identify actions that would ensure the continued application of fundamental principles at work, especially the principles laid down in the Convention. Mexico reiterated its commitment to social dialogue and to the ILO supervisory mechanisms which helped to strengthen that dialogue. To that end, it would respond to the requests for information promptly and appropriately.

### MYANMAR (ratification: 1955)

A Government representative indicated that the Government had set the following priorities for the country and the people: rule of law, the improvement of the socio-economic life of the people, national reconciliation and peace,

and amending the Constitution to build a democratic federal republic. Undoubtedly, the tasks were not easy in the face of various internal and external challenges. In dealing with such challenges, the Government had adopted a path consistent with the needs and situation of the country, while respecting the views and opinions of the international community and bearing in mind Myanmar's international responsibility. Improving the socio-economic life of the people, including workers, had always been high on the agenda. Labour law reform was well under way, and a culture of tripartite dialogue had been successfully introduced and developed. Progress made included upgrading skills, establishing the National Skills Standard Authority, opening migrant resource centres, and, for the first time in history, setting the minimum wage. In close cooperation with the ILO, considerable progress had been made in eliminating the practice of forced labour. A new chapter had opened for the workers with respect to their right to associate and organize. Since the adoption of the Labour Organization Law of 2011, many workers' and employers' organizations as well as three federations and one confederation were in place and functioning. In response to the request for information made by the Committee of Experts concerning the chapter on Rules and the corresponding chapter on Offences and Penalties, the speaker indicated that the Law on the Right to Peaceful Assembly and Peaceful Procession of 2016 allowed for a wider democratic space for all Myanmar citizens, including workers, in their exercise of freedom of association. It also allowed them to assemble and hold a procession without prior permission by providing a 48-hour notice to the relevant authority. Penalties for offences had also been reduced substantially, for instance for holding a procession without notice. Directives, rules and regulations were being developed to implement the Law on the Right to Peaceful Assembly and Peaceful Procession in its letter and spirit. In the meantime, its section 26 provided that rules, notifications, orders, directives and procedures issued under the previous version of the law might continue to apply in so far as they were not contrary to the 2016 version. The Labour Organization Law and the Settlement of Labour Disputes Law of 2012 were currently being reviewed and their amendment was under consideration in close consultation and cooperation with all stakeholders including workers, employers, members of Parliament, and ILO experts. In fact, the ILO had been involved in developing the draft text since the beginning of the process, and the Government would continue informing the Committee on the progress made in the labour law reform. With regard to the Labour Organization Law, the Government had constantly sought the outcomes of discussions among the social partners, as well as comments, views and suggestions of labour federations, employer organizations, the Union of Myanmar Federation of Chamber of Commerce and Industry, and the ILO, and had taken them into consideration in the review process. The question of the 10 per cent membership requirement and the impact of the pyramidal structure formed part of the Government's considerations under the labour law reform process. The requirements for the eligibility to trade union office set out in the Rules to the Labour Organization Law sought to preserve local ownership, and to capture adequate and genuine representation of workers in the body which would be entrusted to promote and protect the interest of workers. Disputes in the special economic zones (SEZs) were settled by respective Management Committees in accordance with Chapter 16 "Matters relating to Labour" of the Special Economic Zone Law of 2014 (SEZ Law). A labour officer from the Ministry of Labour, Immigration and Population (MOLIP) was attached to such committees, and provided advice and guidelines in the dispute settlement process. If no settlement was reached within the Management Committee, such dispute would be

settled pursuant to the Settlement of Labour Disputes Law, although the SEZ Law currently referred to the repealed Trade Disputes Act. The right to freedom of association in Myanmar continued to be strengthened. With the political will of the Government, close tripartite cooperation, technical assistance of the ILO and the support of the international partners, the speaker was confident that workers and employers would increasingly be able to enjoy their fundamental rights, and that such progress would eventually lead to decent work and sustainable development.

**The Worker members** recalled the circumstances under which the case of Myanmar had last been discussed in the Committee in 2011 and considered that much had changed since then: the Labour Organization Law and the implementation regulations had been enacted; independent unions had been allowed to form and carry out activities for the first time in decades; the Federation of Trade Unions of Burma (FTUB) had returned home from exile, had begun to organize thousands of workers and obtained registration as the Confederation of Trade Unions of Myanmar (CTUM); and trade unionists had been released from prison and had continued their union activities. However, despite such important steps, the situation for unionists was deteriorating and many serious issues remained. Although unions had welcomed the Government's decision to amend the Labour Organization Law and the Settlement of Labour Disputes Law, a draft of the Labour Organization Law prepared by the MOLIP failed to address most of the concerns raised by the Committee of Experts and the International Trade Union Confederation (ITUC) and was worse than existing laws in several respects. Furthermore, completed applications for union registration had been denied for arbitrary reasons or on the basis of unpublished Government directives. In some cases, the police had violated workers' civil liberties, including through physical harassment or arrest, in response to the exercise of trade union rights, including strikes. Workers attempting to organize were routinely fired with impunity due to a broken dispute resolution system, and blacklisting was a common practice in the industrial zones. With regard to legislation, they stated that since the Government had ignored much of the technical advice of the ILO, the Labour Organization Law restricted the fundamental rights of workers' and employers' organizations, as had been repeatedly confirmed by the Committee of Experts. The following concerns were raised: the minimum membership requirement of 30 workers to form a basic labour organization combined with the additional support of 10 per cent of the workplace was too high, particularly in large workplaces; a requirement for labour organizations at all levels to be composed only of workers of the same trade or activity had limited the ability of unions to determine their own membership, and a narrow interpretation of the terms "trade" and "activity" had led to narrowly defined unions; union structure was strictly organized and mirrored the administrative structures of the Government leading to workers being unable to form unions that corresponded to their needs; burdensome requirements for the formation of higher-level organizations; restrictions on the eligibility of executive committee members who must be Myanmar citizens or foreigners legally residing in the country for at least five years, 21 years of age, and workers in the relevant trade or activity for at least six months; a prohibition on strikes without first proceeding through the steps of the dispute resolution mechanisms thus limiting strikes to industrial disputes and prohibiting sympathy strikes and strikes over economic and social policy; and a list of workplaces in the law where a 500-yard perimeter must be respected, which could render ineffective the strike by locating it far from the employer. While the Government had initiated a process to reform the Labour Organization Law and the Settlement of Labour Disputes Law, the numerous tripartite meetings over the past

year and a half had been superficial, had not led to meaningful progress, and it was clear from the Government's statements and its draft proposals that it had no intention of addressing workers' concerns or complying with the Convention. Although a later draft of the Labour Organization Law withdrew the minimum membership number to form a union, it failed to address many other concerns and created several new problems. In particular, the draft excluded informal economy workers, which would lead to the dissolution of the majority of unions in the country (unions of self-employed agricultural workers); provided that there could be no more than three basic unions in a trade; kept the rigid trade union structure, and established overly high minimum numbers to form higher level unions; provided for "acknowledgment" of trade unions instead of registration, which would only last two years and would have to be renewed; created new and illegitimate reasons for the chief registrar to deregister unions; and included a new and expansive provision on interfering with or obstructing workers from coming to work which could be easily used to frustrate strikes. The Government must therefore engage in a meaningful process of consultations with workers and employers and should request the ILO to provide detailed comments on the drafts to assist it in developing amendments that would bring the laws into compliance with the Convention.

With regard to registration, it was stated that despite clear rules about registration requirements, registrar officials had denied complete applications for arbitrary reasons, referring in some cases to "directives" from the Ministry which contained additional registration requirements, without however providing them to the unions and claiming that they were not public. According to unionists, the directives required, for instance: all executive committee members to submit their curriculum vitae; all union members to submit photocopies of identification cards (many workers were unable to obtain government-issued identification cards); and the union to obtain a letter from the employer acknowledging that it had informed the management of its intent to register, thus giving employers the ability to veto the union's registration by withholding the letter. More recently, unions had reported a supposed requirement to obtain signatures and photocopies of identification cards from at least 10 per cent of the workforce who were not union members so as to show their support for union formation, thus distorting section 4 of the Labour Organization Law (itself in violation of the Convention) and giving non-union members a veto. Such new and secret requirements clearly frustrated what should be a simple, administrative process. The Government must prohibit registrars from requesting anything beyond the Labour Organization Law and its regulations, and if the abovementioned directives did in fact exist, they should be withdrawn immediately. Turning to the issue of strikes, the Worker members noted that in addition to the obvious flaws in the legal framework governing strikes, workers had been unable to exercise their right to strike freely, and had often faced dismissal, harassment and lawsuits for raising workplace concerns. For example, a strike had been staged by union members at a sock factory in Industrial Zone 3 in January 2018 after the employer's refusal to reach a collective agreement which had responded to the union's demands. Even though the arbitration body to which the dispute had been submitted had ordered the employer to sign the agreement and negotiate over the remaining issues, the employer had dismissed the 48 workers involved in the strike, filed a lawsuit against 13 of the strike leaders and subsequently dismissed another 25 workers. In other cases, workers had been arrested or threatened with legal proceedings for their role in strikes or had reported threats by the police, security guards or employer-hired thugs, some-

times leading to serious injuries. In most cases, law enforcement officers took no action in response to such attacks, complaints submitted to the police were often not accepted and such an approach had become a normalized way of dealing with unions. Concerning deregistration, the Worker members had been informed that labour officials in some areas had ordered union leaders to report to their offices every Sunday, as failure to do so could result in the union's de-registration. Such a requirement constituted serious interference in trade union activity and would infringe upon workers' ability to conduct union activities, and deregistration in those circumstances would constitute an extremely serious violation of freedom of association.

**The Employer members** recalled that the fundamental Convention had been ratified by Myanmar in 1955, and that its application had been the subject of 18 discussions in the Conference Committee and 26 observations by the Committee of Experts. Myanmar was in the process of re-establishing a democratic system of government after many years of military rule. As part of the process, legislation had been adopted on a range of issues within the purview of the Convention, for instance the Law on the Right to Peaceful Assembly and Peaceful Procession. Since the advances were relatively new, there had been limited ability to assess their effectiveness and compliance with the Convention, as reflected in the report of the Committee of Experts. Nonetheless, the Employer members noted that the Committee of Experts had raised the following issues bearing the potential for breaches to occur: (i) one possibility that the chapter on Rules and the corresponding chapter on Offences and Penalties of the Law on the Right to Peaceful Assembly and Peaceful Procession could allow for serious restrictions on the right of organizations to carry out their activities without interference, as contemplated by Article 3 of the Convention; (ii) the lack of information on the labour law reform process seeking to address potentially onerous and non-compliant requirements for the establishment of trade unions, restrictive eligibility criteria for union officials and a residency threshold for foreign workers to be able to join a union; and (iii) a lack of guaranteed coverage of the Convention for workers in SEZs. In that regard, the Employer members observed that the Government had assured the Committee of Experts that its new Law on the Right to Peaceful Assembly and Peaceful Procession was in full conformity with the Convention, requiring only 24-hour advance notification and repealing sanction provisions. However, they noted that the Committee of Experts continued to express the concern that the law might still permit serious restrictions on the right of organizations to conduct their activities without interference. With respect to the labour law reform process, a draft law to amend the Settlement of Labour Disputes Law had been discussed with the tripartite partners at the Labour Law Reform Technical Working Group in July 2017. While noting the Government's indication that it was reviewing the penalties in the draft law and drafting amendments, the Employer members also noted the concerns of the social partners over the lack of information from the Government about the process and over instances of resistance to making amendments. It had led to fears that the result might be worse than the current situation, in particular in view of the Government's reluctance to grant informal workers the right to organize, despite the fact that thousands had already formed unions under the Labour Organization Law.

Furthermore, the Committee of Experts had expressed concern over threshold requirements for unions to have 30 members as well as 10 per cent affiliation in the same trade or activity before being able to establish a basic labour organization, the eligibility requirement for union officials to have been working in the same trade or activity for six months and the requirement for foreign workers to be resident in the country for five years to be able to join a

union. Subject to the caveat that certain threshold criteria were appropriate, for instance the basic criteria to establish any incorporated body, the Employer members endorsed the latest request formulated by the Committee of Experts in that regard, since dual or overly restrictive criteria could have the effect of inhibiting the freedom to form and join organizations and to elect representatives as provided in Article 3 of the Convention. Emphasizing also that the Convention applied equally to workers' and employers' organizations, they suggested that unions should not be treated differently to employers' organizations with respect to the freedom to establish organizations. The Employer members further recalled the 2015 Government's statement, which recognized that the right to strike was a matter for national regulation. With respect to SEZs, concerns had been expressed around the fact that dispute procedures for workers in SEZs were more cumbersome than for other workers, and that labour inspector powers had been delegated to SEZ management bodies. In response, the Government had indicated that the labour inspectorate was permitted to coordinate and cooperate with SEZ management to have jurisdiction, and that the Labour Organization Law could be enforced in SEZs. The Employer members echoed the request of the Committee of Experts that the Government take the necessary steps to ensure that SEZ workers were treated in the same way as other workers as well as provide information on the actual practice of dispute settlement and the results of labour inspectorate activities in SEZs. The Employer members believed that the current situation in Myanmar could be described as one of concern that things might go wrong rather than of certainty that things had gone wrong. In many ways, Myanmar was standing at a new beginning, which rendered the task of establishing labour laws in conformity with international standards all the larger. It was time to consider carefully and thoughtfully how the future should look with respect to labour relations, using a careful and highly consultative approach that involved all the social partners and took into account independent expert advice from the ILO when appropriate. They noted that, in February 2018, the ILO had briefed Parliament and the tripartite constituents on the application of international labour standards in Myanmar, with a view to gathering support for the development of a strategic approach on promoting international labour standards for the upcoming Decent Work Country Programme. The subsequently developed proposals were now under consideration. In conclusion, in the Employer members' view, nothing was too late at the present juncture. It was the right moment for the Government to take heed of the concerns expressed by the Committee of Experts and the Conference Committee, and to collaborate with the social partners in the development of a sound platform for the conduct of labour relations. The Employer members therefore urged the Government: (i) to continue to avail itself of the expertise and technical assistance of the ILO with a view to completing the development and introduction of labour laws in line with the explicit standards and guarantees set out in the Convention; (ii) to consult with the social partners with the aim of ensuring that workers were able to elect their officers freely as envisaged by Article 3 of the Convention; (iii) to apply the Convention without distinction between workers' and employers' organizations; and (iv) to provide information, as soon as it was available, on the steps taken to ensure that SEZ workers were treated in the same way as other workers as well as on the actual practice of dispute settlement and the results of the labour inspectorate activities in SEZs.

**The Worker member of Myanmar** expressed the hope that with the significant changes recently implemented, including the enactment of the Labour Organization Law, Myanmar would enter a new era, where workers would enjoy

their trade union rights in full freedom and would be included in the economic and social development of the country. Workers were still struggling for the development of an independent and strong labour movement, and organizing in the country remained severely hindered by major shortcomings in the legislation and the lack of an enabling environment. The Labour Organization Law contained numerous provisions that hindered union formation and registration by setting excessive requirements and thresholds. It also interfered with the right of workers' organizations to elect their officers freely and to formulate their programmes and activities. In practice, trade union density remained extremely low, and workers were deprived of their fundamental right to organize and defend their interests. In the absence of protection against anti-union discrimination, many workers who had formed or joined labour unions had subsequently been dismissed or subjected to other forms of reprisal by their employers. Furthermore, workers and unions were prohibited from taking industrial action. The Labour Organization Law required that a majority of workers voted for strike action to be undertaken, a threshold that excessively restricted the exercise of industrial action. In addition, permission from the relevant federation to go on strike was required, which was a severe infringement of unions' right to organize their activities freely. Even when a strike action was staged, its impact was severely hampered by the 500-yard picketing restriction, as demonstrations were prohibited within 500 yards from hospitals, schools, religious buildings, airports, railways, bus terminals, ports or diplomatic missions and military or police installations.

The 2018 series of amendments to the Law on the Right to Peaceful Assembly and Peaceful Procession, as passed by the Upper House, had been denounced by labour and human rights organizations. Among the many contentious provisions, a new section provided that anyone who supported a protest either financially, materially or through other means would be deemed in breach of national security, the rule of law, public order, or public moral, and could face up to three-year imprisonment and a fine. Such a vague formulation could be used by the authorities to curb industrial action and suppress unions. The previous law had already been used to arrest and jail students, farmers, journalists and other activists. The Committee of Experts had repeatedly emphasized the need to bring the national legislation into full conformity with the principles and rights enshrined in the Convention; but the Government had failed to take into account the concerns raised. In fact, the amendments proposed by the Government to the Labour Organization Law and the Settlement of Labour Disputes Law would further restrict freedom of association and trade union rights. The last draft proposal maintained a strict control over the formation of unions, which would only be "acknowledged" and not registered, and also increased the powers of the chief registrar to deregister unions. Myanmar had been undergoing a major political transformation, while opening the country to investments which fostered economic development. It was crucial to ensure that workers were included from the start in the process of structuring the economic change in the country, and a solid labour movement led by independent and strong unions was therefore necessary. Such changes could only be achieved in an environment conducive to the exercise of the right to freedom of association. The current legislative framework highly restricted trade union rights, and it appeared that the draft amendments proposed by the Government would not improve the situation. To implement the decision of the ILO Governing Body urging the Government to further engage in the process of the labour law reform to promote freedom of association through tripartite dialogue, it was important that the ILO renew the related project and provide support to all the tripartite partners. In



conclusion, she urged the Government to engage in a meaningful and constructive process of consultations with workers and employers, and to amend the current labour laws in a way that would guarantee to all workers the right to freedom of association and the right to organize freely.

**The Employer member of Myanmar** highlighted the significant growth of the private sector over the last five years. The private sector of Myanmar was a major contributor to the gross domestic product (GDP) of the country. Over the past years, the country had experienced a steady GDP growth pattern (5.9 per cent in 2016; 6.4 per cent in 2017; and a 6.8 per cent forecast for 2018). The growth constituted evidence of employment creation, productivity output and harmonized co-operation between employers and workers. In recent years, hundreds of thousands of new jobs had been created by the private sector. In the labour-intensive manufacturing sector alone, the jobs created had doubled from 2013 (approximately 200,000) to date (over 400,000). Moreover, according to the 2017 Annual Labour Force Survey, child labour participation in the workforce had decreased significantly, thanks to the tripartite partners. Recently, the Government had developed the Myanmar Sustainable Development Plan, in line with the national economic policy as well as the Sustainable Development Goals (SDGs), which aimed at ensuring inclusive and sustained growth of the country and its people. In that context, the private sector had been identified as a prominent contributor to the development of the country. She considered that the Labour Organization Law, which provided for the establishment of labour organizations as well as their rights and responsibilities, was in line with the Convention. In her view, the country knew best the needs of the society based on the culture and customs of the country, and the Conference Committee should not be micro-managing national legislation. After all, Article 8 of the Convention clearly stated that, in exercising the rights provided for in the Convention, workers and employers and their respective organizations, like other persons or organized collectivities, should respect the law of the land. The speaker indicated that employers, workers and the Government had been meeting for the tenth time since 2015 during the National Tripartite Dialogue Forum, openly discussing the needed reforms of the laws, based on reality and practice. The Government's proposed revision to the Labour Organization Law included a new chapter on the formation of employers' organizations, which represented a positive step. To date, there was only one township-level employers' organization and one employer federation in the whole country.

Regarding the Committee of Experts' observations on penalties, she noted that the issue should not be limited to penalty levels and penalties against employers. The lack of significant penalties to deter illegal activities of unions had a significant, negative impact on industrial peace in Myanmar. While noting the right of workers under national law to engage in legal industrial action, she stated that union members had repeatedly carried out strikes using illegal tactics, such as fully blocking the entrance to factories, in violation of national law and international best practice. Such actions inevitably had resulted in physical confrontation, including instances where unionists had assaulted factory management and other non-union workers. Violations of the Labour Organization Law and regulations on strikes were also observed. She called on the Government to devise, through tripartite dialogue, ways and solutions to deter such actions, or else industrial relations and the rule of law would be undermined. The anarchy currently characterizing industrial action was not in accordance with national law and not conducive to positive labour relations. Illegal industrial action was detrimental to current and potential foreign investment and could negatively affect job creation. Moreover, she denounced the repeated calls by

national trade unions during labour law reform meetings for prison sentences against employers for minor, administrative labour law infractions, contrary to the recommendations of the ILO supervisory bodies. A punitive system of labour relations would be unhelpful to the promotion of harmonious labour relations. Furthermore, she highlighted the lack of employer confidence in the arbitration system. Although it was created for collective disputes and even though the law stated clearly that individual cases were for the competent courts, the Government insisted on sending individual cases to the arbitration system (currently over 80 per cent of the total number of cases). Tripartite dialogue on establishing a proper dispute resolution system had taken place but results remained uncertain. Arbitrators were not required to have a legal background and, at the conciliation and first arbitration phase, members of unions and employers' organizations could act as conciliator or arbitrator themselves. The lack of knowledge and conflicts of interest often yielded verdicts that were clearly against the law and undermined employer confidence in the arbitration system. Lastly, she indicated that, under the Factories Act, only two types of businesses were regulated: continuous work where the law allowed for 48 working hours in a week (eight industries) and non-continuous work with 44 hours per week (all other industries). Such rigid working hours were not in tune with the flexibility needs of the newly developed industries (such as the security service, oil and gas, garment, and food processing industry) and rendered them uncompetitive. In conclusion, she emphasized that, for a young democracy like Myanmar, the journey was long, and it would undoubtedly take time to get where all stakeholders wanted to be. The social partners needed to work together constructively.

**The Government member of Bulgaria** speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Norway and Serbia, attached great importance to the respect, protection and fulfilment of human rights, including freedom of association of workers and employers and the right to organize, and recognized the important role played by the ILO in developing, promoting and supervising international labour standards. The EU and its Member States were engaged in the promotion of the universal ratification and implementation of the eight fundamental Conventions. The speaker welcomed the positive steps made by the Government to improve labour rights in a number of areas. The ILO's involvement was also welcomed, particularly with respect to the recent development of a Decent Work Country Programme outline which included freedom of association as a priority. It should be implemented swiftly. Together with the Governments of Denmark, Japan and the United States, as well as with the ILO, the EU had actively provided support for the Myanmar Labour Rights Initiative to Promote Fundamental Labour Rights and Practices, notably through funding the last Stakeholders' Forum which had taken place in Nay Pyi Taw on 17 January 2018 to discuss the progress and challenges in labour market reforms including labour law reform. In view of the constructive dialogue on the way forward during the event, the speaker reiterated the need for the Government to continue its efforts to bring national law in line with international labour standards, to foster tripartite dialogue, and to ensure freedom of association. Noting with interest that tripartite dialogue was being strengthened through the National Tripartite Dialogue Forum, she encouraged the Government to finalize the Labour Organization Law in consultation with the social partners. Observing that the first draft amendment to the Settlement of Labour Disputes Law had been discussed on the basis of tripartite consultations in July 2017, she encouraged the Government to move forward with the reform pro-

cess in close consultation with the social partners. With reference to the concerns raised about some provisions in the Rules to the Labour Organization Law which included restrictions on eligibility to trade union office, and a requirement for the affiliation of 10 per cent of the workers in order to establish a basic labour organization, she requested the Government to take measures to amend the Rules to ensure that workers were able to elect their officers freely, and to form and join organizations of their own choosing. Lastly, the Government was requested to ensure that the rights under the Convention were also guaranteed in SEZs, where specific laws might apply. The EU would remain committed to close and constructive engagement and partnership with the Government.

**The Government member of Thailand** speaking on behalf of the Association of Southeast Asian Nations (ASEAN), recognized the positive developments in the country, including the demographic reform process, and noted with appreciation the information provided by the Government. The ILO had provided technical assistance on the promotion and protection of labour rights, and tangible results had been achieved in that regard. Moreover, the Decent Work Country Programme outline endorsed by the national tripartite body would be implemented. He called upon the ILO to recognize the abovementioned positive developments.

**An observer representing the IndustriALL Global Union** emphasized that the Labour Organization Law deprived workers of their right to establish and join organizations of their own choosing. Section 4 of the Labour Organization Law imposed restrictions on the structure of trade unions, required that workers worked in the same trade or activity to form a union, and set strict requirements to form higher-level organizations. With respect to the restrictions related to the structure of trade unions, section 4 of the Labour Organization Law required unions to strictly follow the administrative structure of the country. Specifically, unions could only be formed as: (i) basic level unions that covered a single workplace; (ii) township level unions which brought together unions in the same township; (iii) regional or state-level unions, comprised of township unions; (iv) federations formed of state-level unions; and (v) confederations. Under that scheme, it was impossible for example to create an enterprise-based union, if the employer was in more than one township. Instead, each workplace of that employer would have a separate union. It was also impossible to form an industry or occupational union at the national level, without having created intermediate structures such as township and state-level unions. This pyramidal structure did not serve the interests of workers or employers. The requirement that workers be in the “same trade or activity” to form a union, created silos from bottom to top. As a result, unions could not be formed among workers in similar or even unrelated “trades or activities”. Moreover, registrars had narrowly interpreted the law and regulations. For example, workers in the transport sector had been forced to form separate unions for truck drivers, train drivers, inland waterways, taxis, etc. It had led to the creation of basic township unions of workers from the same township performing the same task. With regard to higher level organizations, township unions could only form a state-level union of workers performing the same task. Similarly, federations were made up of state-level unions of workers performing the same activities. There could be no structure representing workers of different trades or activities. The Committee on Freedom of Association had held that any restriction, either direct or indirect, on the right of unions to establish and join associations of unions belonging to the same or different trades, on a regional basis, would not be in conformity with the principles of freedom of association. Finally, she urged the Government to rethink the system, together with the unions, so as

to ensure respect for the workers’ right to freedom of association.

**The Government member of Switzerland** supported the statement made by the EU. Regarding the right to peaceful assembly and demonstration, he encouraged the Government to make amendments reducing restrictions on the right to assembly and welcomed the consultations with the social partners led by the Government with regard to the Settlement of Labour Disputes Law. Labour relations based on a smoothly functioning social partnership and confidence in social dialogue were a key factor for sustainable economic development. Freedom of association and protection of the right to organize and collective bargaining formed part of the foundations of a democracy and laid the groundwork for negotiations between the social partners in other areas. He therefore called on the Government to consider ratifying the other fundamental Conventions. He encouraged the Government to take the necessary steps to ensure that the new Law on the Right to Peaceful Assembly and Peaceful Procession was fully aligned with the provisions of the Convention and that the process of labour legislation reform was undertaken in collaboration with the social partners and conformed to international standards. Offering his Government’s expertise regarding the involvement of the social partners in important reforms, he expressed support for ILO cooperation projects in Myanmar that aimed to improve social dialogue in business.

**The Worker member of Japan** drew attention to the increasing discrimination against union leaders in Myanmar, which made it difficult for unions to organize or conduct activities and went against the core ILO principles of freedom of association and the right to organize. She reminded the Government of the Decision taken on the follow-up to the resolution concerning remaining measures on the subject of Myanmar taken by the ILO Governing Body in March 2018, in which the Government had been urged to engage in the process of labour law reform to promote freedom of association through genuine and effective tripartite dialogue and in line with international labour standards. The reality of the trade union situation was bleak. Although the formation of unions had been progressing rapidly since the Labour Organization Law’s enactment, so had cases of union-busting and discrimination against trade union leaders, in clear violation of the Convention. Since 2017, the CTU had reported 29 cases of unfair dismissal as a result of trade union organizing that had led to the termination of 3,424 union leaders and members. In many cases, the Arbitration Council had ordered their reinstatement; but to no avail. Moreover, multiple problems surrounded the dispute process: the arbitration process was time-consuming; fines provided by the Labour Organization Law for non-compliance with the Arbitration Council decisions were so low (amounting to US\$750) that employers often opted to disregard them; employers’ failure to enforce agreements concluded with unions went unpunished, and as a result, many unfair dismissal cases reached the court as individual cases. In an environment where legal enforcement was weak and collective bargaining non-existent, workers could be subjected to criminal punishment for industrial actions. She requested the Government to take concrete measures to guarantee freedom of association, including the amendment of the Labour Organization Law and the Settlement of Labour Disputes Law, in order to protect trade union activists from employers’ discriminatory treatment and dismissals.

**The Government member of the Bolivarian Republic of Venezuela** welcomed the fact that the Government had reaffirmed its commitment to guaranteeing labour rights set within the context of political and economic changes in the country. Under the Labour Organization Law, trade unions and federations were being set up and registered increasingly more often. That trend should continue, given the commitment that the Government had made. In addition, a

process of reforming labour legislation was under way on the basis of tripartite consultations. In that regard, he encouraged the Government to strengthen relations with social partners. The Committee should therefore take note of all the positive aspects arising from the clarifications provided, as well as of the Government's goodwill, and should adopt objective and balanced conclusions. The Government would then be able to consider and assess those conclusions as it applied to the Convention.

**An observer representing Building and Wood Workers International (BWI)** speaking on behalf of the Building and Wood Workers Federation of Myanmar, stressed that the unions in the construction sector were discriminated against and referred to the specific situation of two unions. First, a union created in a Special Economic Zone had been denied its registration application on the ground that a special order from the Ministry of Labour, Immigration and Population had been issued to deny registrations from unions in the construction sector. Officers of the Ministry had argued that the country was not ready for the registration of unions in the informal economy. The second case concerned the denial of a union's registration on the ground that the applicants had not been employed by the company for more than six months. The requirement was impossible to meet in the construction sector where work was intermittent and informal. In conclusion, he urged the Government to end discrimination against unions in the construction sector, and to stop using arguments such as informality and intermittence of the work to deny registrations. In particular, the legal requirement of the six months of service had to be lifted.

**The Government member of the United States** indicated that although union density remained low, since the 2011 enactment of the Labour Organization Law, more than 2,400 basic labour organizations had been registered at various levels specified in the law. Still, according to the ILO Liaison Officer, restrictions on freedom of association continued in both law and practice. The Government and the social partners had committed to reform the Labour Organization Law and the Settlement of Labour Disputes Law of 2012, and a Technical Working Group on Labour Law Reform had been established and convened to hold tripartite consultations on potential amendments. However, the amendments circulated by the Government in September 2017, while lifting some restrictions on the formation of workers' and employers' organizations, would not address the issue of lowering the minimum membership requirements for basic labour organizations and removing the eligibility requirements for executive committee members. Furthermore, the following issues were also raised: the slowing down of the registration rate of trade unions; the imposition of registration requirements not set out in the law by some local labour offices, thus frustrating trade union registration; reprisals against workers during and after union formation, as well as the lack of penalties against violating employers; the low number of registered employers' organizations (27 basic employers' organizations, one township organization and one employers' federation); and low organizational density amongst employers, partly caused by structural restrictions in the law, that inhibited the growth of strong industrial relations in the country. The Government was therefore urged to take full advantage of the tripartite consultative process on labour law reform to bring the laws into compliance with the Convention, in full consultation with the social partners, and in particular to: reduce the minimum membership threshold; remove eligibility requirements for executive committee membership; protect workers from unfair labour practices during trade union formation, including by prohibiting all forms of retaliation; revise the tiered structural requirements so that both workers' and employers' organizations could form and federate more freely; and ensure that penalties for non-

compliance with the law were sufficiently dissuasive, including by explicitly prohibiting non-compliance with Arbitration Council decisions. To conclude, he urged the Government to enact legal reforms through tripartite consultations and encouraged the tripartite partners to avail themselves of ILO technical assistance in that regard.

**The Worker member of the Republic of Korea** speaking also on behalf of the Australian Council of Trade Unions and the Canadian Labour Congress, clarified that procedures for dispute settlement within the SEZs were more cumbersome because, although required by the SEZ Law, no procedure had been established for parties in a dispute to notify the Management Committee so that it could mediate. SEZs aimed to attract foreign investment, and the law offered incentives for export-oriented businesses. Many Korean companies were operating in the SEZs, and although no concrete information was available about working conditions, due to a denial of access for trade unionists, the numerous cases of violations by Korean companies of labour law and of freedom of association indicated that SEZs must be given special attention. For instance, in November 2017, unionized workers in a Yangon sock factory had gone on a 21-day strike to obtain the employer's respect for labour law; the employer had not only disregarded the regional arbitration body's award, but had also dismissed 73 workers and filed a lawsuit against 13 union leaders for leading the strike. In another instance at a wig factory, the arbitration body had ordered the reinstatement of the union president and a central committee member who had been dismissed; instead the employer had dismissed 60 union members and threatened to sue the workers for defamation and unlawful strike. The Government of the Republic of Korea had recently announced that, under its New Southern Policy, it would tighten economic ties with ASEAN countries, including Myanmar. She expressed concern that increased Korean investment would prove very harmful for Myanmar's workers and would undermine fundamental labour rights. The ILO principles were clear: all workers should enjoy fundamental labour rights, including those working in SEZs. She urged the Government to take all necessary measures to fully guarantee rights enshrined in the Convention to workers in SEZs, and to ensure that the SEZ Law did not interfere with the application of other laws.

**The Worker member of Turkey** stated that in March 2018, the Upper House had approved amendments to the Law on the Right to Peaceful Assembly and Peaceful Procession which would include: a potential three-year jail term for anybody deemed to have supported, financially or otherwise, a protest that had the intention to "disrupt national security, rule of law, public order or public morals"; and a new obligation for those seeking permission to hold a rally to inform the relevant local authorities of how much money would be used to fund the gathering and who would fund it. Thousands of people had protested against the proposed changes, and some parliamentarians had considered that they would diminish protection for the rights of workers, farmers, ethnic groups, as well as the rights of citizens to protest against corruption. If adopted, the amendments would stifle freedom of expression and peaceful assembly and would mark a significant shrinking of democratic space in the country. The Government must therefore repeal or amend the Law. The right to free assembly and the right to strike were inalienable rights for workers and their families, including those that had been displaced. However, in practice, the Labour Organization Law had weakened the trade union movement, and support was therefore expressed for the call by the Worker members and the CTUM to amend the Labour Organization Law to ensure its compliance with the Convention on the right to strike. He also expressed solidarity with the Worker member of

Myanmar regarding the goal to ensure that the right to organize was fully protected.

**The Government representative** indicated that he had carefully listened to all concerns, views and suggestions raised during the discussion, which would be brought back to the capital for due consideration with a view to ensuring better compliance with the Convention. The Convention had been ratified in 1955, but the Labour Organization Law had been adopted in 2011. Since then, more than 20,000 employers' and workers' organizations had been established. More organizations would mean more collective bargaining. As Myanmar continued to improve the Law on the Right to Peaceful Assembly and Peaceful Procession, it was heartening to note that tripartite spirit, which was the hallmark of the Committee, was taking root and developing in Myanmar. That should be viewed as progress. Based on a tripartite spirit, three Technical Working Groups relating to a Decent Work Country Programme, labour law reform and communication had been established. All suggestions received in the Committee would be discussed by the Labour Law Reform Technical Working Group. Three Stakeholder Forums on Labour Law Reform had also been held in 2015, 2016 and 2018, thanks to the Governments of Denmark, Japan and the United States, as well as the ILO. Local and international partners had participated to exchange views and experiences, and the forums had produced the intended outputs. The Labour Law Reform Technical Working Group and tripartite participants were constantly interacting. The achievements so far could be seen as a glass half empty or half full. A lot had been done compared to the labour law situation in the past, but more needed to be done for gradual progress towards compliance with the Convention. For that purpose, assistance from the international partners and technical cooperation from the ILO would be necessary with a view to achieving compliance with the Convention.

**The Employer members** indicated that fixing a threshold per se did not amount to a violation regarding the right to establish organizations. Many countries fixed thresholds for establishing organizations, and some even aligned the thresholds with those for forming enterprises. Many interventions had underlined, however, the cumbersome nature of the process of establishing organizations in Myanmar, due to additional and unnecessary thresholds. In that context, the Employer members also drew attention to the need to ensure equality between workers' organizations and employers' organizations as far as conditions for the establishment of organizations were concerned. On the other hand, the right of workers to establish organizations of their own choosing also involved the risk of creating a multitude of scattered unions, which would give rise to serious problems and would entail the need for a better organization of the trade union movement. In that regard, the Government must be mindful of lessons that could be learned from others. Furthermore, the Employer members stated that many interventions had referred to repressive activities concerning strikes, although the gatherings rather amounted to public protests. They wished to emphasize that the Law on the Right to Peaceful Assembly and Peaceful Procession was a general civil law applicable to all and not only to trade unions, whereas the Labour Organization Law and the Settlement of Labour Disputes Law were of a distinct nature and genuinely belonged to the area of labour legislation. The Employer members urged the Government to take heed of all requests related to labour legislation and the SEZs. In their view, Myanmar was still at the beginning of the implementation process. There were concerns, but as yet, nothing was broken to the extent that it could not be fixed. Social dialogue was the way forward, and Myanmar had the platform to succeed in this regard.

**The Worker members** stated, in reply to some of the comments made, that the question of trade union plurality was

a challenge for workers in many countries, as there were different models and different solutions, but it was for the workers to decide on their own form of organization. The issue of the Law on the Right to Peaceful Assembly and Peaceful Procession was a question for democracy, democratic space and social movement, and organized labour unions formed part of it. They further indicated that starting in 2012, interest in investment in Myanmar had grown considerably, largely because the country had been (and continued to be) the world's next low-cost manufacturing hub, with wages among the lowest in Asia. At the time, workers had warned that, in the absence of a demonstrated commitment to the rule of law and coherence in economic and social policy, there had been no guarantee that the generated employment would constitute decent work. Indeed, interest in foreign investment had waned, which was partly due to the poor legal environment for social dialogue and the absence of coherent labour relations policies and of the rule of law, particularly for workers. Since both employers and workers had agreed that the dispute settlement system was broken, more tripartite social dialogue was needed as the law was being reformulated. In March 2018, trade associations representing the major United States apparel and footwear brands had sent an urgent letter to the State Counsellor explaining that the potential to initiate, maintain, and expand business relationships in Myanmar would be greatly enhanced by the ability to engage with workers who enjoyed freedom of association and collective bargaining, and the ability to address any grievances through predictable, transparent channels, enforced by the Government, that had the confidence of all stakeholders. The brands had noted, however, that the existing labour laws were not fit for that purpose and that the Government had so far failed to enforce even those flawed laws. They had further found that factory managers had routinely intimidated workers, had urged them not to form unions and had called the police during work stoppages as an intimidation tactic to break strikes. Rather than following a high road development strategy, it would appear that Myanmar was racing to the bottom. The Worker members had expected much more from the Government. However, if it pursued truly authentic social dialogue that could be seen in results, put in place the proper laws and invested in developing a mature industrial relations strategy, Myanmar could still distinguish itself and attract more and more responsible businesses. Consequently, the Government was requested to: engage in meaningful dialogue with Worker and Employer representatives to ensure that the Labour Organization Law and the Settlement of Labour Disputes Law complied with the Convention; ensure that workers' and employers' organizations were able to register through a simple, administrative process – any directives containing additional requirements to those contained in the Labour Organization Law and its Rules should be withdrawn immediately, and all registrar officials should be instructed not to request any such additional documentation; ensure that workers were able to carry out their trade union activities without threat of violence or other violations of their civil liberties by the police or private security; address the shortcomings in law and practice regarding labour rights in the SEZs; accept a technical mission as soon as possible to develop an industrial relations system based on freedom of association and collective bargaining, including to review all drafts of the Labour Organization Law and Settlement of Labour Disputes Law; recommend amendments consistent with the Convention; and inform the Committee of Experts at its next session on the progress made in the implementation of the Convention in law and practice.

## Conclusions

The Committee took note of the oral statements made by the Government representative and the discussion that followed.

The Committee regretted the absence of progress with respect to the long-awaited legal framework in which workers and employers may freely exercise their rights under the Convention.

Taking into account the Government's submissions and the discussion that followed, the Committee urged the Government to:

- ensure that the Labour Organization Law and the Settlement of Labour Disputes Law are brought into full compliance with Convention No. 87 by availing itself of ILO technical assistance during the legislative reform process;
- ensure that workers are able to carry out their trade union activities without threat of violence or other violations of their civil liberties by police or private security;
- ensure that the registration of workers' and employers' organizations is not subject to unreasonable requirements to guarantee that the right to join or establish organizations of their own choosing is not hindered in practice;
- ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law; and
- bring the labour legislation in Special Economic Zones (SEZs) into conformity with Convention No. 87, with full consultation of the social partners.

The Committee urged the Government to accept a direct contacts mission before the next International Labour Conference and to report on progress made on the above mentioned recommendations to the Committee of Experts for its meeting in November 2018.

The Government representative took the opportunity to thank his country's international partners which had engaged in the discussions and expressed gratitude for their readiness to provide assistance to Myanmar in its efforts to ensure compliance with the Convention. He further indicated his Government's intention to work closely with the ILO in order to advance with the Convention's implementation as completely as possible and as quickly as possible.

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

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### BRAZIL (ratification: 1952)

The Government has provided the following written information.

In its report to the 107th Session (May–June) of the International Labour Convention, issued last February, the Committee of Experts on the Application of Conventions and Recommendations (CEACR), commenting out of the regular reporting cycle, referred to articles 611-A (prevalence of collective bargaining over legislation), 442-B (self-employment) and 444, single paragraph (relationship between individual contracts and collective agreements) of the Labour Code as amended by Law 13467 (2017).

#### *Labour reform in Brazil: Context and objectives*

- The previous Brazilian labour legislation, which dated back to 1943, went through some changes over the years, but needed to be updated in order to address requirements of the economy of the twenty-first century.
- The intervention of labour courts cancelling clauses agreed in collective bargaining led to frequent complaints by trade unions. In this context, ABC metalworkers' unions, which are the cradle of the Brazilian

trade union movement, proposed in 2011 the adoption of the Collective Bargaining Agreement with Specific Purpose (ACE), aiming at the prevalence of the collective bargaining over the law, having as the only limitation the rights enshrined in article 7 of the Federal Constitution, precisely the aspect that the labour reform has implemented.

- Labour reform (Law 13467; entry into force in November 2017) stems from many years of discussions regarding challenges of the Brazilian labour market, shortcomings of the labour legislation and concerns about the functioning of the labour justice system.
- Such issues became particularly pressing in a context of deep economic recession: In 2016, unemployment rose to 11.3 per cent – the highest since modern records commenced in 1992 – an increase of 82 per cent since 2012. Other relevant factors impacting the labour market include: 44 per cent of participation of informal jobs in the total amount of jobs, while 60 per cent among unskilled workers; high degree of judicialization; lowest labour productivity since the seventies (near 1 per cent per year); high turnover of labour; underuse of collective bargaining and lack of legal certainty for its implementation.
- Inclusive, comprehensive and extensive consultation with social partners is a key feature of labour reform in Brazil. The proposal of modernizing labour legislation was elaborated after a series of debates organized by the Ministry of Labour and by the Chief of Staff of the Presidency in December 2016, with the participation of representatives of trade unions and employers.
- Subsequently, during the legislative process in 2017, 17 public hearings, seven regional seminars and over 40 meetings with interested stakeholders took place in Parliament and in different states, leading to the approval of the Bill by a significant majority at the Chamber of Representatives and at the Federal Senate.
- Labour reform seeks to provide more flexibility, increased labour productivity, legal certainty and rationality to both labour market and legal system, with enhanced safeguards against breaches of the law and full respect of fundamental principles and rights at work.
- A central aspect of labour reform in Brazil is the strengthening of Conventions and collective agreements between unions and employers, aiming at the possibility for each category to negotiate, collectively, the best terms to reconcile employment quality and increase of productivity, without affecting the rights of workers.

#### *CEACR – Mandate and reporting cycles*

- As consistently stated in CEACR reports, the mandate of the Committee refers to the application of Conventions “in law and practice” through an impartial analysis.
- The assessment of the Brazilian case by the CEACR fails to meet that mandate, and minimal fairness requirements, on many accounts.
- The CEACR offered no explanation for the exceptional measure of breaking the cycle and prematurely commenting on the reform before the Government's due report on the application of Convention No. 98; moreover, the wider context of Brazil's reform has not been taken into account at all.
- Clearly, there has not been sufficient time for an evaluation of all relevant aspects of the implementation of the new Brazilian legislation. At the time the Committee met in November 2017, Law 13467 had entered into force a few days earlier.

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

Brazil (ratification: 1952)

- Additional time would have been required to allow for an adequate and balanced understanding of the effective legal framework, including high court decisions, and its impact on the labour market.
- Respecting regular reporting cycles would have facilitated a comprehensive evaluation, in 2019–20, of the reform’s application of Convention No. 98 principles. Brazil presented its last report on Convention No. 98 in 2016 and its subsequent reporting obligation would normally fall on 1 September 2019. The CEACR would thus publish comments in February 2020 and any possible CAS discussion would only take place at the 109th Session of the ILC (2020).

### *Relationship between Labour Law and Collective Agreements (Article 611-A of Law 13467)*

- According to the experts, article 611-A, despite safeguards contained in article 611-B of the Labour Code, breaches “the general objective of Conventions Nos 98 and 154 and the Labour Relations (Public Service) Convention, 1978 (No. 151)”, which “is to promote collective bargaining with a view to agreeing on terms and conditions of employment that are more favourable than those already established by law” [..].
- The analysis by the experts is seriously flawed by the complete absence of efforts to refer to the ordinary meaning of the text of the relevant Convention No. 98, as required in international law.
- In this respect, it should be stressed that nothing in the text of Article 4 of Convention No. 98 or any other agreed language by tripartite bodies indicates that collective bargaining is limited to more favourable conditions than “those already established by the law”: Article 4: “Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”
- On the contrary, the spirit of Article 4 and the Convention as a whole, according to recommendations of the Committee on Freedom of Association, censures limitation of the scope of negotiations and invalidation of collective agreements’ by courts and executive authorities.
- In that same vein, the ILO Policy Guide on Collective Bargaining (2015) states: “The collective bargaining framework needs to give the negotiating parties full latitude to decide the subjects they wish to include on their bargaining agenda. Measures taken to restrict the scope of negotiable issues are generally considered by the ILO’s supervisory bodies to be incompatible with international labour standards and principles on the right to collective bargaining.”
- In addition, the first part of the text of Article 4 expressly relates measures to promote voluntary negotiations to “appropriate national conditions” – a term with both legal and practical connotations, requiring due considerations of the complexity of the situation on the ground before any conclusion is drawn (once again, the CEACR report is completely silent in an essential aspect for the correct interpretation of the relevant obligations under Convention No. 98).
- In this line of thought, it would be paramount to assess the context of the Brazilian reform and the wider framework of fundamental principles and rights at work enshrined in the Brazilian Constitution of 1988 (the breadth and detail of constitutional labour rights are unique features of our legal system). Relevant constitutional provisions, article 611-B of the new

legislation (excluding about 30 fundamental workers’ rights from negotiation) and all legal remedies available in Brazil ensure thus a system of safeguards that ought to be considered in any thorough examination of the application of Convention No. 98 in law and practice (an examination that is completely absent in the CEACR report).

- In robust and well developed systems of labour rights, such as the Brazilian one, the Committee’s interpretation of Article 4 would amount to a severe, erroneous limitation of the scope of collective bargaining, against the text and the spirit of Convention No. 98.
- The reference to the “*travaux préparatoires*” of Convention No. 154 (of 1981) is another serious legal flaw in the analysis undertaken by CEACR. In no way would the “*travaux*” be an appropriate ground for restricting the outcome of collective bargaining:
  - (i) As a subsequent Convention, it cannot determine the meaning intended by the members who participated in the setting of Convention No. 98 (of 1949) nor those who later ratified it (Brazil ratified Convention No. 98 in 1952, 29 years before the adoption of Convention No. 154).
  - (ii) According to the Vienna Convention on the Law of Treaties recourse to the “*travaux*” consists in a supplementary form of interpretation, subordinate to the ordinary meaning, and to be used either to confirm the text of the very treaty under interpretation (i.e. Convention No. 154, and not another one, let alone a pre-existent one, such as Convention No. 98) or in cases of ambiguity and obscurity of that text.
  - (iii) If, for the sake of argument, one were to consider Convention No. 154, one should give precedence to the text of Article 9 of that instrument, rather than its “*travaux préparatoires*”: “This Convention does not revise any existing Convention or Recommendation.”
  - (iv) Even when considering such “*travaux*” one should read its full text (Report IV(1) of the 67th Session of the ILC – 1981), particularly paragraphs 58 and 65. One shall note that the discussion was more nuanced: a prohibition of outcomes that could derogate from provisions of the law was not even considered and, in any case, no party envisioned the specific legal clause contained in the Brazilian legislation.

### *Relationship between individual contracts and collective agreements (Article 444, single paragraph, Law 13467)*

- The Committee also “recalls that legislative provisions which allow individual contracts of employment to contain clauses contrary to those contained in the applicable collective agreements (although it is always possible for individual contracts of employment to contain clauses that are more favourable to the workers) are contrary to the obligation to promote collective bargaining, as set out in Article 4 of the Convention”.
- It should be recalled that Article 4 of Convention No. 98 does not refer to individual contracts of employment.
- The possibility established in article 444 (not 442, as wrongly recorded at the report) of the amended labour legislation is only applicable to a small proportion of the Brazilian population (0.25 per cent) at the very top layer of income, and with a higher level degree, who are generally employed in positions of management.

*Independent contractors (Article 442-B of Law 13467)*

- The Committee also states that “the Convention applies to all workers, with the sole possible exception of the police and the armed forces (Article 5) and public servants engaged in the administration of the State (Article 6)”.
- The new text of article 442-B (not 444-B, as wrongly recorded at the report) simply clarifies the legal status of the independent contractor (“*autônomo*”, in Portuguese).
- Contrary to what the experts conclude, nothing in that provision contradicts Convention No. 98: if the contractor does not hold a subordinate position vis-à-vis his or her contracting party, he or she will not be deemed an employee. Moreover, article 511 has not been amended by the new legislation and thus independent contractors (“*trabalhadores autônomos*”, in Portuguese) can still be organized in trade unions.

*Committee on the Application of Standards (CAS)*

- According to the CEACR’s own comments, Brazil has until 1 September 2018, to submit its full report on the application of Convention No. 98, so as to respond to the social partners’ and the Committee’s observations.
- As we have advocated, the limited time and resources of CAS should be devoted to serious cases. Thus, Brazil’s inclusion on the “short list” of the CAS amounts to passing judgment on the Brazilian situation before hearing the Government, in breach of the most basic standards of due process.
- In comparative analysis of other cases and comparable situations, the CEACR has not used incisive language in relation to Brazil. While expressions such as “deep concern”, “deep regret”, “urges” and “firmly urges [various courses of action]”, “persistence and gravity of allegations” are relatively widespread in the report, none of them have been applied to the Brazilian case. These expressions indicate a clear sense of seriousness and/or urgency, which should be duly taken into consideration by the social partners in drafting the long and short lists.

*Conclusions*

- By failing to take into account the application of Conventions in practice and in the national context, the observations of the experts, at best, are premature, and contradict the Committee’s own mandate. In addition, they propose a legally flawed interpretation of Convention No. 98 that departs from the ordinary meaning of the text of the instrument.
- It also departs from consistent recommendations of the Committee on Freedom of Association and technical texts of the ILO itself.
- There is no reason whatsoever to assume, as suggested by the experts, that the new labour legislation in Brazil would discourage collective bargaining. Workers retain the ability and option, in a voluntary negotiation, to prefer legal provisions wherever they are deemed more favourable than the terms proposed by the other party.
- Conversely, revising relevant articles of the Labour Code with the modifications introduced by the labour reform (or law 13467/2017), as the Committee suggests, would discourage negotiations, as it would allow the judiciary to review and annul collective agreements, as has happened recently, and significantly reduce the scope of what can be negotiated, which would have negative effects on the labour market.
- In fact, labour reform has consecrated a formula that reconciles free and voluntary negotiations with the

protection of workers’ rights (many of them enshrined in our Constitution). It is worth noting that the very same principle (prevalence of negotiation over legislation), as introduced in the Labour Code, had also been a claim by metalworkers’ unions in the state of São Paulo in 2011, in proposing the Collective Bargaining Agreement with Specific Purpose (ACE).

- By providing legal certainty and reliability to collective bargaining, without unprotecting workers, the labour reform effectively abides by and promotes Convention No. 98, in line with our international obligations.
- It is important to emphasize that in no way are workers unprotected under Brazilian new legislation. Labour unions can freely negotiate the issues that interest them and still remain covered by the provisions of the Labour Code in all other issues not negotiated or agreed to in collective bargaining. Brazil’s legal protection system and constitutional guarantees ensure a high level of protection in any scenario. Besides, the collective negotiation process itself ensures that the workers’ best interest is reflected on the final agreements: first, by the bargaining power of its union, which must be representative; by the legal requirement that the collective agreement be approved by a general assembly of the category and, finally, by the system of judicial control exercised by the Labour Prosecutor’s Office and the Labour Courts.
- Brazil has shown continuous willingness to foster social dialogue throughout and beyond the process leading to the adoption of the labour reform. In June 2017, the Ministry of Labour created the National Labour Council to discuss all pressing issues of the world of work, and from October onwards the standing orders of the Council were agreed to by tripartite constituency, rendering them fully operational.
- Finally, it is important to note that since the entry into force of the Brazilian labour reform, there have been a number of legal actions filed in the Supreme Court claiming the unconstitutionality of the new provisions, but none of them are related to the issues brought to the attention of the CEACR. Instead, most of them had to do with the end of trade union’s compulsory contribution.
- Brazil is ready to continue in conversation with social partners and civil society on all aspects of our legislation.

In addition, before the Committee, a **Government representative**, Minister of Labour, regretted that the case was being discussed for political considerations. That could have a negative impact on the quality of the system, and Brazil had always supported the strengthening of the ILO supervisory system. Brazil was a founding member of the ILO and had ratified 97 Conventions, 80 of which were in force. It was one of the States most exposed to the supervisory system. Its performance in the context of the ILO supervisory mechanisms was exemplary. Each year, the Government submitted all reports due, demonstrating the full implementation of the instruments ratified. In addition, the Tripartite Commission on International Relations, where ILO standards and their application were widely discussed, in full implementation of the social dialogue promoted by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), met periodically. With all those credentials, and with no reason to justify the urgency of such an examination, it was difficult to understand why the Committee of Experts, not fulfilling its mandate to examine the application of ILO instruments in law and in practice, did not wait for the regular reporting cycle to examine Act No. 13.467/17. Concerning some important aspects, that law was examined prematurely a few days after its entry into force. The analysis was conducted with such

excessive speed that the provisions of the legislation examined were swapped. Because the country had committed to the ILO and its system of standards supervision, the biased, partial and non-technical treatment of the case caused great discomfort. The ILO was captured in a political game that combined partisan motivations and corporatist interests. Workers were not impaired by Brazil's modernization, but only those unions dependent on the State and lacking real commitment to workers. Out of the more than two dozen of "Direct Actions of Unconstitutionality" (judicial review proceedings) proposed in the Federal Supreme Court against several points of the reform, none dealt with the points analysed by the Committee of Experts. Two-thirds of them dealt with the end of the union tax, which was a very controversial measure not questioned by the Brazilian Unions in their submissions to the Committee of Experts. That measure brought Brazil closer to the practice of the vast majority of the countries in the world and promoted the autonomy and independence of trade unions, established in the Convention. He affirmed that questioning this measure would expose the fragility of the whole case raised by union confederations (*centrais sindicais*). The reform abolished a provision which was created in the 1940s by a government that wanted to keep trade unions under control. The Committee of Experts stated that the possibility, by means of collective bargaining, of derogations to the rights and protections afforded to workers by the labour legislation would discourage collective bargaining and would therefore be contrary to the objectives of the Convention. He regretted that the Committee of Experts seemed to have endorsed the political thesis that the reform would lead to precarious work. However, that could be possible only if trade unions would voluntarily agree to the terms of an agreement less favourable than the existing legal provisions; if labour inspection did not function; if labour judicial bodies did not exist; and if the Federal Constitution was torn apart. The Committee of Experts omitted to consider that trade unions were not obliged to agree to conditions less favourable than those defined by law. Negotiation without the possibility of reciprocal concessions, only conferring advantages to one party, would not offer the other party any incentive to negotiate. It was a basic principle of any negotiation to have concessions from each side. In a country like Brazil, with extremely broad and detailed labour legislation, restricting collective bargaining only to points not covered by legislation or above legal provisions would reduce their range and scope of application in an irrational way. That would be contrary to the Convention as it established that governments had to promote negotiations as comprehensively as possible, as recognized in the ILO Handbook on the subject and reaffirmed repeatedly in recurrent recommendations of the Committee on Freedom of Association. The Committee of Experts did not refer to a broad set of labour rights that had been granted constitutional protection in the Brazilian legal system and could not be revoked by any reform, not even by a constitutional reform. Those rights were included in Act No. 13.467/2017. Eighty ILO Conventions in force were part of the legal system in Brazil and were not affected by the reform. In the General Survey of 2018, the Committee of Experts recognized that constitutional protection guaranteed to those rights in Brazil was an example to emulate. Those rights were not subject to derogation and had been expressly excluded from the possibility of any negotiation. That proved that the aim of the reform was not to revoke any right but, by consolidating them, to guarantee as much space as possible for collective bargaining, thus implementing the Convention more effectively. The Committee neglected to mention that, in the past, it was common that the judiciary in Brazil would make void labour clauses of collective agreements or entire agreements, without any objective legal reasoning. That created legal uncertainty

and discouraged collective bargaining. Collective bargaining could be effectively fostered, as advocated by the ILO, only by granting force of law to collective bargaining and protecting the autonomy of the parties, through the primacy of the negotiated over the legislated. It was surprising that union leaders questioned that point, since the law incorporated a proposal originally made in 2011 by one of the largest and strongest unions in the country, the ABC metalworkers union of São Paulo. It was alleged that the primacy of the negotiated over the legislated opened the possibility for unions to negotiate to the disadvantage of the workers. However, that was not the experience of collective bargaining in Brazil. Studies showed that in 2016, the year of a strong economic crisis, in more than half of the collective agreements, unions negotiated wage increases above inflation, while the vast majority succeeded in securing job preservation at a time when layoffs were high. Trade unions in Brazil had already integrated the provisions contained in the new legislation into their collective agreements. Collective bargaining had not been discouraged with the new legislation. He stated that when practical analysis belied the theories that best served political interests, some deemed best to ignore practice and cling to theories. In addition to the constitutional guarantees, workers were protected by the system of registration of collective agreements by the Ministry of Labour, which required proof that the agreement was approved by a representative assembly of the category; by the labour inspection system, composed of professionals able to identify and administratively combat fraud and violations; by the labour prosecutor's office, a unique institution that could bring a lawsuit when it perceived non-compliance with legal precepts, as it had done; and by the labour judicial system, with specialized professionals who, in 2017, before the new law entered into force, received more than 4 million new lawsuits. The Committee of Experts did not mention that in Brazil there were 17,509 registered union entities and many had done very little for their constituency. It was not difficult to understand why there were so many, differently from the rest of the world. Since it benefited from a mandatory tax, in order to exist a union did not have to be representative or defend the workers' interests. The income guaranteed by the State, which in 2017 reached more than 4 billion reais (or US\$1.25 billion), provided a sufficient reason for its existence, in a clear distortion of the values that should guide and justify workers' organizations. Labour reform ended the state of affairs while unions would have to work much more and workers and employers as a whole would benefit. For that reason, the same reform that favoured collective bargaining, also promoted union independence, which was at the heart of the Convention.

It was clear that there were no technical reasons why the case of Brazil should be examined by the Committee at this time and it was regrettable that the ILO had been politically manipulated. This was possible through political bargaining kept in secret rather than on technical merits. Hasty and technically flawed analyses could be sufficient to expose a country, if political interests so required, and force it to provide clarification to the Committee. In an election year, the process was described as inquisitorial in the Brazilian press, regardless of the country's commitment to fulfilling its obligations. Such a system did not meet the demands and challenges of the world of work, nor the expectations placed in the ILO. With the ILO approaching its first centenary, the time had come to reform the system so as to make it more consistent with the world of work and with democratic and inclusive principles, such as the due process of law, which was required of all agencies of the UN system. For many years, GRULAC had denounced this state of affairs and had been solemnly ignored. The time had come to start listening, because otherwise the system of standards supervision would run the grave risk of losing



credibility, and thereby become irrelevant. In a tripartite organization, it was astonishing that there was nothing tripartite in the regular system of standards supervision. Unlike other agencies, governments had no role in the selection of the Committee of Experts' members or in the definition of working methods. Unlike other agencies, there was no real universal method of supervision. It was always the same group of countries that allegedly failed to respect commitments. That situation privileged selectivity against transparency and universality. He reiterated the lack of consensus in the current working methods of the Committee. If the level of compliance and support for ILO instruments was to be increased, the perspectives of governments had to be included in selecting the lists of cases, to meet technical criteria; in the drafting of conclusions, to be effectively implemented; and in working methods in general, to be honoured. The composition of the Committee of Experts had to be revised to reflect the diversity and technical quality expected. The criteria for selecting the lists of cases to examine had to be re-examined in order to ensure that decisions were exclusively of a technical nature. Brazil had a keen interest in continuing the debate with the social actors in order to improve its labour legislation and it was prepared to do so. He expressed its continuous commitment to the obligations undertaken with the ILO and reiterated that the modernization of the legislation did not violate any Convention. On the contrary, Act No. 13.467/2017 promoted and strengthened collective bargaining, giving full effect to the Convention. He urged a profound change in the supervisory system before it was too late and expressed the readiness of his Government to participate in good faith in a collective effort to improve the supervisory system for all.

The Worker members noted that it was the first time in 20 years that the Committee was discussing the application of the Convention in Brazil. Noting that the country had been on a steady path towards social progress and a global leader in this regard, they were therefore deeply disappointed by the regressive legislative steps undertaken, which would have the effect of dismantling collective bargaining rights and the strong industrial relations tradition built over the past two decades. In 2016, Brazilian trade unions had already transmitted information to the Committee of Experts to report the severe shortcomings and flaws of the bills which were before Congress at that time. Considering that the introduction of a general possibility of lowering through collective bargaining the protection established for workers in the legislation would have a strong dissuasive effect on the exercise of the right to collective bargaining and could contribute to undermining its legitimacy in the long term, the Committee of Experts had requested the Government to take these comments into account during the examination of the bills. Even if it had not discussed by the Conference Committee in 2017, Brazil had been listed on the preliminary list of cases. Despite these warning signals, the Government had adopted the problematic amendments on 13 July 2017, without taking into account the comments of the Committee of Experts. Both social partners had provided their views on the legislative reform, which was passed before the 2017 session of the Committee of Experts. The Worker members therefore did not agree that this case, which had a history within the supervisory system, had been dealt with prematurely by the Committee of Experts. They also strongly disagreed with the criticism related to the treatment of the case outside of the regular reporting cycle. Recalling that the criteria for breaking the reporting cycle were reproduced every year in the General Report of the Committee of Experts, they considered that the case of Brazil met the criteria that observations referring to legislative proposals or draft laws may be examined by that Committee even in the absence of a reply from the Government. The development of a mechanism to

break the reporting cycle enjoyed tripartite support. It had been introduced as a safeguard when the Governing Body had extended the reporting cycle for certain types of Conventions to ensure that effective supervision of the application of ratified Conventions was maintained. They would never accept that an individual case would be used to attack the well-recognized and supported impartiality and independence of the Committee of Experts. The Worker members were deeply concerned that the far-reaching legislative amendments, which were introduced hastily and without prior genuine and meaningful consultation, would effectively result in the dismantling of the collective bargaining framework in Brazil and undermine the rights of workers. With reference to the Government's statement that the legislation had been elaborated after a series of debates organized by the Government in December 2016, with the participation of representatives of trade unions and employers, they wished to remind the Government that "debates" could not be a substitute for genuine and effective consultations and that the most representative trade unions were not part of these debates. Moreover, the draft Bill had only seven articles at that time, whereas the law, as enacted, was very extensive, with more than 100 articles. In addition, the Labour Relations Council, which was the official tripartite body where ILO matters were discussed, had not been convened after April 2016. When the new National Labour Council was created on 1 June 2017, the Bill had already been approved in the lower house.

They considered that the amendments ran counter to the objective and spirit of the Convention. New section 611A of the Consolidation of Labour Laws (CLT), which established as a general principle that collective agreements prevailed over the legislation and that collective agreements, negotiated by workplace delegations at the enterprise level, prevailed over collective agreements, made it possible through collective bargaining not to give effect to the protective provisions of the legislation. While Act No. 13.467/2017 contained a list of subjects in respect of which collective bargaining prevailed over the law, that list included many aspects of the employment relationship, such as working-time arrangements. Since that list was merely illustrative, it could be broadly extended by the parties. The sole limit to these deviations was a closed list of rights referred to in section 611B, which contained 30 rights, enshrined in article 7 of the Federal Constitution of Brazil. Moreover, section 611A specified that the absence of compensatory measures was not a reason for the clauses of collective agreements to be found void, even where they derogated from the rights set out in the law. The Worker members wished to recall that the overall aim of Article 4 of the Convention was the promotion of good faith collective bargaining with a view to reaching an agreement on terms and conditions of employment that were more favourable than those envisaged in law. By allowing for less favourable derogations in collective agreements on virtually all subjects of the employment relationship, the Government deprived workers of their fundamental right to collective bargaining and failed to ensure the effective realization of a minimum set of rights which would apply equally to all workers in Brazil. Moreover, new section 444 of the CLT, which stated that workers who had a higher education diploma and received a wage that was at least two times higher than the ceiling for benefits from the general social security scheme may agree to derogate from the provisions of the legislation and collective agreements in their individual contracts of employment, was not in conformity with Article 4 of the Convention and with the Collective Agreements Recommendation, 1951 (No. 91), which laid down the principle of the binding effects of collective agreements and their primacy over individual contracts of employment where the latter were less favourable. In addition, by expanding the definition of autonomous workers

who did not enjoy the right to organize and bargain collectively to include workers who were engaged exclusively and permanently for an enterprise, new section 442B of the CLT diluted the collective representation of workers through misclassification. The Worker members were deeply concerned by the profound and broad-reaching changes implemented by the legislative reform which eroded collective bargaining rights previously guaranteed to workers. With reference to the Government's argument that the reform had been necessary due to the overall context of economic recession, they noted that even though the number of collective agreements had decreased by 29 per cent since the adoption of the reform, the economic situation in the country had not improved. Unemployment and the informality rate had even risen. No country had ever achieved sustainable economic progress by depriving workers of their fundamental rights. Reiterating their deep concern with the retrograde practices in a country which used to be championing fundamental rights at work, they called on the Government to urgently take the necessary steps in order to reform the legislation and to bring it into line with the Convention before any further harm was inflicted on the workers of Brazil.

The Employer members expressed concern with the observation adopted by the Committee of Experts on the application of the Convention by Brazil. While recognizing the authority of the Committee of Experts to examine a situation outside of the regular reporting cycle, in exceptional cases, they were concerned with the exercise of this discretion in the present case. While one national trade union had criticized the labour reform, the national employers' organization had sent information to express satisfaction at the modernization of the outdated labour relations system. Moreover, despite the fact that it had not received a response from the Government to the diverging opinions of the social partners, the Committee of Experts had adopted an observation, only a few days after the labour law reform had come into effect. In addition, 2017 had not been a reporting year on the Convention for Brazil, which was up to date with its reporting obligations. In view of the lack of information on the position of the Government, a direct request might have been the more appropriate first step in the examination of the situation. In view of the sensitivity of the case, they regretted that its discussion by the Conference Committee was based on incomplete information. The Committee was therefore not in a position to examine the case in a proper and balanced manner. Examining the case in the regular cycle would have allowed a comprehensive evaluation of the impact of the reforms on the application of the Convention, both in law and in practice. The Employer members had taken careful note of the Government's statement. Additional information was necessary to fully understand the labour law reform.

The Employer members noted that the labour law reform established as a general principle that collective agreements prevailed over national legislation, except for the constitutional rights referred to in section 611B of the CLT. In that respect, the Committee of Experts had observed that the general objective of the Convention was to promote collective bargaining with a view to agreeing on terms and conditions of employment that were more favourable than those already established by law. The Employer members recalled the requirements of Article 4 of the Convention which provided that member States must take measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. In their view, there was no absolute requirement that the outcome of collective bargaining must be on terms and conditions that would be more favourable than those established

by law. A mechanism that allowed for the prevailing effect of collective agreements promoted in law the principle of collective bargaining. It might create an incentive for additional voluntary collective bargaining. It was not yet possible to analyse the effect of the system in practice and therefore not possible to know at this stage whether this mechanism would undermine the principle of collective bargaining. In order to allow a complete examination of the conformity of the reform with the Convention, the Employer members encouraged the Government to provide information in its next report on the operation of sections 611A and 611B of the CLT, in law and in practice. The analysis must take into account the extensive rights of workers enshrined in the Constitution and referred to in section 611B which concerned 30 areas of protection, including the right to unemployment insurance, minimum wage, paid weekly rest and vacation, maternity and paternity leave, occupational safety and health and freedom of association. It was of concern that the full list of protected rights was not included in the observation adopted by the Committee of Experts. With respect to the issue of the relationship between individual contracts of employment and collective agreements, the Committee of Experts had noted that workers who had a higher education diploma and received a wage that was at least two times higher than the ceiling for benefits from the general social security would be able to derogate from the provisions of the legislation and collective agreements and accords in their individual contracts of employment. In that respect, the Employer members noted that it was not possible to have a full and informed discussion on the impact of such a provision in law and practice and to assess compliance with the Convention without further information from the Government and the social partners. In their view, the issue of the prevalence of individual contracts over the national legislation was not within the scope of application of the Convention. Finally, regarding the extension of the definition of autonomous workers and its effect on the exclusion of workers from trade union rights, they noted that it was not possible to have a full and informed discussion without appropriate information and requested the Government to send its comments on the observations from the trade unions for examination by the Committee of Experts.

The Worker member of Brazil, speaking on behalf of the Brazilian trade union associations, congratulated the Committee of Experts on the quality of its work, which had made it an unmistakable point of reference in discussions on labour relations. He maintained that the technical knowledge and impartiality of the Committee of Experts should not be called into question merely because their comments were unfavourable to a particular side. The function of the Committee of Experts was vital in guiding debates and creating the necessary balance within the Organization; as such, attacks on the Committee of Experts were tantamount to an attack on the Organization itself. The seriousness of the violations engendered by Act No. 13.467 was reflected in the stern comments of the Committee of Experts. The new legislation constituted the most serious attack on workers' trade union rights in the entire history of Brazil. The discussion in the Conference Committee was not new, as in 2001 the Government had attempted to pass an act that would enable the rights provided in law to be restricted through collective bargaining. In 2002, in reply to a query from the CUT of Brazil, the International Labour Standards Department of the ILO had confirmed that making it possible to disregard the rights laid down in law through collective bargaining breached Conventions Nos 98 and 154. The process that had culminated in the adoption of the Labour Reform of July 2017 had been notable for the utter failure to consult either workers' representatives or representatives of other sectors in-

volved in the world of work, such as the National Association of Labour Judges, the Office of the Public Prosecutor for Labour Law or the Association of Labour Lawyers. The new Act furthered the general weakening of the whole system of worker protection, undermining freedom of association and the right of workers to use legal channels to present their claims and imposing a heavy financial burden on those who did so. In that regard, he condemned any practice intended to persecute labour magistrates who, in applying the new Act, had followed a different legal approach. On the pretext of modernizing labour relations, the new Act represented a return to a judicial position that had been superseded many years previously. That position was based on entirely free bargaining and assumed that the parties in labour relations enjoyed the same bargaining power. The backward step became obvious if one bore in mind that the Act allowed individual bargaining to derogate from the application of collective agreements, in violation of Article 4 of the Convention. Furthermore, on the grounds of tackling informal work, the new Act legalized various forms of precarious work and allowed pregnant women and breastfeeding mothers to work in unhealthy workplaces. The reform had not only failed to create the promised jobs, it had actually resulted in higher rates of unemployment. When the Act had come into force, the unemployment rate had stood at 12.2 per cent; by April 2018, however, according to data from the Official Institute of the Brazilian State (IBGE), it was 13.1 per cent, equivalent to 13.7 million people out of work. If that figure was combined with the number of potential workers who had stopped looking for work (7.8 million) and the number of people underemployed (6.2 million), it gave a total of 27.7 million Brazilians outside the labour market (24.7 per cent of the economically active population). The Government's stance – that the new Act helped to promote collective bargaining – was far removed from reality. A study by the Economic Research Institute of the University of São Paulo had observed a fall of 34 per cent in the number of collective agreements signed in the first few months of 2018. Under the new Act, collective bargaining took precedence over legislation, including when better conditions were provided in law; an enterprise agreement took precedence over collective agreements, and individual agreements could exclude workers from the protection offered by existing agreements, in clear breach of the Convention. The reform had hit trade unions hard, in that it had put an end to the existing funding model without offering any alternative. Union assemblies were also prevented from approving rates for dues and contributions to maintain their activities, again in breach of the Convention. It was impossible to strengthen collective bargaining by weakening trade unions. He concluded by requesting the repeal of the new Act, given that it took away rights, attacked trade unions, promoted individual bargaining at the expense of collective bargaining, and distanced the country from the Decent Work Agenda.

**The Employer member of Brazil** said that there was no legal basis to justify calling Brazil to appear before the Committee to provide clarifications regarding collective bargaining. In failing to observe the regular reporting cycle established for examining the Convention, the Committee of Experts had prejudged the application of it, on the basis of a superficial, abstract analysis of the new Act which took no account of the results of its specific application without being based on any data, or facts, in the quick manner from the text of a recent legislation (applied since only six months). Here the discussion was not technical but political and ideological. Brazil was one of the countries which had ratified the most ILO Conventions and where labour rights had constitutional status. Labour reform did not abolish or modify those labour rights. The new Act simply allowed workers and employers, if they so desired, to establish

standards relating to work routines, which were valid for a set time. There were no grounds for claiming that, as a result of the reform, collective bargaining nullified the applicable legislation, particularly since the existing legislation had to be applied when no agreement was reached in collective bargaining. It was clear that Act No. 13.647, contrary to what had been claimed, did not undermine the Convention but strengthened its objectives in the framework of Brazilian labour legislation, ensuring that collective instruments could be adopted taking account of current working and production procedures, without interference from the State. In 2015, the Constitutional Court of Brazil recognized the key role of collective bargaining as a mechanism for adapting labour standards to different sectors of the economy and economic situations. In that regard, the labour reform simply confirmed the central objective of the Convention to promote voluntary negotiation, expressly providing that workers' rights, as established in the Federal Constitution, could not be suppressed or reduced by means of negotiation. Such rights included those detailed by the Employer spokesperson. The new Act sought to establish an environment conducive to collective bargaining by providing the social partners with legal certainty so that they could renew dialogue on issues where negotiation was fraught with uncertainty since it often resulted in cancellation by the labour justice system, even though it was indeed the will of the parties. The workers had not suffered harm as a result of the reform, contrary to what was being claimed by certain unions who were calling for the restoration of the mandatory union tax without providing their members with the services due in return. Existing national remedies had not been used before turning to the ILO. Indeed, the trade union confederations had only gone to the Constitutional Court to demand the trade union tax and not to allege supposed violations of the Constitution or Convention. The labour reform was necessary to boost collective bargaining and modernize a law that dated back to the early 1940s. The new Act, which was the result of a democratic process involving numerous public hearings and the adoption in the National Congress by a large majority, did not undermine the Convention but protected collective bargaining from external interference; it consolidated an effective mechanism for tackling economic problems; it harmonized the legislation with that of other ILO member States and sought to achieve a balance between freedom of negotiation and the principle of worker protection. It was a matter for concern that the ILO could consider that negotiation was only valid if it contained terms and conditions of employment more favourable than those established by the law, in particular because such a notion resulted from a broad interpretation of the Convention, which, if adopted, would end up being binding on all 165 countries that had ratified the instrument. Any changes to the rules of the game established by the Convention should not be permitted. Recalling that only a few years ago his country was regarded as a benchmark for the Committee, he trusted that impartiality and the institutional role of the ILO would prevail in the discussion of the case, on the basis of tripartism and the absence of any political or ideological interests, and requested that in its Conclusions, the Committee took into consideration that collective bargaining should be free and spontaneous, as proposed in the text of the Convention.

**The Government member of Paraguay**, speaking on behalf of a significant majority of the group of Latin American and Caribbean countries (GRULAC), reiterated her deep concern regarding the working methods adopted by the Conference Committee, which did not involve tripartite consensus. Furthermore, several aspects of the Committee of Experts' comments raised questions. With regard to the interruption of the regular cycle, in which no report had been produced by the Government, she considered that the existence of criteria in that regard illustrated the need to

justify the decision to break the cycle. Referring to the mandate of the Committee of Experts reflected in its General Survey, which indicated that the opinions of the Committee of Experts were not binding and which took into account the application of the Conventions “in law and practice ...”, while cognizant of different national realities and legal systems”, she expressed regret that, in the case of Brazil, sufficient time had not been granted to evaluate the complexity of the labour reform, which should be examined in its entirety and in terms of its practical repercussions and its interpretation by the courts. In that regard, no consideration had been given to the extensive role of the labour rights contained in the Brazilian Federal Constitution. In the case of Brazil, it was necessary to take into account not only the Constitution but also the specialized system of labour justice, including the labour inspectorate, which was independent of the Government, the fact that labour inspection personnel had the status of employees with state careers, and the maintenance of the framework of the CLT. She reiterated her commitment to promoting collective bargaining and to upholding the principle contained in Article 4 of the Convention. The ordinary meaning of the Article was clear, including the reference to “national conditions”.

**The Government member of Panama** drew attention to the model for tripartite social dialogue roundtables set up in the country to harmonize the legal system with the ILO Conventions and Recommendations. He also emphasized the crucial nature of the technical assistance provided by the ILO International Labour Standards Department. However, he noted with concern the regulatory methods used to determine the inclusion of Brazil in the list of cases to be examined by the Conference Committee, such as the fact that the Committee of Experts had broken the normal cycle and made comments without receiving a report from the Government. Reaffirming the Government’s commitment to the supervisory bodies, he highlighted the need to adopt working methods that had been duly agreed by all constituents.

**The Worker member of Portugal** considered that the labour legislation reform adopted by the Brazilian Government followed the matrix of reforms that had occurred in Spain, Portugal and Greece which, since 2009, had led to social regression for workers in southern Europe to levels of several decades earlier. Under the pretext of making labour relations more flexible, increasing employment, ending labour market fragmentation and enhancing collective bargaining, the “troika”, consisting of the International Monetary Fund (IMF), the European Commission (EC), the European Central Bank (ECB), and the Governments had imposed labour law reforms on workers, allowing for collective bargaining to be carried out by informal organizations, eliminating the principle of favourability, increasing hours of work and lowering overtime pay. Such changes had had dire consequences for workers, with labour incomes dropping, unemployment rates reaching figures never seen before, rising from under 10 per cent to over 20 per cent in less than two years, forcing hundreds of thousands of workers, mainly young people, to look for work in other countries. He thus considered that the central objective of these labour legislation reforms had been to cut workers’ and pensioners’ incomes. The reform that was being imposed on the Brazilian workers followed the same matrix, grounds and aims. By mandating that an individual contract of employment could stipulate lower terms and conditions than those set by law or by collective agreements; by permitting that collective bargaining could be engaged in without the participation of trade unions; and by allowing the development of precarious employment relations, the labour reform would lead to an increase in precarious work and to labour market segmentation, instead of

combating them. The Government’s labour reform undermined workers’ fundamental rights enshrined in the ILO core Conventions and was in violation of the Convention, since it allowed for collective bargaining without the participation of trade unions and to set aside collective labour agreements by individual contracts. He therefore urged the Government to accept ILO technical assistance to align labour legislation with the international instruments to which they were bound and to respect the indispensable role of the Committee of Experts in ensuring that ILO Conventions were effective.

**The Government member of India** appreciated the efforts and the positive steps taken by the Government to reform its labour laws with a view to providing legal certainty and reliability to collective bargaining, in consultation with the social partners and in accordance with the Constitution of the country and its international obligations. Countries should not be included in the preliminary or final list of cases before the end of the reporting cycle and without following due process and for other reasons than the technical merits of a case. A genuine and constructive tripartism was *sine qua non* for an effective and credible ILO supervisory mechanism. In fulfilling its labour-related obligations, the Committee should fully support the Government.

**The Worker member of Italy** stated that the Government had been implementing a series of reforms in Act No. 13.467/2017 in breach of fundamental principles of the ILO. No consultation with the social partners had been held, no public debate had accompanied the discussion and the Act, which took away the set of existing guarantee, had been approved in record time. Neoliberal policies enacted in a unilateral way had the effect of job insecurity and precariousness. The so-called “innovation” had only entailed the worsening of working conditions and the denial of trade union rights, undermining collective bargaining mechanisms. Act No. 13.467/2017 allowed for collective agreements to worsen the conditions provided for in the law. For millions of Brazilian workers the reforms meant an increase in inequality in one of the most unequal industrialized countries. The criteria and procedure for breaking the reporting cycle of the examination of cases by the Committee of Experts provided for safeguards to ensure the effective supervision of the application of ratified Conventions. That possibility not only strengthened the supervisory system of the ILO, but also ensured that time-sensitive issues, including matters of life and death or fundamental human rights were appropriately addressed. She urged the Government to amend the legislation so as to bring it into line with the Convention.

**The Government member of the Russian Federation** welcomed the information provided by the Government representative on the merits of the issue, as well as on its procedural aspects. The speaker shared many of the concerns expressed, in particular in relation to the decision to examine this case outside of the regular reporting cycle. Additional explanations regarding the reasons for that decision were needed. When considering the implementation of ILO Conventions, it was important to take into account both law enforcement practice and the general context conditioned by the peculiarities of the legal system of the country concerned. Since the reform had just been adopted, it was necessary to give the Government time to work before making unambiguous conclusions. The speaker believed that there was room for improvement in the working methods of the Committee. The concrete proposals made in this respect deserved a comprehensive study. Given that the Committee was central to ensuring consistent and strict compliance with international labour standards, it must rely on the full trust of governments, workers and employers.

**The Worker member of Pakistan** recalled that the mandate of the Committee of Experts was clearly spelt out in

its General Report. It was vital for the Conference Committee to recall that the legitimacy and rationality of the Committee of Experts' work was based on its impartiality, experience and expertise. It was on that basis that over the years, exceptional cases had been identified and the reporting cycle broken, when allegations had been sufficiently substantiated and there was an urgent need to address the situation. In addition, observations referring to legislative proposals or draft laws could be examined by the Committee of Experts in the absence of a reply from the Government when it could be of assistance to the country. Therefore, the speaker considered that the Committee of Experts had acted within its mandate and in line with the criteria for breaking the reporting cycle, as the right to organize and to bargain collectively was a fundamental human right that risked being eroded by the enactment of Act No. 13.467/2017.

**The Employer member of Colombia** noted that the labour reform in Brazil was a product of extensive discussions carried out with the social partners over more than 20 years. It was a question of regulations adopted to improve labour relations in Brazil, as the legislation was aligned with new realities, always on the basis of collective bargaining. The labour reform aimed to establish more favourable conditions for competitiveness, productivity and socio-economic development, while ensuring respect for fundamental labour rights and decent work. He considered that the impact of the reform had been assessed prematurely; a reasonable timeframe for implementation was necessary to reach accurate and substantive conclusions. The Brazilian labour reform did not authorize the repeal of labour legislation through collective bargaining, as had been reported. The changes focused on securing both the outcome of agreements between workers and employers and the scope of collective bargaining. The new labour regulations did not deprive workers of their labour rights and guarantees and did not breach Convention No. 98 or Convention No. 154. The existing labour legislation protected collective bargaining, consolidated an effective and much-needed mechanism to tackle economic problems and provided employers and workers with better opportunities to negotiate, without violating the labour rights enshrined in the Constitution. With regard to the regulation of autonomous employment, the speaker noted that the new legislation clearly defined who were considered autonomous workers as well as the criteria for identifying them. Self-employed or autonomous workers were governed by different standards to those of employees but in both categories decent work was a requirement. The fact that autonomous workers were not in an employment relationship and were therefore not covered by labour legislation did not mean that trade union rights were restricted.

**The Worker member of Argentina** noted that, according to a recent study submitted to the United Nations Human Rights Council, over 130 countries had introduced pro-austerity policy reforms and labour standards in recent years, and the deregulation of the labour market did not favour growth or employment. Conversely, a growing number of studies confirmed that labour standards had a positive economic impact on both productivity and innovation. The labour reform in Brazil made outsourcing and subcontracting more widespread. It therefore reduced wages, weakened trade unions and collective bargaining, and favoured major multinational corporations. Increased informality and precariousness led to greater inequality. The new legislation abolished the concept of the working day by creating intermittent work; eliminated remedies available to workers to file complaints before the labour courts; allowed for pregnant women to be employed in insalubrious working conditions; and eliminated funding for trade unions, which had a serious impact on the existence of unions and of collective bargaining. By prescribing "negotiations" between

employers and workers, without the presence of a trade union, it allowed for the imposition of inferior conditions to those of a collective agreement. Furthermore, the new Act represented an attack on the core standards of the ILO and was a regressive measure that could not be considered as an acceptable response to the economic and financial crises. It was necessary to create sustainable economies, with social protection, secure jobs and decent salaries both in Brazil and throughout the entire American continent.

**The Government member of Honduras** expressed his concern at the interruption of the regular reporting cycle. He trusted that the Government would make progress in fostering collective bargaining through the adoption of the appropriate measures to allow for the use of free and voluntary bargaining processes and collective agreements that regulated conditions of work.

**The Worker member of the United States**, speaking also on behalf of the Worker member of Canada, stated that stable labour market institutions, social dialogue and collective bargaining were being dismantled in Brazil. In November 2017, the amendments to the CLT had come into force reducing workers' capacity to defend their rights and to negotiate improved wages and conditions. The changes permitted unions and individuals to negotiate agreements that lowered wages and conditions while increasing precarious work. Contrary to the concept of collective bargaining, employers and workers could negotiate agreements that lowered standards below what was provided for in legislation. As indicated in the report of the Committee of Experts, Act No. 13.467/2017 was not based on negotiation, but on the abdication of rights on a wide range of issues. The changes to the CLT had created a new category of exclusive autonomous workers and denied an employment relationship even when a worker had been engaged exclusively and permanently by one firm. Such workers were denied freedom of association and collective bargaining rights, and this had resulted in atomized labour relations. The first three months of the new regime had seen a nearly 3,000 per cent increase in the number of stable employment relationships dissolved, mostly concerning low-wage positions held by workers without the higher education supposed to afford them greater individual bargaining power. The changes opened more workers to precarious work and unions would no longer receive a stable contribution from those they represented. In March 2018, unions had received approximately 20 per cent of what they had in March 2017. In the first quarter of 2018, the total number of collective agreements had fallen by 29 per cent over the same period in 2017. In 2018, there had been 1,000 fewer collective agreements than there had been over the six previous years. Unemployment, informality and precarious work had increased in the same period. Brazil was experiencing extreme polarization exacerbated by the deliberate dismantling of social dialogue and mature industrial relations. Labour law reform should not mean abandoning ILO standards. A different path could lead to broadly shared income growth and progress.

**The Government member of Bangladesh** commended the Government of Brazil for holding a series of discussions with the representatives of trade unions and employers in reforming the CLT that had entered into force in November 2017. Inclusive, comprehensive and extensive consultation with the social partners was key in reforming any legislation concerning labour rights. One of the main aspects of labour reform in Brazil was the strengthening of collective agreements between unions and employers aimed at the possibility for each to negotiate collectively without affecting the rights of workers. Additional time was needed for understanding the impact of the law on the labour market, as it was still in its initial stage of implementation. He supported the view that the reporting cycle should not be bro-

ken and comments issued before a report was due and submitted, and agreed with the Government representative's statement with regard to the reform of the ILO supervisory mechanism. He concluded by underlining the importance of objectivity, transparency, neutrality and impartiality in the work of the Committee through the use of tripartism in all decision-making processes, including for the establishment of the final list of cases and the consideration of conclusions.

**The Worker member of the United Kingdom** stated that the labour law reforms adopted in Brazil in July 2017 were in contravention of the Convention. The reform had deregulated more than 120 labour standards, including safeguards protecting pregnant women from working with toxic substances, rules on dismissal and equal pay laws. It had also dismantled the collective bargaining system, including by permitting collective agreements to displace statutory standards. The stated goal of the reforms had been to increase flexibility, reduce unemployment and regularize the informal economy. However, unemployment levels in Brazil had remained high with a growing informal economy and a rise in precarious forms of work. Workers in insecure work were deterred from joining trade unions for fear of victimization or job loss. The reforms had also permitted educated workers to enter into individualized contracts which opted out of collectively agreed pay and conditions. As the Committee of Experts had noted, that was a clear violation of the Convention. The speaker called on the Government of Brazil to reform its national legislation and to restore trade union rights, in line with the Convention.

**The Government member of Mexico** noted with interest the extensive consultation process that had led to the adoption of a legislative reform seeking to provide more flexibility, higher labour productivity, legal certainty and rationality in both the labour market and the legal system. Highlighting his concern regarding the unwarranted break in the regular reporting cycle, he considered that the reform processes needed to be evaluated holistically, taking into account the context in which they were developed and other practical measures that contributed to the development of an effective legal framework aligned with fundamental principles and rights.

**The Worker member of Colombia** stated that the reform delegitimized the objective of collective bargaining, which was to improve working conditions, by allowing collective agreements or accords to undermine the minimum standards established by law. The restriction on the duration of collective agreements or accords to a maximum of two years, in accordance with section 614 of the new provisions, and the prohibition of the continued legal effect of agreements and accords, curtailed the parties' scope of action and contravened the Convention. He strongly rejected the possibility for workers to negotiate working conditions outside of collective bargaining or agree to being excluded from the application of agreements or conventions, either individually or collectively, without the participation of trade unions.

**Another Worker member of Colombia** expressed deep regret at the Government's non-observance of the Convention and voiced his solidarity with the Brazilian trade union confederations.

**The Government member of China** shared the concerns expressed regarding the working methods of the Committee. The Committee was at the heart of the ILO supervisory system and its working methods could be improved. There was a lack of transparency in the selection of individual cases, which should be based on objective, fair and transparent criteria, and not on political considerations, in compliance with the established ILO procedures. Governments that were required to appear before the Committee should be informed of the final list in advance, in order to have ample time to prepare. The recommendations made by the

Committee should reflect tripartite consensus. Governments should fully enjoy the right to information and the right to participate in the process of examining individual cases. Further, capacity building and technical assistance should be provided by the ILO to the Government concerned.

**The Worker member of Paraguay** drew attention to the fact that the labour reform in Brazil made work more precarious, weakened collective bargaining and social dialogue and attacked the trade union movement. The reform had been approved during one of the worst moments of political and institutional crisis in Brazil's history, without dialogue with the workers and trade unions. It would result in the business community being able to carry out mass dismissals, without needing to hold discussions with the trade union. As well as limiting trade union representation, the reform deprived the Brazilian trade union movement of its principal sources of funding. Recalling that in recent years the Brazilian trade union confederations had been denouncing anti-union practices and the proposed reforms that had recently been implemented, he expressed his support for the discussion on this case of violation of the Convention.

**The Worker member of Uruguay** expressed his solidarity with the Brazilian trade union confederations regarding the effects of the new Act, which had increased unemployment and poverty and had led to a decline in living conditions in the country. Regarding the need to wait for the Government to send its report, he maintained that the need to comply with the provisions of the Convention was more important than the reporting obligation. In the Southern Cone region, the MERCOSUR Social and Labour Declaration, a tripartite tool that protected workers' rights, had been concluded following extensive debates between the social partners but the labour reform in Brazil sought to impose formulas from the 1990s to deregulate labour relations.

**An observer representing the World Organization of Workers (WOW)** indicated that the Brazilian labour reform violated the right to organize, as established in the Brazilian Constitution and in Articles 3 and 4 of the Convention. The labour reform regulated employment contracts between workers and employers on an individual and private basis, without the participation of trade unions, which made workers vulnerable and put them in an extremely dangerous situation. Such disregard for trade unions and for collective bargaining allowed employers to carry out collective dismissals. In recent years, Brazilian worker organizations had been speaking out against anti-union practices. It could be a step backwards for trade unions as an institution worldwide if different countries were allowed to attack freedom of association and collective bargaining.

**The Worker member of the Bolivarian Republic of Venezuela** considered that the Brazilian labour reform, which permitted negotiations that undermined workers' rights, was a step backwards because it left workers without protection and violated the Convention. It also allowed trade union membership to be terminated if the worker earned a wage that was at least two times higher than the ceiling for benefits from the general social security scheme. That could weaken the strength and unity of trade unions. In addition, the reform established the concept of an exclusively autonomous worker, which violated the right to organize and to collective bargaining.

**The Employer member of Mexico** emphasized that the ILO recognized collective bargaining as one of the main means of freely and voluntarily establishing labour conditions and other regulations through representatives appointed for the purpose. Collective bargaining was a binding instrument that placed an obligation on parties and ensured legal certainty. Unfortunately, before the labour reform in Brazil, collective agreements were continually subject to interference by the authorities which annulled them

on a recurring basis. The labour reform recognized and gave priority to collective bargaining within the framework of the Constitution, which established several fundamental rights that were inalienable.

**The Employer member of Guatemala** thought that the new legislation responded to the need to strengthen collective bargaining, under the terms set out in Article 4 of the Convention. The fact that the workers' rights enshrined in the Constitution were the basis for negotiation was a strong guarantee of protection. Before the new legislation had come into force, a Constitutional Court judgment had expressly acknowledged the important role of collective bargaining as a mechanism to adapt labour standards to different sectors of the economy and different economic conditions. He underlined the fact that, before the reform, government interference in the form of annulling terms agreed between the parties had been fiercely criticized and subject to complaints from Brazilian workers and employers. In 2011, a major trade union in Brazil had proposed the adoption of a collective agreement with the specific objective of ensuring that collective bargaining took precedence over the legislation. The reform allowed those who did not want to engage in collective bargaining to enjoy the protection of the legal system; those who did would have the opportunity to adapt legislation to better suit their circumstances, without prejudice to the considerable guarantees enshrined in the Constitution.

**The Worker member of Chile** pointed out that, in many aspects, Brazilian legislation on freedom of association had been exemplary before the adoption of Act No. 13.467. He noted with concern the recent Act reforming the CLT, which was affecting compliance with the Convention. He observed with great concern that, in the name of allegedly defending employment, investment and economic growth, the country had resorted to the classic formula of denying workers their rights, thus violating the provisions of the Convention. He recalled that inequality was the most significant challenge of the century and possibly in the history of humanity, and that collective bargaining, with strong trade union protagonists, could contribute to establishing a path towards equitable and comprehensive growth that would also allow for such inequality to be reduced. To that end, the Committee should urge the Government to comply with the Convention, by revising the aspects of Act No. 13.467 that were not in line with it, with the aim of promoting free and voluntary collective bargaining and sustainable development goals.

**The Employer member of Spain** said that the reform of Brazil's labour legislation had highlighted the fact that collective negotiation took precedence over ordinary law, which, because it was so rigid, had left workers and employers very little room for manoeuvre prior to the reform, leading to many disputes. Modernizing labour law had strengthened collective bargaining, in line with the Convention. Enterprises and workers, represented by the unions, could negotiate and agree working conditions suited to the specific reality of different sectors, regions and enterprises. He emphasized that the law did not make collective bargaining compulsory; it was based on the independence and free will of the parties.

**An observer representing the Latin American Association of Labour Lawyers** highlighted the seriousness of the case and its importance for the effective enforcement of the ILO supervisory system. She emphasized the role of collective negotiation as a mechanism for redressing the inequalities present in the relationship between an employer and a worker. The need for international minimum standards was based on that premise. International standards were also a result of negotiation processes and took precedence over national law when it was less favourable to workers. The Brazilian labour reform that provided that individual agreements prevailed over collective agreements represented a

serious and unacceptable regression in terms of social rights, which had an impact in many countries, including in Latin America.

**The Employer member of Uruguay** drew attention to the practice of initiating labour court proceedings in the region, which impaired collective bargaining and business management. The practice was bolstered by an inadequate legal framework. The Brazilian labour reform sought to find solutions in cases of abuse, giving assurance to all social partners on the implications of agreements.

**The Government member of Egypt** noted the information provided by the Government representative on measures taken to comply with the Convention. She welcomed the efforts made to strengthen its labour legislation and bolster collective bargaining. She called on the Government to pursue its efforts to fully respect the Convention, and to avail itself of ILO technical assistance in that respect.

**The Employer member of Chile** considered that the Committee of Experts had interrupted the reporting cycle without any explanation, in order to carry out a hurried evaluation of Act No. 13.467. It was clear that insufficient time had been allocated to evaluate the impact of the legislation in a serious and responsible manner. The comments of the Committee of Experts gave the Convention an interpretation that was not reflected in its Articles, as they considered that the general objective of promoting collective bargaining implied reaching an agreement on labour terms and conditions that were more favourable than those established in the legislation. Furthermore, such comments did not highlight the scope and detail of the labour rights provided for in the Brazilian Constitution, or all of the legal remedies available for workers to safeguard their rights. Article 4 of the Convention did not envisage any restriction on collective bargaining in the sense that it could only establish conditions that were more favourable than those laid down by the legislation. Quite to the contrary, it expressly provided for the possibility of adopting measures that were appropriate to national conditions. In a changing world, and in the face of new forms of employment, it was important for laws to safeguard the freedom of the parties to adapt to change and modernization.

**The Government member of Angola**, highlighting the ties of friendship between the two countries, supported Brazil's statement and considered that the Brazilian delegation's oral statement indicated that the Government had fulfilled its obligations.

**The Employer member of Greece** indicated that there had been a methodological error in the data on unemployment and informality in Brazil which had been referred to during the discussion. This was misleading the Committee. The relevant indicators released in May 2018 by the Brazilian Institute of Geography and Statistics made it clear that when the seasonality of economic activity was accounted for, the unemployment rate in Brazil had been reduced in 2018 as compared to the same period of 2017, since the unemployment rate was reduced by 0.7 per cent repeating the trend recorded in the mobile quarter from January to March 2018. Furthermore, it was too early for an assessment of the new legislation as it had still not been fully implemented. The speaker considered that the labour reform had potential for growth in formal and quality jobs.

**An observer representing Public Services International (PSI)** stated that she was also speaking on behalf of Education International (EI), IndustriALL Global Union and the International Transport Federation (ITF). The possibility, by means of collective bargaining, to derogate from statutory minimum rights breached the fundamental objective of the Convention, as well as Conventions Nos 151 and 154. The speaker rejected the Government's assertion that the Committee of Experts had erred in its interpretation, and expressed support for that Committee's interpretation of Article 4 of the Convention and its technical comments.

The new section 611A of the CLT that allowed collective bargaining agreements to reduce the rights and protections afforded by labour legislation could have catastrophic consequences for workers and trade unions. In the aviation and maritime sectors, such derogations could interfere and reduce sector-specific safety standards, including protections derived from technical ILO Conventions. The safeguards contained in section 611B of the CLT were not sufficient. It was also possible that collective bargaining would derogate from the application of ILO Conventions. A recent decision by the Superior Labour Court had contradicted the claim that the reform was a modernization of the labour legislation aimed at strengthening negotiations and unions. The Court had recently ruled on the illegality of a strike of oil workers and established a substantial daily fine for unions that had failed to suspend the strike. That created a hostile environment that was not conducive to mature social dialogue. In December 2017, the President had vetoed Law No. 3831, regulating collective bargaining in the public administration, which was an affront to Brazilian civil servants, particularly as Brazil had ratified Convention No. 151. Law No. 3831 had been built by consensus in the bipartite Chamber of Government and Public Servants of the Ministry of Labour and Employment and had been approved unanimously in the Federal Senate and the Chamber of Deputies of Brazil. The labour reform also had direct consequences for the education sector relating to the privatization of secondary education and the minimum salary of teachers. Contrary to what had been indicated by the Employer member of Brazil, Act No. 13.467/2017 had not been preceded by a broad process of discussion. Brazilian trade unions had merely been informed of the proposed amendments. The ILO supervisory bodies had said that it was imperative that full and frank consultations take place on any question or proposed legislation affecting trade union and collective bargaining rights. Comprehensive labour law reform, in consultation with all social partners, was therefore necessary to bring the Brazil's legislation into conformity with the Convention.

The Government representative appreciated the leadership, firmness and serenity of the Chairperson in conducting the work of the Committee and expressed his gratitude to the countries and speakers who had expressed their support to Brazil and to the importance of improving the supervisory system for greater predictability, transparency and real tripartism. The Government had come prepared to dialogue and had presented technical arguments to prove the full consistency of the labour reform with ILO standards. The discussion had reinforced the belief that the debate on the reform was premature and he reaffirmed his concern about the improper use of the mechanism to serve other purposes than the mandate and objectives of the Organization, which should remain technical, impartial and objective in order to keep its effectiveness and legitimacy. He then reacted to some of the points brought forward in the discussion, reiterating that the labour reform was the result of many years of discussions on labour market challenges in Brazil due to the shortcomings of the labour legislation and to the malfunction of the labour courts. Such discussions had become even more urgent, in a context of hard economic crisis in recent years. The year 2016 had witnessed the highest unemployment rate ever recorded since the beginning of the series, in 1992, and an 82 per cent increase in the unemployment rate since 2012. The crisis had not been generated by the Government, which could not be held responsible for it, but the reform was part of the solution and was already producing results. Between January and April 2018, more than 310,000 formal jobs had been created, the largest volume in the previous five years. Although statistics had been presented to criticize the modernization of labour in Brazil, when comparing the quarter from February to April 2018 with the same period

from 2017, the unemployment rate had fallen 0.7 percentage points, repeating the trend recorded in the mobile quarter of January to March 2018, compared to the same quarter of 2017, when the reduction had been of 0.6 percentage points. He rejected claims that the reform made rights precarious. He affirmed that the reform was fighting informality, the worst form of precariousness, and allowed for new forms of employment with all the legal guarantees and constitutional rights, namely as it had increased by almost eight times the amount of the fine applied to companies failing to register their workers. With regard to article 444 of the CLT, the Committee of Experts' observation had no grounds as the Convention did not refer to individual contracts; moreover, Act No. 13.467/2017 only foresaw the application of such provision in exceptional cases, for workers with a higher education degree and with incomes at least two times higher than the ceiling for benefits of social security. The legal provision aimed at stimulating negotiations to best address the particular situation of such workers, usually not foreseen in collective agreements. While the previous legislation had already allowed for the differential treatment of those workers, the labour reform had set objective criteria for ensuring the provision would only apply to those with negotiation capacity, without prejudice to their rights. The reform had not weakened the unions, as the union contribution had not been eliminated and could still be deducted with the agreement of the worker or company. To promote the independence of trade unions from state funding, in line with the Convention, the obligation of every worker to contribute to a trade union had been abolished, but Brazilian unions could still rely on other sources of financing permitted by law. He also rejected that the reform had taken place without consulting workers, as a series of debates had been organized by the previous Minister of Labour, who had met in December 2016 the six main trade union confederations (*centrais sindicais*) and representatives of the major employers' confederations, to discuss the proposal prepared by the Ministry of Labour, which had subsequently been forwarded to the National Congress. During the legislative process in 2017, 17 public hearings, seven regional seminars and more than 40 meetings with interested stakeholders had been held in Parliament and in different States, leading to the approval of the Bill by a significant majority in Congress and later in the Senate. The labour reform Bill had received 1,340 amendments, one of the largest numbers in the entire history of the Brazilian Parliament. Of the 452 amendments accepted, 62 had been authored by opposition parliamentarians. Amendment number 150, which had been accepted, proposed the possibility to bargain collectively on daily hours of work, within the constitutional limits, the protection against unjustified dismissal in the event of reduction of hours of work and/or salary among other measures related to the strengthening of collective bargaining. The author of the amendment had underlined that it "resulted from the valuable contribution of the combative National Confederation of Commerce Workers (CNTC)", demonstrating the effective participation and acceptance of suggestions from workers. With regard to representation in the workplace, it had been a historical demand of the Brazilian trade union movement, foreseen for nearly 30 years in article 11 of the Constitution and regulated by the labour reform, in line with the provisions of ILO Convention No. 135. Workers' representatives in the company did not compete with the mandate of the unions. The number of collective agreements had been dropping since 2016, which suggested that it was more related to the effects of the economic crisis than to the labour reform. In addition, the same study quoted by the workers' representative indicated that there had been a qualitative change in the agreements signed, which evidenced the expansion of the scope of bargaining



and the concern to improve the representation at the workplace. Concerning pregnant women, the new rule had been designed to prevent discrimination in hiring women; it had been formulated by health workers' unions and defended by the female Congressional Caucus, and guaranteed the protection of maternal and infant health. Regulatory Standard No. 15 had a broad definition of an unhealthy workplace which included, for example, hospitals and airports, and the rule remained the protection of pregnant women. A 12-hour working day was only permitted if followed by 36 hours of compulsory rest, which, at the end of the week and month, represented less hours worked with no reduction in wages. The Committee of Experts had also made a serious mistake by considering that the law excluded the possibility of independent contractors to form unions and engage in collective bargaining. That was provided for in article 511, which dealt with trade union organizations and had not been altered by the new law. The purpose of article 442B was simply greater conceptual clarity and certainty about the elements that characterized the employment relationship, in line with ILO Recommendation No. 198, and as defined by article 3 of the CLT, unchanged by the reform. The Government representative rejected the Committee of Experts' comment that the Convention should apply to autonomous workers, since it did not provide a definition of "worker" for the purposes of application of the Convention, and the new legislation did not change the characterization of employment already present in the CLT. The Government had worked constructively and in respect for the common interest of all members of the Committee despite the shortcomings of the current process. He reiterated the call for all members to engage in an urgent, collective and effectively tripartite effort to reform the standards supervisory system.

**The Employer members** expressed appreciation for the detailed information provided by the Government representative, including with regard to the consultations that had taken place in connection with the labour law reform, and on the nature of the reform. Certain aspects of the discussion in the Committee had fallen outside the appropriate scope of the discussion on the application of the Convention. The Employer members were not able to conclude that Brazil was in violation of its obligations under the Convention as a result of the labour law reform. Modernizing labour law could be a difficult process leading to change and uncertainty. The discussion of the case had been premature. Article 4 of the Convention required the Government to encourage and promote voluntary negotiation between employers and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. That obligation should guide the consideration given to the information provided by the Government. With respect to the labour law reform, a mechanism that allowed collective agreements to prevail over provisions of law could be seen as promoting collective bargaining in law, by extending the scope of collective bargaining while also ensuring that the floor of rights in the Constitution remained respected. It could not constitute a violation of the obligation to promote voluntary bargaining in law. There was also no information available to support the assertion that the reform constituted a violation of the Convention in practice. There had been no objective assessment of the impact of the reform on the labour market and on collective bargaining. Evidence was therefore required in order to assess the impact it had had on the social partners' ability to engage in collective bargaining. The issue of the relationship between individual contracts and collective agreements could be further examined by taking into account the Employer members' view that workers also had contractual freedom and could not be bound by a collective agreement against their will. The issue of an individual contract prevailing

over national legislation was not within the scope of the application of the Convention. Certain other issues that had been raised during the discussion, such as maternity protection, were also not within the appropriate scope of the discussion. The Employer members encouraged the Government to provide information on the content and application of the labour law reform, in particular with respect to the extent to which the collective bargaining partners had made use of the possibility of negotiating collective agreements which workers had made use of the possibility to adopt individual contracts prevailing over collective agreements. The Employer members noted the Government's indication that the views of the Committee of Experts on autonomous or self-employed workers had been inaccurate. Accordingly, more information on the effect of the extension of the definition of an autonomous worker should be provided by the Government, as well as information on the impact it had had on the ability of those workers to represent their interests. The Employer members concluded by encouraging the Government's continued commitment to international labour standards, in cooperation and consultation with the national workers' and employers' organizations.

**The Worker members** expressed their deep disappointment at the remarks of the Government representative describing trade unions as political instruments, which would have done little to advance the rights of workers. The right to freedom of association was a prerequisite for the right to organize and bargain collectively. Regarding remarks on the ability of the Committee of Experts to assess Brazilian legislation taking into account the context of the country, they recalled that members of the Committee of Experts were appointed by the ILO Governing Body and that they were eminent legal experts from all regions of the world. They reiterated their deep respect for the work of that Committee. They also recalled that document D.1 on the working methods of the Conference Committee had been adopted by unanimous tripartite consensus. Governments had ample opportunity to participate in the Conference Committee and to complement the information included in the report of the Committee of Experts. They stressed that, as recalled in the preparatory work to Convention No. 154, collective bargaining was a process intended to improve the protection of workers provided for by law. As recognized in the ILO Constitution, in the Declaration of Philadelphia, in the 1998 Declaration on Fundamental Principles and Rights at Work and in the 2008 Social Justice Declaration, collective bargaining contributed to the establishment of just and equitable working conditions and other benefits, and thereby to social peace. That could not mean going below statutory minimum protections. That principle was well supported throughout many jurisdictions. For example, the Court of Justice of the European Union had established that collective bargaining agreements fell outside the scope of competition law provided that those agreements seek to adopt measures to improve conditions of work and employment. The European Court had even extended this principle in order to protect the right of workers who were falsely classified as self-employed to bargain collectively. The Worker members were deeply worried about the extensive and structural reform of the collective bargaining system adopted in 2017 and its grave consequences on the enjoyment and realization of the fundamental right to collective bargaining for workers in the country. In undertaking that reform, the Government had failed to duly take into account prior comments of the Committee of Experts in this regard. The social partners had merely been informed of those permanent and far-reaching changes, which would effectively lead to the breakdown of industrial relations. A comprehensive legislative reform process had to be undertaken in order to reverse the devastating

**Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**  
*Greece (ratification: 1962)*

changes made. The Government should ensure that the legislation was in full conformity with Article 4 of the Convention. The legislative provisions with respect to the general possibility, by means of collective bargaining, to reduce the rights and protections afforded by the labour legislation for workers, had to be revoked. Moreover, the provisions permitting individual derogations from the law and from collective agreements for workers with a higher education diploma and earnings above a certain limit had to be repealed. The definition of an autonomous worker had to be revised to ensure that misclassified workers were not excluded from their right to organize and to bargain collectively. Given the absence of effective tripartite consultations during the legislative reform process, the Worker members urged the Government to engage the social partners in genuine negotiations within the framework of the national tripartite body. In this regard, they called on the Government to avail itself of ILO technical assistance in order to develop a time-bound roadmap for legislative reform. The Government should also accept a direct contacts mission before the next International Labour Conference in order to assess progress made. Finally, they believed that it was crucial that the case be included in a special paragraph of the report.

**Conclusions**

**The Committee took note of the written and oral information provided by the Government representative and the discussion that followed.**

**Taking into account the fact that the Committee of Experts examined this case outside of the regular reporting cycle, considering the Government's oral submissions to the Committee regarding the labour law reform and its compliance with its obligations under Convention No. 98, and the discussion that followed, the Committee recommends the Government to:**

- **provide information and analysis on the application of the principles of free and voluntary collective bargaining in the new labour law reform; and**
- **provide information on the tripartite consultations with the social partners regarding the labour law reform.**

**The Committee requests the Government to provide this information to the Committee of Experts before its November 2018 session.**

The Government representative noted that a clear majority of Committee members had undeniably expressed criticism for the working methods of the Committee of Experts on the Brazilian case. He urged the Committee of Experts and the Conference Committee to give full consideration to this important fact. The examination of the Brazilian case was in breach of the most basic principles of due process. A system allowing for this to happen, with no effective checks and balances, failed the purposes and objectives of the ILO. It also impaired the necessary strong and shared perception by member states and social partners that the system should function in a fair and equitable way, based on the technical merits of the cases. The system had failed on all those accounts. Its reform was a matter of urgency and necessity for the good of the Organization. His Government had presented robust arguments on the relevance and timeliness of the labour law modernization, which was creating more jobs, formalizing important sectors of the economy, preserving labour rights and promoting collective bargaining in full compliance with the country's international obligations and in particular Convention No. 98. While thanking the majority of the Committee for their parliamentary behaviour, the speaker regretted that some members had passed judgement on issues that had no bearing on the work of the Committee. This was yet another example of the politicization of the Committee which should not be accepted. His country rejected any attacks on its institutions. Over the last two years, Brazil had faced a

political crisis and an economic recession. It had implemented important economic and labour reforms, enacted key legislation and promoted positive change. Democracy was alive, civil society was vibrant, political debate was in full force, the rule of law was in place and strong and the judiciary remained fully independent. As to the conclusions agreed solely by the social partners, of which he had just been informed, they were yet another example of the flawed working methods of the Committee which lacked tripartite consensus. If information on the case was incomplete, this was not due to a lack of political engagement on behalf of his Government. It was rather a matter of reality imposing itself as the reform was only six months old and facts could not and, above all, should not be fabricated. Concerning the reference to consultations, the focus of the discussion should be the application of Convention No. 98 and any issue pertaining to other conventions should evidently be dealt with according to the relevant reporting cycles. The speaker concluded by indicating that his Government would examine the text of the conclusions that had just been submitted to him and, if appropriate, provide a response in due course.

**GREECE (ratification: 1962)**

A Government representative, Minister of Labour, Social Security and Social Solidarity, stated that the late submission of the country's report had been due to human resources constraints and administrative changes at the Ministry of Labour pursuant to ILO recommendations, under the ongoing technical assistance project on labour administration. Nevertheless, the Government had managed to submit all reports requested under article 22 of the ILO Constitution for 2017, along with the report requested under article 19 and all questionnaires on the preparation of the items of the present session of the Conference, as well as the country's response to the Committee of Experts' comments regarding the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), due in 2018. She emphasized that the current Government had promoted collective bargaining and fostered social dialogue. The restoration of two key principles of collective bargaining (the extension principle and the principle of favourability) had been set as a top priority by the Ministry of Labour, since those had been suspended by the previous government in 2011. Indeed, the Government had set collective labour rights at the epicentre of its growth strategy, in order for workers to pursue, through negotiations, a fair share of the wealth produced. The Government had been involved in long and tough negotiations with its creditors, namely the European Institutions and the International Monetary Fund (IMF), who strongly believed that a coordinated system of collective bargaining would hinder the country's return to growth and prevent unemployment from dropping. Finally, the Government's persistence to restore the system of collective bargaining had been successful, after many months of negotiations. Legislation, entering into force in August 2018, had already been adopted, restoring the two abovementioned fundamental principles. The speaker considered that, even more important than the legislation itself, was the political mobilization that had taken place on the issue in 2017, and during the negotiations with the country's creditors for the need to restore the collective bargaining system. Under the second round of negotiations, labour market issues had been strongly debated, due to efforts to address the points raised by the Committee of Experts. The Government had been supported by the International Trade Union Confederation (ITUC), the European Trade Union Confederation (ETUC), several members of the European Parliament, the President of the European Commission and the ILO. The issue of collective bargaining had become emblematic, identified as part of the core of the European

social model and it was therefore surprising that, after such efforts, the Government had been called upon to provide explanations for the violation of the Convention. For the past eight years, Greece had been under successive Economic Adjustment Programmes, a funding package from the Troika, consisting of the European Commission, the European Central Bank (ECB) and the IMF. As part of the conditions for receiving funding, the country had signed a Memoranda of Understanding (MoU) with the above creditors, under the terms of undertaking specific legislative, economic and political reforms. The reform package had been applied from 2010 to 2014 and aimed at reducing labour costs, not only by wage cuts, but also by imposing general restrictions on labour rights. In order to achieve the required internal devaluation, a number of severe measures had been adopted during that period, dismantling core elements of the Greek employment protection system. The result was severe deregulation of the labour market and of the legal framework, leading to violations of the Convention. More specifically, the reforms adopted in 2011 had led to the abolition of the extension and favourability principles, as well as to limitations on the time extension and after-effect of collective agreements. As a result, collective bargaining had stopped being a reality in the country. Bargaining coordination had dropped, earning inequality and low-pay incidence had increased significantly. At the same time, bargaining coverage had declined from approximately 85 per cent to less than 30 per cent of the workforce. Individual contracts without the protection of collective bargaining had been the largest share of the working population's employment reality. Accordingly, real annual salaries had decreased by 18 per cent and part-time work rose by 28 per cent. However, those policies had not been able to effectively contain rising unemployment, which had reached 27.9 per cent in general and around 60 per cent among the youth. The Greek system of collective bargaining had experienced a "disorganized decentralization". Trust among the social partners, and between the social partners and the State had been considerably and negatively affected. That had been the reality that the Government had tried to reverse, in 2015, when a change of paradigm had taken place in Greece with a new Government focused on social rights. The new Government's objective had been to alleviate the major humanitarian crisis that had led to the collapse of the Greek society between 2010 and 2014, and to pursue the recovery of the economy by reducing the high unemployment rate and empowering the workforce. The above negotiations had indeed resulted in the restoration of the extension of collective agreements and the favourability principle. As already noted, the restoration of those principles had been legislated since May 2017 and would enter into force in August 2018. The last technical details had been agreed upon with the social partners recently, leaving no doubt that collective bargaining would be reinstated in the country in August 2018.

Moving on to the issue regarding the arbitration system in Greece, she recalled that arbitration had always been a part of the Greek legal framework for resolving collective disputes. Article 22, paragraph 2, of the Greek Constitution provided that the general working conditions shall be determined by law, supplemented by collective agreements, and when free collective bargaining failed, by rules determined by arbitration. Since 1990, that system had been entrusted to an autonomous organization called Organization for Mediation and Arbitration (OMED), governed fully by the social partners. The Government was aware that the Committee of Experts had stated many times that the right of unilateral recourse to arbitration had not been considered compatible with the Convention. Nonetheless, the specific requirements of the Greek Constitution, as well as the repeated rulings of the Greek Supreme Courts, had to be respected by the Government. The Supreme Courts had ruled

that the Convention's provisions and guidelines had already been implemented through the provisions of the Greek Constitution for free bargaining and arbitration and that there was no issue with respect to compatibility. In 2012, when the former Government had tried to abolish the unilateral recourse to compulsory arbitration, the full plenary of the Council of State had cancelled, in 2014, the abolition, ruling that it contradicted the provisions of the Greek Constitution. Furthermore, according to ruling No. 2307/2014 in Greece: (a) the establishment of an arbitration system was a constitutional obligation; (b) unilateral recourse to arbitration was also a constitutional right; and (c) the scope of arbitral decisions should cover all issues that could be negotiated during collective bargaining and could not be limited only to the determination of wages. Pursuant to those constitutional obligations, the existing legal framework provided that the right of unilateral recourse to arbitration was only given to either party when: (i) the other party refused to participate in the mediation process; or (ii) after the submission of the mediator's proposal. That meant that the right could only be exercised when all possibilities for free negotiations had been exhausted. In addition, a number of other provisions also restricted the role of arbitration in order to foster free collective bargaining, such as the establishment of a second degree arbitration (on appeal). That appeal would be examined by a five-member Commission, consisting of two arbitrators, two Supreme Court judges (from the Council of State and Areios Pagos) and one Counsellor of the Legal Council of the State. Moreover, mediators' proposals as well as arbitral decisions had to be fully justified and documented. Further, the judicial control of arbitral decisions had been increased and strengthened. Finally, in light of the provisions of the Convention, as well as the requirements of the Greek Constitution, the Government had recently initiated a tripartite dialogue on the basis of an independent expert's study on mediation and arbitration in collective bargaining. Following the tripartite dialogue, the Ministry of Labour was planning to introduce further amendments to arbitration, with a view to further enhancing free bargaining and good-faith negotiations between the parties and strengthening the mediation procedure. Through such amendments to the mediation procedure, free collective bargaining was expected to be further enhanced and arbitration would be limited to playing a supplementary role, in line with the Committee of Experts' recommendations, while preserving the constitutional particularities of Greece. She concluded by emphasizing the importance that the current Government gave to collective bargaining and to social dialogue. Under extremely hard conditions, the Government was reinstating a coordinated system of collective bargaining and guaranteeing the necessary legal requirements to foster social dialogue.

**The Worker members** regretted that the Government had failed to discharge its reporting obligations, which was a sine qua non condition for the effective monitoring of the application of ILO standards. Referring to the observation of the Committee of Experts, they recalled that, bearing in mind that small enterprises were in the majority in the Greek labour market, abandoning the favourability principle (Act No. 3845/2010), taken together with the possibility for "associations of persons" to conclude a collective agreement at enterprise level, even if the association was not a trade union (Act No. 4024/2011), had seriously detrimental effects for the whole basis of collective bargaining in the country. The figures cited in the report of the Committee of Experts were enlightening in that respect: of the 409 collective agreements concluded in 2013, 218 had been concluded by associations of persons and only 191 by trade unions. The right to collective bargaining guaranteed in Article 4 of the Convention was a right intended for workers' organizations, and it was clear that associations

of persons were not workers' organizations in the proper sense. When the Committee of Experts had made observations previously, the Government had explained that an association of persons was created independently of the total number of workers and for a specific period of time; that three-fifths of workers at the enterprise level at least were required to create such an association; and that those workers were protected against anti-union dismissal and could take strike action. The Worker members did not consider those explanations very convincing. Admittedly, Collective Agreements Recommendation, 1951 (No. 91), provided that, in the absence of workers' organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations could conclude collective agreements. However, the preparatory work for that Recommendation showed that the possibility had been included so as to take into account the situation in countries where trade unions were not sufficiently well developed and to ensure that the principles set out in the Recommendation could be applied in those countries. Greece was certainly not a country where trade unions were insufficiently well developed, and its national legislation provided that the representation of workers in small and medium-sized enterprises (SMEs) was through sectoral unions. They also referred to the Collective Bargaining Convention, 1981 (No. 154), ratified by Greece, Article 3(2) of which provided that appropriate measures shall be taken, wherever necessary, to ensure that the existence of non-union representatives was not used to undermine the position of the workers' organizations concerned. There were three consequences of that: (i) ILO principles and standards implied that States were required to promote and develop collective bargaining; (ii) such bargaining must be carried out at a level that allowed the participation of workers' organizations; and (iii) the fact of providing in law that enterprise-level agreements could derogate from sectoral and national agreements, in a context where trade unions were not present at the enterprise level, constituted a violation of ILO Conventions and Recommendations.

They underlined that the Committee on Freedom of Association had observed, in cases concerning Spain and Greece, that "the elaboration of procedures systematically favouring decentralized bargaining of exclusionary provisions that are less favourable than the provisions at a higher level can lead to a global destabilization of collective bargaining machinery and of workers' and employers' organizations and constitutes in this regard a weakening of freedom of association and collective bargaining contrary to the principles of Conventions Nos 87 and 98". It was therefore the responsibility of the Government to take the appropriate measures for the effective promotion of the right to collective bargaining with workers' organizations. Regarding recourse to the compulsory arbitration procedure, they considered that the nature of the current system had the effect of strengthening the position of employers by allowing them not to participate in the dispute settlement procedures. The Government was therefore requested, in the response it would provide to the decision of the Council of State deeming the suppression of the unilateral recourse to arbitration unconstitutional, to adopt an approach consistent with the restoration of effective collective bargaining machinery. With respect to the issue of protection against anti-union dismissal raised in the Committee of Expert's observation, they considered that it fell within the scope of the implementation of flexible forms of work (flexibility in the power of enterprise management to terminate full-time employment contracts, the unilateral imposition of reduced working hours, the longer period for the authorized use of temporary agency work, the extension of the probationary period and of the maximum period for fixed-term contracts). All those measures made work-

ers more vulnerable to unfair practices and unjustified dismissal. It was therefore necessary for measures to be taken to ensure that workers benefited from adequate protection against discriminatory practices that undermined their trade union rights. In conclusion, they noted that the question of the decentralization of collective bargaining and the role played by associations was not only the responsibility of the Government. They were conditional measures, or diktats, imposed on Greece since 2010 in the negotiations with the European Commission, the European Central Bank and the IMF. It should be noted that the completion of the adjustment programme in no way implied the end of the conditional measures imposed by the creditors, who had reaffirmed that Greece would remain under strict surveillance. The examination of the case offered an opportunity for the Worker members to recall that the logic of austerity, with all its dramatic consequences on workers and societies, was incompatible with the fundamental standards and principles of the ILO.

**The Employer members** stated that they shared the concern of the Worker members and of the Committee of Experts that the Government had not submitted a report to the Committee of Experts in time for that Committee to fully consider the issue. That limited the Conference Committee's ability to consider recent information. The Convention required that measures appropriate to national conditions be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. Referring to the decision of the Council of State on the unconstitutionality of the provision in Act No. 4046 of 14 February 2012 providing for the suppression of unilateral recourse to compulsory arbitration, the Employer members indicated that the Government appeared to be encouraging the use of compulsory arbitration as a replacement for voluntary negotiation. The Committee of Experts had noted the issues raised by the Hellenic Federation of Enterprises and Industries (SEV) and its concern regarding the Government's insistence in keeping regulations allowing unilateral recourse to compulsory arbitration to circumvent collective bargaining. The Employer members expressed their concern that no response had been provided to the concerns raised by the SEV. The Employer members expressed surprise that the Government had indicated that one of its top priorities was the restoration of a collective bargaining system, as the Government had also indicated that arbitration had always been a part of the Greek legal system, even if the Committee of Experts had made numerous observations that a system of compulsory arbitration did not meet the obligation under the Convention. The Government had stated that it considered the decision of the Council of State in light of the Greek Constitution. The Government's statement appeared to imply that it had discharged its obligations under the Convention, as a result of recent amendments, and that the onus then fell on workers' and employers' organizations. Compulsory arbitration had a distortionary impact on the labour market and could materially affect the outcome of negotiations. In 1978, the mission report of the International Programme for the Improvement of Working Conditions and the Environment (PIACT) concerning Greece had stated that systematic recourse to compulsory arbitration resulted not only in excluding the establishment of a tradition of dialogue between the social partners, but also in deterring the labour organizations from designing policy. The prediction that systematic recourse to compulsory arbitration would stifle collective bargaining had been accurate.

The Employer members disagreed with the Worker members' assertion that the status quo favoured employers

in the country. However, they agreed that the Government should reinstate effective collective bargaining mechanisms. Legislative provisions that allowed either party to unilaterally request compulsory arbitration for the settlement of a dispute or collective agreement did not promote voluntary collective bargaining, stifled collective bargaining and were contrary to the Convention. The Employer members urged the Government to ensure that neither a decision of a national court nor any legislative amendments imposed compulsory arbitration for the settlement of disputes or collective agreements as the normal course. They further called on the Government to discuss the existing arbitration system with the social partners with a view to achieving compliance with international labour standards. Full and robust social dialogue with workers' and employers' organizations at the national level was necessary to resolve the concerns identified on the use of compulsory arbitration, including its scope. Lastly, the Employer members called on the Government to take immediate measures in that respect and to provide a full report on the measures taken to the Committee of Experts in advance of its session in 2018.

**The Worker member of Greece** expressed appreciation for the support provided by the ILO in supervising compliance with labour standards and providing technical assistance and noted that the Government had not resolved human resources issues in the country leading to non-compliance with its ILO reporting obligations. Collective bargaining destabilized by repeated statutory limitations had still not been effectively restituted and the significant interventions in the voluntary nature of collective bargaining and in the principle of the inviolability of freely concluded collective agreements, raised by the Committee on Freedom of Association, had not been effectively addressed. A number of issues were at stake, including the statutory infringement to set the minimum wage at poverty levels and further reduce it for young workers; the evisceration of the National General Collective Agreement (NGCA) by removing the right of its signatory social partners to bargain collectively; erosion of sectoral collective bargaining; annulment of fundamental principles protecting terms of pay and work, such as the extension of collective agreements and the favourability principle; and conferral to non-elected associations of persons the ability to conclude binding enterprise-level agreements. Those measures had deprived the social partners of the fundamental right and means to advance and defend their economic and social interests, resulting in a decline in collective bargaining coverage from over 80 per cent of the workforce to just over 30 per cent. Furthermore, successive measures had wiped out remaining institutional safeguards that had been ensuring a level playing field in labour markets, bearing upon collective dismissals, pension cuts and the right to strike, and the authorities had ignored the strong appeal by the Committee on Freedom of Association to review, with the social partners, all the contested measures and their impact. To address the adverse cumulative impact of the measures on the exercise of the right to bargain collectively and conclude collective agreements, it was necessary to ensure the unequivocal compliance of domestic law and practice with the Convention and the national constitutional order. Although the adoption of section 5 of Act No. 4475/2017, reinstating the extension of collective agreements and the favourability principle, was welcomed, the Government had undertaken to streamline and codify existing labour law which implied the consolidation and perpetuation of all prejudicial legislation since 2010, including provisions that overtly violated the Convention. With regard to the arbitration procedure, the Government did not fully comply with the decision of the Plenary of the Council of State No. 2307/2014 and the nature of the existing system was mainly subsidiary. The la-

bour market was fully deregulated, workers suffered significant institutional disadvantage and abusive employer practices hindered the conclusion of collective agreements, for instance, employers avoided participation or denied their designation as an employer organization. In 2013, the Committee had requested the Government to establish a functioning model of social dialogue to promote collective bargaining but tripartite social dialogue had degenerated into a superficial fragmented procedure and any existing dialogue should be credited only to the social partners and the ILO. Consequently, the Committee was called on to: reaffirm previous recommendations and conclusions by the ILO supervisory bodies and request the tripartite review of the mentioned measures based on their impact assessment, with a view to rendering legislation and practice compatible with the rights enshrined in the Convention; emphasize that collective bargaining institutions could not be effectively restored without repealing all statutory interventions that violated the Convention, including associations of persons, and section 2(7) of Act No. 3845/2010 derogating the scope of collective agreements; reiterate that public authorities should refrain from any interference restricting the right to free collective bargaining or impeding its lawful exercise; and renew its emphasis on the need to reinstate the standing and practice of tripartite social dialogue, urging the State to respect the autonomy and the representativeness of the social partners, as well as collective bargaining outcomes.

**The Employer member of Greece** recalled the two main issues discussed: firstly, enterprise-level collective agreements and associations of persons and secondly, the issue of compulsory arbitration. With regard to the competence of associations of persons to represent workers at the level of an enterprise where a trade union did not exist, such measures were in full accordance with ILO standards, actively promoted collective bargaining and social dialogue and should therefore not be changed. Special regulations allowing trade union sections in small companies would, in the country's specific context, be seen as a Government intervention in the way workers organized of their own free will and there should thus be no legislative amendments, irrespective of whether a favourability principle existed in the laws or not. The existing system, to the extent that it included unilateral recourse to compulsory arbitration, had been found by ILO supervisory bodies to be against ILO standards. The arbitration system was dominant and central in Greek industrial relations but recourse to compulsory arbitration stifled the development of collective negotiations and in practice caused an absence of industrial action and the development of collective bargaining. Although from an employer's viewpoint, practically eliminating industrial action might appear as positive, near-zero strikes on salary issues was a symptom that the system had consistently provided easy solutions accommodating the workers' side and constituted a fundamental distortion of the collective bargaining environment. Such a distorted environment was one of the main reasons explaining why social dialogue between workers and employers had been almost non-existent in the past ten years. Act No. 4303/2014 adopted after the 2014 Council of State decision had reinstated compulsory arbitration but it was essentially the same as the previous laws that had been found by ILO bodies to infringe the Convention and the Government intended to keep it that way. However, even in the framework of that decision, the situation could be improved drastically by adjusting the scope of compulsory arbitration to be as close as possible to ILO standards. The proposal was for compulsory arbitration to be accepted as the ultimate measure for resolving collective disputes strictly in the following cases: (1) where the employer was an entity belonging to the administration of the State where it provided essential services; (2) in sectors of the economy where the resolution of a collective

dispute was necessary for reasons of public interest that was at risk at the moment of the dispute – apart from general government and essential services, a collective dispute at the enterprise or occupational level could not be conceived as putting at risk the public interest and compulsory arbitration should thus not be allowed for disputes at those levels; for sectoral, regional or national-level disputes, the risk of public interest should be proven, if it was to merit recourse to compulsory arbitration; (3) if one of the parties refused in bad faith to enter into negotiations; and (4) if negotiations had definitively failed and such failure had been proven by several cumulative conditions (at least one year had passed since the expiry of the previous collective agreement; the minutes of negotiations showed that one side refused to accept the realistic proposals of the other; and all means of union pressure had been used). Unilateral recourse to compulsory arbitration was thus not acceptable if strike action had not been undertaken to exert pressure on the employer. Although the proposal would not achieve full compliance with ILO standards, it could present significant improvement as an interim measure, until an opportunity arose to settle the matter at the level of the Constitution or its interpretation. Furthermore, substantial improvements should be made in the existing framework of the OMED, including procedures to establish true representativeness for both sides of the dispute, strong safeguards for ensuring independence and professional qualification of arbitrators and mediators, standards for decisions to be adequately substantiated concerning their economic impact and full-scale self-government of the OMED by the social partners regarding its administrative or legal setup, funding and internal processes of arbitration and mediation. In December 2017, the SEV had extended to the General Confederation of Greek Workers (GSEE) a formal invitation to discuss a brand-new arbitration system but since the GSEE had expressed the wish to return to the initial system that had existed before the crisis and to abolish the reforms of Act No. 4303/2014, which had brought back compulsory arbitration but had some marginal improvements over the old system, the discussion had not continued. As for the Government, it lacked any willingness to make the slightest move in the indicated direction, as demonstrated by the absence of any reference to the proposed changes in a technical document drafted with the country's creditors, which thus represented an explicit demonstration by the Government to continue flouting the Convention, as well as Convention No. 154 for the foreseeable future. To conclude, the speaker suggested that if the Government was sincere about reviving collective bargaining, it should start by taking steps to comply with the Convention and if the workers believed in free collective bargaining as the main pillar for effective social dialogue, they should find the courage to denounce compulsory arbitration.

**The Worker member of the United Kingdom** recalled that the ability for independent trade unions and employers to engage in free collective bargaining to defend and promote their members' interest was a core value of the ILO. Effective collective bargaining systems ensured that workers and employers had an equal say in negotiations and that the outcomes were fair and equitable. It was deeply regrettable that labour law reforms introduced since 2010 at the request of Greece's creditors and the Troika had led to the dismantling of collective bargaining machinery and significantly weakened the position of workers in the labour market, depriving them of the institutional means needed to address economic hardship. In 2012, the national minimum wage – which had previously been set by collective bargaining, and had provided a safety net for low-paid workers – was substantially reduced. The collective bargaining system had been seriously weakened with the removal of mechanisms for the extension of sectoral-level agreements and precedence being given to enterprise-level agreements.

Reforms had also limited the duration and content of collective agreements, as well as their effect on individual contracts after their expiry and imposed severe restrictions on the right for parties unilaterally to request arbitration. Those measures had discouraged free collective bargaining as they permitted employers to impose lower wages and worse working conditions and compelled trade unions to either accept employers' terms or risk even greater salary losses and fewer negotiating rights. Moreover, there was no guarantee that lower salaries agreed at a sectoral level would not be further reduced through the proliferation of less favourable enterprise-level agreements. The dismantling of collective bargaining institutions, the accompanying wage suppression and other austerity measures had had wide-ranging impacts, including a dramatic increase in the risk of poverty or social exclusion. Consequently, the speaker called upon the Government to refrain from interfering with the collective autonomy of the social partners and reinstate the collective bargaining machinery as a matter of urgency.

**The Employer member of Spain** indicated that non-compliance of a Member State of the European Union with ILO standards for so many decades was worrying, not only for the Greek employers. The crisis of recent years had shown the interconnection between the economies of European countries. In periods of crisis it was all the more important for social partners to have a shared understanding of the problems in each country, as it was not possible to achieve results without such collective understanding and sharing the responsibility for the solution. The lack of a culture of effective collective negotiations was probably one of the reasons for the delay in approving structural reforms. Social dialogue could not be built instantaneously but needed preconditions and was based on the gradual building of mutual trust and respect among social partners engaging in continuous exchanges through collective negotiations. True social dialogue would be beneficial both to the Greek economy and to other partners in the European Union. Moreover, compulsory arbitration was contrary to the *acquis communautaire*. The ETUC had reiterated that the requirement for compulsory arbitration to be abolished raised no misgivings and that its abolition would bring the situation in line with ILO Conventions and the European Social Charter. In conclusion, there was support for the proposals of the SEV to urge the Government to comply with ILO and European standards.

**The Worker member of Germany** indicated that the reforms adopted by Greece since 2010 had been in conflict with the Convention. Under pressure from the Troika, the Government had weakened the validity of the NGCA and replaced negotiations of the social partners on minimum wage setting by legislation. The Government had also eliminated the favourability principle and weakened enterprise collective agreements. The negotiating position of the independent trade unions had been undermined by allowing associations of persons to act and negotiate as workers' representatives. The devastating effects of the decentralization of collective bargaining were undeniable. Enterprise collective agreements had become the predominant form of collective bargaining, accounting for over 90 per cent of all agreements in 2015. Almost half of them had been negotiated with associations of persons. The number of sectoral collective agreements had fallen from 65 in 2010 to only 12 in 2015. In view of the disproportionate number of small and micro-enterprises in Greece, coverage under collective bargaining agreements had decreased from 85 per cent before the crisis to an estimated 10 per cent in 2016. Wage cuts were highest where negotiations were carried out at the enterprise level and with associations of persons rather than with representative unions. Dialogue through collective bargaining had become difficult or in some instances had completely stopped. The continuation of that

situation put at risk collective rights and the democratic participation of workers. Therefore, the speaker called upon the Government to restore the institutional framework as soon as possible, so that a functioning social partnership and free collective bargaining could be guaranteed at all levels, in particular at the enterprise and national levels. Furthermore, the representation of workers' interests by associations of persons instead of by trade unions should be legally prohibited. The speaker called on the Member States of the European Union to support Greece in re-establishing a peaceful society and rebuilding a democratic and fair collective bargaining system.

**The Worker member of France** considered it regrettable that the economic adjustment programmes implemented in Greece for a number of years had overlooked effective social dialogue, an observation shared by the Workers and Employers. Despite the repeated recommendations of the supervisory bodies, the only effective social dialogue formats were those involving the presence of the ILO in the context of technical assistance. Bipartite agreements between workers and employers were quite simply ignored and measures relating to labour law and collective bargaining had been taken without any consultation with the social partners. The social partners had clearly called for the re-establishment of social dialogue in the framework of an agreement on general collective bargaining in March 2018, a request that had already been made in joint statements in 2015 and 2016. Although Greece had ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the social partners were not even invited to work on the reports due from Greece. She called for the restoration of tripartite social dialogue in a structured framework, with procedures that respected the experience and knowledge of the social partners.

**The Employer member of France** said that the question of compulsory arbitration in Greece should be examined in light of Conventions Nos 98 and 154, both of which had been ratified by Greece, as well as the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), and the Collective Bargaining Recommendation, 1981 (No. 163). Unilateral recourse to arbitration was a persistent problem and was contrary to the fundamental principles of the ILO. In brief, Greek legislation established the right to initiate a mediation process without the consent of the other party, and then an arbitration process, if a collective agreement was not concluded. The arbitration award was then regarded as a collective agreement which had been concluded in the normal manner, even in the absence of agreement between the parties, and had the same binding effect as a collective agreement. He noted that there were evident legal inconsistencies between the above instruments and the national law, and emphasized that the Government had not responded to concerns expressed by the SEV that unilateral recourse to compulsory arbitration was stifling collective bargaining. It was time for the Government to take measures to ensure the conformity of the law with ILO Conventions, as history had shown that the compulsory arbitration system, by its very nature, undermined collective bargaining, which was a fundamental principle of social dialogue.

**The Worker member of Portugal** also speaking on behalf of the Trade Union Confederation of Workers' Commissions (CCOO) and the General Workers' Union of Spain (UGT-Y), stated that the labour market restructuring explicitly imposed by Greece's creditors violated core ILO Conventions and deprived workers of institutional means to defend themselves and to bargain collectively. Combined with a sizeable informal economy, the dismantling of collective bargaining magnified the negative cumulative impact on employment, exacerbated already existing disparities and severely compromised the right to work. Statistics were provided on the unemployment rate in the

country which, despite a recent decrease, amounted to the highest in the European Union. Unemployment was often long-term and touched over 1 million people, in particular young people, showing that it increasingly acquired structural characteristics. Furthermore, while full time jobs decreased, the number of part-time workers, rotation and shift jobs – the so called flexible forms of employment – increased and such precarious jobs could not contribute to sustainable job growth. The deregulation of labour relations had thus led to the worsening of the basic protection indicators of employment and a dramatic increase of enterprise-level collective bargaining agreements.

**The Worker member of Sweden** speaking on behalf of the ETUC, stated that the rule of law could only be upheld if member States complied with international legal standards, even in times of economic difficulties. The case concerned human rights. The collective bargaining system in Greece had been radically restricted and dismantled, leading to violations. Greek trade unions had taken various legal measures with a view to reinstating the industrial relations system and the right to collective bargaining as well as the guarantee and enforcement of agreements. As a result, since 2011, national courts, international supervisory bodies and special procedures had identified violations of international standards on human rights, including labour and social security rights. Such bodies had expressed deep concern regarding the impact of austerity measures and deep regret when their recommendations had not been followed. Nonetheless, there had been no progress regarding respect in practice for the rights guaranteed in the Convention. That included the decision to establish the minimum wage by law without bargaining with the social partners and allowing enterprise agreements to be concluded with associations of persons that did not have guarantees with regard to elections and representativeness. The ETUC had criticised austerity measures and had expressed its solidarity and support for the GSEE, asking the Government to proceed in full and frank dialogue with that Confederation. Human rights needed to be guaranteed and respected. The speaker concluded by urging the Government to take the necessary measures in order to comply with the Convention, including through amending its legislation.

**An observer representing Public Services International (PSI) and Education International (EI)** regretted that once again the Government had not submitted its report to the Committee of Experts, thus avoiding its obligations under the ILO Constitution and Conventions. That prevented an honest discussion regarding the public sector, where the enforcement of the Memoranda of 2010 was having devastating consequences. There were no collective bargaining agreements in the public sector in Greece, including in public education. It was to be recalled that in Greece over 95 per cent of schools were public and teachers' salaries and working rights were determined by regulations of the Ministry of Finance and the Ministry of Labour. Equal rules applied to all public servants across all public sectors. All collective bargaining agreements had been abolished since the enforcement of the Memoranda of 2010 and replaced by individual contracts of employment. However, even before the enforcement of the Memoranda, the salary increases for all public servants were unilaterally decided by the State without any consultation. With regard to teachers, some further increases had been given after large-scale strikes and mobilizations. But in the last one, the Ministry of Education had issued civil mobilization orders for teachers, abolishing de facto their right to strike, a decision that had later been supported by the courts. Social dialogue did not exist anymore. For instance, while the Federation of Secondary School Teachers (OLME) participated in the National Council of Education and had to be invited in the Committee for Education Affairs of the Parliament to be consulted on every new legislative act put forth, the State

was not required to take into consideration the OLME's views. In 44 years of union action some form of dialogue had been established between the union and the sole employer of public school teachers in Greece, the Ministry of Education. Yet, that dialogue could not be defined as "social dialogue" in the strict sense because it did not lead to an agreement between both parties. True social dialogue needed to be genuine, meaningful and effective.

The Government representative reiterated that the extension principle and the principle of favourability that had been suspended since 2010 and 2011 respectively, would be restored in August 2018, after the exit from the economic adjustment programme. Furthermore, it was not true that supervision would be strict after exiting the programme; on the contrary, it would be limited only to the achievement of fiscal targets. In the current Government's view, both principles were extremely important for a stable, effective and coordinated system of collective bargaining, and that had been the reason for the Government's insistence on their restoration. The principles reversed the power imbalance between the parties; fostered social dialogue and incentivized the parties to engage in it; they unified rules and created a level playing field; they reduced income inequality and achieved a fair distribution of national income. Supplementary to the restoration of collective bargaining principles, a rise in minimum wage was under way. Moreover, there were a number of economic/efficiency benefits in having coordinated collective bargaining structures, such as reduction in transaction costs, higher productivity, lower unemployment and social peace. Hence, the re-establishment of an organized and fully functioning system of free collective bargaining had always been and still remained at the core of the holistic growth strategy that the Government had drafted and presented to the Eurogroup the past month. The strategy was based on a model of socially fair and sustainable growth, in which social rights were prerequisites, not bottlenecks, to economic growth. To this end, she recalled the support the Government had received in its efforts there had been the following: (a) a joint statement by the European Commission President, Mr Jean-Claude Juncker, and the Greek Prime Minister in May 2015; (b) a press release statements and letters to the President of the European Commission by a number of members of the European Parliament in December 2016; (c) a statement by ETUC in 2016; and (d) a joint press release by ETUC and ITUC in 2017, whereas the National Workers' Confederation (GSEE) remained silent.

Regarding the issue of unilateral recourse to compulsory arbitration, the Government planned to introduce some further amendments to arbitration with a view to enhancing free bargaining and good-faith negotiations between the parties. The amendments included the following: (1) the mediator would have the ability to refrain from any proposal, blocking temporally the path to arbitration, if it was reasonably believed that there was still room for negotiation in good faith between the parties. In such a case, the parties would return to direct negotiations; and (2) unilateral recourse to compulsory arbitration would be only permitted: (i) to whichever party had come to mediation, if the other party had refused to participate; or (ii) to whichever party had accepted the mediator's proposal, which the other party had rejected. The first condition penalized the party that had shown bad faith by refusing to participate in the mediation process, while the second ensured that the right of unilateral recourse to compulsory arbitration was only given to the party that had shown good faith and a consensual behaviour by accepting the mediator's final proposal. She questioned the Employer members' argument that arbitration undermined collective bargaining and pointed out that statistical data proved that mediation and arbitration had a supplementary role to collective bargaining. Arbitral decisions in general represented only a small

part of the total collective bargaining agreements. In particular, during the past 28 years the average rate of arbitral decisions had been 12 per cent. Since 2014, only 7.7 per cent of collective disputes had led to mediation and only 2.3 per cent of them had been resolved with an arbitral decision. Finally, over 55 per cent of the cases which had led to mediation and arbitration, had been resolved on the basis of consensus by the parties without the need of an arbitral decision. She also reiterated that the amendments to the arbitration processes had been decided following extensive tripartite dialogue which had included the SEV. A few of the proposals submitted by the SEV had been taken on board, while the majority had been considered contrary to both the Greek Constitution and the Council of State's ruling previously mentioned. The Government was however proceeding to limit the scope of unilateral recourse to arbitration. She concluded that the above proved the Government's goal, strategy and priorities to enhance workers' bargaining power, increase their income and thus set the preconditions for a socially fair and inclusive growth. It was important that those preconditions had been set, as the Greek economy was entering a phase of strong recovery. Recession was behind and the country had returned to positive growth rates. The Government had taken all the measures for the new growth model to become a reality. It was now up to the social partners to use in good faith the tools given to them, and to proceed with collective agreements that would serve social peace and promote social justice.

The Employer members recalled that several speakers had highlighted the lack of social dialogue at the national level. They had noted with concern that the Government's intervention suggested a resistance to adopting measures to come into full compliance with the Convention with respect to the issue of compulsory arbitration. The Employer members further reiterated their concern that the Government had not submitted a report on the application of the Convention to the Committee of Experts. While statistical information had been provided to the Conference Committee, it was necessary that the information be submitted to the Committee of Experts. Referring to the obligation under Article 4 of the Convention to encourage and promote the full development and utilization of machinery for voluntary negotiation, it was stated that the use of recourse to compulsory arbitration in the Greek system did not promote voluntary negotiation and that the Committee of Experts had repeatedly stated that regular and repeated recourse to compulsory arbitration was not consistent with the obligations in the Convention. It was the Employer members' position that compulsory arbitration was not compatible with Article 4 of the Convention, and that existing law and practice in Greece did not seem to be justified by any acceptable exception. Therefore, the Government should introduce changes that banned unilateral recourse to compulsory arbitration, in line with the requirements of the Convention. The Government's reference to the ruling of the Council of State on constitutional obligations was not a complete answer to that issue. The Employer members urged the Government to re-establish without delay the ban on unilateral recourse to compulsory arbitration, requested it to report to the Committee of Experts on measures taken in that respect and to avail itself of ILO technical assistance in order to come into compliance with the Convention.

The Worker members said that they wished to dispel any misunderstanding concerning recourse to compulsory arbitration. They had not suggested that it was favourable to employers, but rather that the context and general situation of the Greek labour market was favourable to them. It was clear from the discussion in the Committee that the aim of compulsory arbitration in Greece was to make up for the inadequacies of the collective bargaining machinery. They



reiterated that a country such as Greece, in which the labour market was composed essentially of small enterprises and where it had been decided to entrust collective bargaining to associations of persons, was not ensuring this right effectively. While the Convention did not preclude collective bargaining from being carried out at different levels, the choice of the level of bargaining had to be left to the parties, and the authorities should not provide on a unilateral and general basis that agreements concluded at lower levels could derogate from higher-level agreements. It was for the parties to decide whether or not to allow sectoral or enterprise agreements to derogate from general agreements. Such a decision was therefore in itself subject to collective bargaining. When responding to the decision by the Council of State on compulsory arbitration, it was the responsibility of the Government to adopt a global overall approach involving the reintroduction of effective collective bargaining machinery. The Government was also responsible for taking the necessary measures to protect workers against any acts of anti-union discrimination. This was of particular importance in view of the employment situation in Greece and the increase in flexible forms of work. The Committee needed to reaffirm the previous recommendations and conclusions of the ILO supervisory bodies and call for these measures to be reviewed immediately through a tripartite examination based on their impact assessment, with a view to bringing the legislative system and practice into conformity with the rights set out in the Convention. Finally, it was important to reiterate that the public authorities should refrain from any interference that might restrict the right to free collective bargaining or impede the exercise thereof, and to re-establish as a matter of urgency the status and practice of tripartite social dialogue so as to demonstrate that the State respected the principle of collective autonomy, representativity and the outcome of collective bargaining.

### Conclusions

The Committee took note of the oral statements made by the Government representative and the discussion that followed.

The Committee expressed concern regarding the Government's submission related to the compulsory arbitration system and the decision of the Council of State concluding that the provision in Act No. 4046, which provided for the suppression of unilateral recourse to compulsory arbitration, was unconstitutional.

The Committee also expressed concern regarding the Government's failure to provide a report to the Committee of Experts in time for its most recent session in November 2017.

Taking into account the Government's submissions and the discussion that followed, the Government was urged to:

- ensure that unilateral recourse to compulsory arbitration as a way to avoid free and voluntary collective bargaining is employed only in very limited circumstances;
- ensure that public authorities refrain from acts of interference, which restrict the right to free and voluntary collective bargaining, or impede its lawful exercise;
- provide information on the number of collective agreements signed, the sectors concerned and the number of workers covered by these collective agreements;
- provide information and statistics related to complaints of anti-union discrimination and any remedial action taken;
- avail itself of ILO technical assistance to ensure the implementation of these measures; and
- report to the Committee of Experts on the implementation of these recommendations before its next session in November 2018.

**Taking into account the Government's failure to meet its reporting obligations in 2017, the Committee urged the Government to comply with its reporting obligations to the Committee of Experts in the future.**

### NIGERIA (ratification: 1960)

A Government representative indicated that the Government was fully committed to meet its obligations under the Convention. The allegations relating to anti-union discrimination and impediment to collective bargaining were unfounded. Employers and workers had the right to establish and join organizations of their own choosing in full freedom. The right to freedom of association and to organize derived from the Constitution and the Trade Unions Act. Such Act made the recognition of registered trade unions obligatory for employers whenever workers expressed their interest to join a trade union. The only categories of workers excluded from unionization were those engaged in essential services such as the Customs and Excise Department, the Immigration Department, the Prison Services and the Central Bank of Nigeria. Those exclusions were due to national interests and security reasons. However, the Joint Consultative Committees established in those institutions protected the interests of the workers, who were often afforded better working conditions than those engaged in other sectors of the public service. On the issue of impediment to collective bargaining, trade unions or workers' representatives had the right to bargain collectively with their employers for the purpose of setting terms and conditions of work without any interference whatsoever by the Government. Moreover, the issue of prohibiting an employer from granting a general wage increase without the approval of the Minister as stipulated in section 19 of the Trade Disputes Act, would be brought to the attention of the Tripartite Technical Committee which was currently reviewing labour legislation. Yet, it was important to affirm that in practice, there were no restrictions whatsoever as to general or percentage increases in wages by an employer. The national minimum wage was stipulated by law and the social partners needed to reach a consensus with the tripartite plus body before a minimum national wage could be fixed. The statutory requirement of depositing collective agreements with the Federal Ministry of Labour was purely for record purposes and for monitoring their implementation. In relation to export processing zones (EPZs), trade unions were now fully operating and involved in the resolution of disputes. Trade unions operating in the EPZs included the Amalgamated Union of Public Corporations, the Civil Service Technical and Recreational Services Employees (AUPCTRE), the National Union of Food, Beverage, and Tobacco Employees (NUFBTE), the National Union of Hotels and Personal Services Workers (NUHPSW), the National Union of Civil Engineering, Construction, Furniture and Wood Workers (NUCECFWW), the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) and the Nigeria Union of Petroleum and Natural Gas Workers (NUPENG).

The Employer members addressed the following issues raised by the Committee of Experts in 2010, 2012 and 2017: the denial of the right to organize to certain categories of employees and anti-union discrimination; the requirement for collective agreements to be approved by the Minister of Labour; and the handling of employer-employee disputes by the authorities. According to the Committee of Experts, acts of anti-union discrimination included the use of blacklists against trade union officers; transfers, relocation, demotion, withdrawal of benefits, restrictions of all kinds, non-renewal of contracts and dismissals. At the national level, the definition of essential services in the Trade Disputes Act included the Central Bank of Nigeria, the Nigerian Security Printing and Minting Company Limited, any corporate body licensed to carry

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

Nigeria (ratification: 1960)

out banking business under the Banking Act, postal service, sound broadcasting, maintaining ports, harbours, docks or aerodromes, transportation of persons, goods or livestock by road, rail, sea or river, road cleaning, and refuse collection. The Employer members recalled that the Committee of Experts had observed that certain categories of workers were denied the right to organize (such as employees of the Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Mining Company Limited, the prison services and the Central Bank of Nigeria) and therefore were deprived of the right to collective bargaining. It had also considered that essential services included “those the interruption of which would endanger the life, personal safety or health of the whole or part of the population”. Nigeria had listed a number of services as essential services, considering their importance to national security and stability. The Employer members did not agree that the definition of essential services was broad as observed by the Committee of Experts. The list was in response to the national needs of Nigeria and therefore in compliance with Articles 5 and 6 of the Convention. However, taking into account the concerns raised by the trade unions regarding these exceptions, the Government had elaborated the Collective Labour Relations Bill which had expressly removed the exceptions. The Employer members expressed their satisfaction at the tripartite process that had led to the development and validation of the Bill and looked forward to its submission to Parliament for enactment.

Concerning the registration of collective agreements with the Ministry of Labour, the Employer members had always considered that the sections of the Wages Boards and Industrial Council Act and the Trade Disputes Act, which made it an offence for an employer to generally adjust wages upwards without the approval of the Minister, were irrelevant, had never been enforced and should therefore be repealed. They disagreed with the Committee of Experts’ view that private sector collective bargaining rights were restricted by the requirement of the Government’s approval of any collective agreements on wages. Sectorial unions and the respective employers’ organizations in the private sector freely negotiated and entered into collective agreements every two years. The agreements were then filed with the Ministry of Labour whose main role was to assist in the event there was a need for mediation. Finally, the Employer members indicated that, under the 1992 Decree on Export Processing Zones, the functions of the EPZ Authority included the resolution of disputes between employers and employees in consultation with the Federal Ministry of Employment, Labour and Productivity. The Authority’s role was to facilitate and serve as observer through collective bargaining between sectorial unions and the respective employers. This was in line with the consultative nature of its functions under the Decree. Therefore, the rights of workers to organize and bargain collectively had been preserved. In conclusion, the Employer members considered that the Convention had been adhered to, but Nigeria had, in a consultative manner, put in place mechanisms to better implement its provisions. The Collective Labour Relations Bill responded to concerns raised by the trade unions regarding the exemptions from the rights to organize and bargain collectively and unions, such as the Technical and Recreational Services Employees, had started organizing their members within the EPZs. They therefore encouraged the Government to expedite the processes of enactment.

The Worker members considered that the right to organize and bargain collectively had witnessed a steady and systematic erosion. For a number of years, the Committee of Experts had been pointing to serious violations of the Convention and had been asking the Government to bring its laws and practice into line with the Convention and to

report on all progress made in this regard. However, the last time the Government had submitted its report was in 2012. Since then, it had ignored the Committee of Experts’ requests and disregarded its reporting obligations. This was a case of serious failure to report and was to be regretted. The very essence of the ILO supervisory system was in the dialogue with the constituents. This system was based on the information on the application of the Conventions provided by governments. The failure to submit reports undermined the supervisory system and the very functioning of the ILO. The Worker members called on the Government to live up to its reporting obligations as a matter of urgency. The Convention was interwoven with the realization of other fundamental rights at work and it was unfortunate that many new violations had occurred in the country since 2012. Those without the right to organize were also denied the right to bargain collectively. Anti-union dismissals, transfers, relocations, demotions, non-renewal of contracts of employment, pressure and harassment and withdrawal of benefits or non-payment of remuneration had been taking place in the public and private sectors alike. In January 2018, 21,000 primary school teachers had been dismissed by the Kaduna State Government for having protested against the introduction of a competency test administered without due consultations and aimed at unilaterally reducing the number of teachers on the payroll of the State. Kaduna State had also failed to implement the collective bargaining agreements. When the Nigerian Labour Congress (NLC) had expressed its solidarity with the affected teachers it had received public threats of sanction from the State Government. The Governor of the State had prohibited trade union activities. In this respect, it should be emphasized that the Convention applied to public sector workers and only the rights of those involved in the defence and security forces and those directly engaged in the administration of the State could be restricted. The Convention did not exclude persons employed by the Government, workers in public enterprises or autonomous public institutions, nor teachers. Furthermore, the denial of the rights to organize and bargain collectively, and lack of protection of trade unionists from violence and hostility may have very serious consequences. It could result in violent murders of trade unionists. The Worker members recalled the assassination of Abdulmumuni Yakubu, the branch chairperson of the Non-Academic Staff Union of Kogi State (NASU) at his home by an unknown gunman in November 2017. This murder had occurred at the height of negotiations with the Kogi State Government and strike actions over prolonged non-payment of wages. Kogi State had effectively banned the academic and non-academic staff unions in the tertiary institutions. They further recalled the assassination of Mr Alhaji Saula Saka, the Lagos Zonal Chairman of the National Union of Road Transport Workers in 2010. Both cases remained unresolved and reflected the dangerous situation trade union leaders were confronting and the absence of security and protection in the performance of their activities. The Government must arrest and prosecute the perpetrators and stop the growing and brazen impunity. In the private sector, the situation was equally serious. According to the Association of Senior Staff of Bank and Financial Institutions, 337 workers had been dismissed in June 2015 for having tried to join a union. About 700 workers of another company had been dismissed in Lagos in September 2015 for the same reason. The situation was no different for workers in the telecommunications sector. In some cases they had to denounce their intention of unionization as a condition of employment.

The Wages Boards and Industrial Council Act was particularly alarming as it provided that every agreement on wages must be registered with the Ministry of Labour for approval or disapproval as to its binding nature. It also made it an offence for an employer to grant a general or

percentage increase in wages without the approval of the Minister. In practice, the effect of this was that national minimum wage negotiations were used as a pretext to frustrate, prevent, delay and, in some cases, deny, voluntary collective bargaining over wages. This was not in compliance with the Convention, which required member States to ensure that collective bargaining was implemented through a voluntary mechanism. Furthermore, the Convention applied to workers in EPZs. However, sections 3(1) and 4(e) of the Decree on Export Processing Zones ran counter to the right to organize and the right to collective bargaining. Its section 4(e) provided that “employer–employee” disputes were not matters to be handled by trade unions but rather by an authority managing the zone. Section 3(1) also made it very difficult for workers to form or join trade unions by making it almost impossible for workers’ representatives to gain free access to such zones. The Worker members believed that this situation of violation, anti-union discrimination, interference and lack of protection for trade unionists existed because of the gaps in the labour legislation and the very weak labour administrative mechanisms. Section 11 of the Trade Unions Act denied the personnel of the Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Minting Company, the Prison Services, Nigeria Telecommunications and the Central Bank of Nigeria the right to organize and thus, to collective bargaining. They expressed their concern at section 7(9) of the Trade Unions Act, which empowered the responsible Minister to revoke the certificate of registration of trade unions without a judicial process or clearly outlined administrative procedures and guarantees. Section 8 of the Act automatically imposed trade union membership on federal government teachers without their consent. They further regretted that section 3(1) and (2) of the Act required a very high threshold of a minimum of 50 workers to establish a trade union at the enterprise level and restricted the formation and registration of other unions in sectors where one union already existed. They noted with concern that sections 30 and 42 of the Act imposed restrictions on the right to collective action and provided for imprisonment for non-recognized strikes and for compulsory arbitration with an overly broad definition of essential services. Sections 39 and 40 granted the registrar of trade unions the power to supervise union accounts at any time. Furthermore, the Collective Labour Relations Bill, which had been drafted with the support of the ILO and the involvement of the social partners and which had been pending for a decade or so, had been unilaterally amended by the Government ignoring the views of the social partners. The Worker members, like the Committee of Experts, requested that the Bill be brought into full conformity with the Convention and further urged that the Bill be adopted without unnecessary delay. The situation of the near breakdown in collective bargaining was systemic and was the outcome of the existing legislation and the way the governance institutions functioned in Nigeria. It was therefore urgent for the Government to take a holistic review of its labour legislation to ensure that it was amended to reflect international labour standards and to give effect to the principle of free collective bargaining. The labour administration mechanisms and institutions, including the police and other law enforcement agencies, needed to receive training in order to effectively inspect and supervise compliance with international labour standards to avoid any abuses and prevent impunity. Many of the serious violations of the Convention could have been prevented if the Government had followed the recommendations of the Committee of Experts. The Worker members urged the Government to comply with its obligations and restore, in full consultation with the social partners and in cooperation with the ILO, the right to organize and to bargain collectively in the country.

**The Worker member of Nigeria** stated that Nigeria operated a federal system with 36 states with their own governments, a Federal Government Territory and a central Government. Issues of labour relations were in the Exclusive List of the Nigerian Constitution with federal government supervision and oversight. While infractions of the Convention existed in the private sector, most of those in the public sector were perpetrated by State Governments. In 2017, the Government of Kaduna State had dismissed 38,000 workers, of which 21,000 teachers, about 5,000 local government council staff and over 8,000 from ministries, departments, agencies, as well as those in the tertiary institutions under the guise of a vague reform. Dismissals had been carried out without any respect or consideration for the established rules, notably the provisions in the existing public sector collective bargaining procedures. The NLC had officially reported this violation to the Ministry of Labour, with no tangible outcome to date from the intervention proposed by the Ministry, while the situation continued to deteriorate. The disregard for collective bargaining laws and practices was such that the Nigeria Union of Teachers had challenged the dismissal in court, had obtained a restraining order to hold the dismissal until the substantive lawsuit was decided, but nonetheless the court order had been disregarded by the State Government. The Kaduna State Government had also violated section 16(A) of the Trade Unions Act, which made it mandatory for employers to deduct and remit union members’ dues to trade unions, not only by withholding seven months deductions to all the unions, but also by issuing a circular to stop deduction completely. All the affected trade unions had filed legal complaints against such actions of the State Government. In Kogi State, the Government was refusing to abide by the collective agreement concerning the payment and protection of wages. Workers and pensioners were owed over seven months’ salary and pension benefits, in spite of repeated genuine efforts by the federal Government to ameliorate the problem through the granting, three times, of a financial bailout to all affected States. In July 2017, instead of negotiating with the teaching and non-teaching staff in the tertiary institutions, the Kogi State Government had proscribed and confiscated the assets of the affected unions, in violation of article 40 of the Nigerian Constitution. The NLC had officially reported such infractions to the Ministry of Labour, who had in turn invited the Kogi State Government to a mediation meeting which the latter did not attend. In November 2017, Abdulmumuni Yakubu Branch Chairman of the NASU had been violently murdered during the period his union was in a hard and difficult negotiation with the Kogi State Government. The non-respect for the provisions of the Convention had impacted on people, households and their communities, as the State Government had failed to honour collective bargaining agreements, especially on salaries and wages. He recalled that interference in collective bargaining in the private sector had been a cause of worry to the Committee of Experts since 2009, but there were still benchmarks for wages, since the Government’s approval was required for any collective agreement before it became implementable, allegedly to ensure that there would be no “undue economic disruption”. This contradicted Article 4 of the Convention. It was reported that the National Minimum Wage Bill would not be finalized by September 2018, contrary to the agreement with the social partners. The Minister was thus unilaterally determining the negotiation outcome, in infraction of the Convention. Discussions on the Collective Labour Relations Bill were ongoing for over ten years. The process had been very slow and delayed, which raised concerns as to the Government’s intention. Against the advice of the Committee of Experts to bring labour laws into conformity with the Convention, the Government had been using the process to weaken and destroy trade unions. Indeed, the

new version of the Collective Labour Relations Bill foresaw that if after two years of commencement of its application, the NLC had not amended its constitution to conform to it, the latter would stand proscribed. Such Bill was not a product of consultation, as it was largely different from the one the unions had made inputs to, and would have surreptitiously been passed into law, but for their vigilance and Parliament's due diligence. He concluded by asking the Committee to call on the Government to allow for genuine and good faith engineering of the intended labour law reforms and to ensure that the Government worked genuinely with the high-level mission that had been proposed on several occasions.

**The Government member of Zimbabwe** welcomed the information submitted by the Government, in particular in relation to the current review of the legislation on collective bargaining. It was encouraging that trade unions were now allowed to fully operate in the EPZs and were involved in the dispute resolution mechanisms. That was also a sign of progress and the result of an effort to meet the social partners' needs. All social partners were urged to show the same commitment in complying with the Convention. The ILO's technical support to the Government and its social partners was necessary to strengthen their tripartite structures.

**An observer representing Public Services International (PSI)** pointed out that section 11 of the Trade Disputes Act prohibited workers in a number of sectors and state-run companies to organize and thus deprived them of the right to bargain collectively. Moreover, the right of firefighters to organize was also denied pursuant to the Trade Unions (Prohibition) (Federal Fire Service) Order. In 2013, under the Universal Periodic Review, at its 17th Session, the Human Rights Council had also recommended to the Government to amend the Trade Unions Act in order to guarantee freedom of association and the effective recognition of the right of collective bargaining. Workers in the public sector, including in such critical sectors as health services, across more than half of the 36 States were currently owed monthly salaries for a period of between three and 18 months. While the Government had announced in October 2017 its intention to make another tranche of bailout funds available to address the situation, it appeared that the funds had not been yet secured. The lack of an appropriate system of social dialogue had made this problem even worse and the situation had led to unrest and protests in many sectors in those States. The Committee should request the Government to fully involve the unions in the legislative reform and to ensure that the bailout funds, once released, were fully disbursed for the payment of outstanding salaries to public sector workers, with no part thereof being diverted or otherwise appropriated by the State Governments.

**The Government member of Algeria** expressed his support for the Government of Nigeria and encouraged it to continue its efforts to fulfil its obligations under the Convention. The Government was mindful of its obligations and had taken all the necessary measures to meet them, both in law and in practice. For example, the protection of workers' rights in essential services was guaranteed through mixed consultative committees. The information provided on collective bargaining allowed the Committee to maintain a link with the real situation. Indeed, it was essential that the Committee took into consideration the socio-economic environment of States in its evaluation of their performance with a view to respecting national sovereignty.

**The Worker member of Eswatini (formerly known as Swaziland)**, speaking also on behalf of trade unions in the Southern African Trade Union Coordinating Council (SATUCC), recalled the ILO definition of essential services. The Trade Disputes Act classified employees in the

Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Minting Company Limited, the Prisons Services and the Central Bank of Nigeria as persons providing essential services who could not enjoy the right to organize. That list was familiar as it was similar to the list of essential services in the South African region. The basis for services to be qualified as essential was unclear. The list referred not only to services related to the safety and security of people, but also to workers engaged in currency printing and in fiscal and monetary management. Workers in charge of essential services made sacrifices for the economy and their communities. Their rights should not be stifled. Experience proved that when workers had an organized platform to express their grievances, industrial disharmony was substantially reduced. In October 2017, in Kaduna State and in January 2018 in Delta State, personnel of the police force had peacefully protested for the non-payment of two months' of salary. If the personnel were allowed to organize, they certainly would have made use of their organization to negotiate and resolve the issue. To allow those workers to organize themselves into unions of their free choice was a right unambiguously provided for by the Convention. The Government should avail itself of ILO technical assistance to comprehensively reform the Trade Disputes Act with the genuine and full consultation and participation of the social partners.

**The Government member of Libya** supported the statement made by the Government of Nigeria and considered that Nigeria was in compliance with the Convention. The Constitution guaranteed the right to freedom of association without interference whatsoever by the Government. The willingness of the Government to ensure compliance with the Convention was also proved by the bills brought before Parliament. It was important to support the efforts made by the Government in collaboration with the social partners and it was hoped that the Committee would consider those efforts when adopting its conclusions.

**The Worker member of Mali** expressed his solidarity with the population of Nigeria and referred to the challenge of insecurity arising from the presence of criminal and extremist forces in Nigeria, as in Mali. The fact that workers and trade union leaders in Nigeria were attacked, intimidated, dismissed and even killed on account of their trade union activities was a source of serious concern, as was the fact that there had been no conclusive investigations or arrests, prosecutions initiated or penalties imposed in those cases. Such was the case for the murder in 2010 of Alhaji Saula Saka, president of the local branch of the National Union of Road Transport Workers in Lagos, and that of Mallam Abdulmumuni Yakubu, President of the NASU, who had been killed at the end of 2017 at a time when his union was engaged in difficult negotiations with the Kogi State Government. It was unacceptable that those two murders had not been solved and that those responsible had not been brought to justice. Such impunity had consequences. Firstly, intimidation, harassment, threats and murder were some of the tools used by the other social partners to interact with workers and their leaders. Those practices had the aim of intimidating trade unionists, dispersing them and undermining their determination to assert the human rights and other civil liberties necessary for their organization and their engagement in collective bargaining. Secondly, the impunity surrounding those despicable acts had become the rule and was an obstacle to any sense of responsibility or equity. Consequently, it must be tackled. In conclusion, the Government should be urged to take dissuasive measures to end the attacks on workers and trade union leaders and to rapidly commence the appropriate investigations and initiate prosecutions regarding the cases of mur-

der. Lastly, it was important to establish a favourable climate, free from intimidation, in which trade union organizations could constructively engage in social dialogue.

**The Government member of Cameroon** expressed her support for the Government of Nigeria and thanked it for the information provided to the Committee. Measures had been implemented to ensure a better application of the Convention, notably through the preparation of draft laws that were submitted to Parliament. The Government should be encouraged to continue along that path, with the necessary technical cooperation from the Office.

**The Worker member of Ghana** pointed out that the case was being discussed by the Committee not to shame the Government but rather in order to obtain additional information on the alleged violations of the Convention with a view to seek better implementation thereof. The reported infractions included threats, arrests, beatings and detention used as strategies to discourage and frighten workers and trade union leaders from organizing and pursuing collective bargaining. In April 2015, Aminu Kolawole, the chairperson of the Air Transport Services Senior Staff Association of Nigeria (ATSSSAN) and Lawson Imotto, the secretary, together with Chukwu Jude and Kingsley Ejiogu, the chairperson and the secretary of the National Union of Air Transport Employees (NUATE), were dismissed for organizing workers and demanding that the management enter into negotiation with the union. Lawson Imotto was arrested and taken to an unknown destination. In September 2015, over 700 workers were dismissed in one swoop in south-west Nigeria for having wanted to exercise their right to freedom of association. The workers had only found out about their dismissal when they had returned to work and found the gate locked with a notice of employment termination. The company in question had prevented workers from unionizing even after the intervention by the Ministry of Labour. The tactic of dismissing trade union leaders was a direct way of undermining the right to organize: “deal with the leader, and the members will flee”. The cases of four leaders, Akeem Ambali, the chairperson of the NLC in Ogun State (south-west Nigeria) and three other officers, Dare Ilekoia, Nola Balogun and Eniola Atiku, who in April 2017 had been suspended along with 15 others for demanding that the State Government respect the agreement it had reached with the union on salary payment, was another case in point. While 15 of the 19 suspended workers had been reinstated, the leaders remained suspended indefinitely. Mr Joseph Ogunyemi, former chairperson of an automobile union, had demanded that working conditions be regulated through collective bargaining and had suffered a similar fate. The speaker called on the Committee to urge the Government to accept an ILO high-level mission to improve and advance Nigeria’s industrial relations practice.

**The Worker member of Norway**, speaking on behalf of trade unions in the Nordic countries, recalled that since 2010, several serious allegations of violation of the Convention had been observed, including restrictions on the right to organize and the right to bargain collectively. The Trade Disputes Act denied the right to organize to certain categories of workers. The Decree on Export Processing Zones made it almost impossible for workers to form or join trade unions as these did not have free access to the EPZs, which operated as “protected territories”. It appeared that article 40 of the Nigerian Constitution, which gave the right to freely assemble, associate and to form trade unions and other associations was not operational. As a result, a large number of workers were deprived of the right to collective bargaining. Every agreement on wages needed to be registered and approved by the Ministry of Labour. This did not contribute to free collective bargaining. She fully supported the recommendations of the Committee of Experts and urged the Government to ensure that

the legislation be amended so as to ensure that workers could bargain collectively, and to step up social dialogue with workers and employers instead of limiting fundamental workers’ rights.

**An observer representing IndustriALL Global Union** expressed concern at the reported anti-union activities of international oil companies operating in Nigeria which were preventing tens of thousands of contract workers from joining a union and defending their rights. The fragmentation of contracts to frustrate unionizing efforts was common and the practice of casualization and precarious working conditions were entrenched in the Nigerian oil industry. Workers were obliged to sign a pre-engagement commitment not to become a union member. This made precarious workers dread association with the union. The companies refused to implement rulings of Industrial Arbitration Panels whenever they ruled against them and severed ties with a contracting company if the latter had unionized workers. Denied collective bargaining powers, contract workers endured poverty wages, dire health and safety conditions, and absence of job security and labour rights. This had led to social deprivation and an upsurge in crime. The repressive anti-labour activities of oil and gas companies had accentuated the social upheavals in the Niger Delta region, resulting in revolts in the form of organized attacks on installations, hostage taking and community insurgency. She called on the Government to ensure that all workers at international oil companies had the right to organize.

**The Government representative** took note of the discussions and reiterated the Government’s full commitment to the application of the Convention. As stated by the Worker member of Nigeria, the country operated a very complex social and economic structure, with a Federal State and 36 State Governments. She clarified that the infringements under examination had been made by State Governments and not by the federal Government and that the latter had no control whatsoever over the autonomous State Governments. The federal Government had the constitutional responsibility to administer labour issues. When infractions by a State Government were brought to its attention, the federal Government did not fail to invite the parties to solve the issues. That had also occurred in relation to the case of Kogi State mentioned above. It was important to note that the transactions related to the case had lasted approximately seven months and the State Governor had engaged with the social partners but no agreement had been reached. The Ministry of Labour was still engaging with the Kogi State Governor to find a solution. With regard to the decision of the State Governor of Kaduna State to terminate 21,000 teachers in public primary schools, it was important to clarify that many of those teachers had been appointed fraudulently and were not qualified for their work. Before reaching that decision, the State Governor had engaged with the national union of teachers for a period for two years to solve the issue. That dismissal had been the result of an investigation and only teachers that had fraudulent documents had been dismissed. She requested the Committee to take that information into account when preparing the conclusions. In relation to salaries, most cases of non-payment of wages affected State Governments, therefore the federal Government was not involved. On the contrary, the federal Government had released 1.8 trillion naira to State Governments for solving the issue of wage arrears. However, some State Governments had not prioritized that issue. The federal Government had therefore engaged with the social partners concerned to ensure that resources were used for the purpose for which they were allocated. With regard to the assassination of trade union leaders, the speaker indicated that the statements made during the present discussion were unfounded. The issue of security was prominent in Nigeria and episodes of murders did not only concern trade unionists. Investigations were being carried

out and the cases were before national courts awaiting decisions. The Government committed to provide further information on the outcome once the decisions became available. With regard to the Collective Labour Relations and other Bills, there had been progress but, based on the comments of the Committee of Experts and the Conference Committee, the Government had recalled the bills to improve their content and bring them into conformity with international labour standards. It was also important to underline that the Government had carried out consultations with the social partners concerned with a view to reform legislation and ensure its conformity with international labour standards and with the Convention in particular.

**The Worker members**, while welcoming the Government's stated intention to comply with the obligations under the Convention, expressed disappointment at the attitude of denial that serious problems with regard to trade union rights existed in the country. Noting the Government's explanation on the separation of powers between the federal and State Governments, they recalled that when a member State ratified a Convention, it was the responsibility of the federal Government to ensure compliance therewith. The Worker members expressed their serious and grave concerns about the gradual and systematic erosion of collective bargaining rights in Nigeria as well as the failure of the Government to submit its reports in response to the observations of the Committee of Experts. They further regretted that legal gaps and disregard for collective bargaining rights had resulted in systematic and repeated anti-union discrimination. The Worker members expressed concern at the harassment, intimidation and anti-union discrimination of workers who had expressed the desire to join a union and to bargain collectively in the private sector, including in the telecommunications, and oil and gas sectors. They were equally concerned about the denial of the right to organize to some public sector workers, including those employed in the EPZs, customs, and the Central Bank of Nigeria. To address the growing impunity, the Government should investigate the killings of trade unionists, arrest and prosecute the perpetrators. The Government must reform the labour governance mechanisms to ensure effective supervision and regular inspections backed by an efficient labour market information system for monitoring and evaluating compliance with the Convention. The Government should also build the capacity of labour inspectors and administrators, the police and law enforcement authorities and provide them with adequate resources and training to deliver on their mandate. The Government must, in consultation with the social partners, amend relevant laws, including the Trade Unions Act, the Wages Board and Industrial Council Act, the Decree on Export Processing Zones and the Collective Labour Relations Bill. In order to effectively address these concerns and engage in the necessary reforms, the Worker members urged the Government to accept an ILO direct contacts mission and avail itself of ILO technical assistance.

**The Employer members** considered that the Government was acting in good faith and had responded with clear arguments to the numerous allegations made against it. However their view was that it was inappropriate to comment on cases that had not been concluded before competent courts in Nigeria. It was their view that in this regard the Government had satisfied the request to have the matters investigated. The respective cases had already been submitted to the competent courts and were awaiting decisions. It was important to underline that Nigeria operated in a complex government system and that the Convention left it to national law to determine which categories of employees could be excluded from its application. Consultations were still taking place on the adoption of the Collective Labour Relations Bill. The Government should be encouraged to fast track the process and to avail itself of ILO

technical assistance with a view to addressing the issues raised. In relation to EPZs, taking note of the fact that certain employers did not have unions in place, the Government needed to support those employers to promote unionization in those areas, without effecting their rights under Convention No. 87 on freedom of association and the protection of the right to organize.

### **Conclusions**

**The Committee took note of the oral statements made by the Government representative and the discussion that followed.**

**The Committee deeply regretted the Government's failure to submit its report to the Committee of Experts since 2012.**

**Taking into account the Government's submissions and the discussion that followed, the Committee urged the Government to:**

- **bring relevant legislation, including the Trade Union Act, Trade Dispute Act, Wages Board and Industrial Council Act, the 1992 Decree on Export Processing Zones and the Collective Labour Relations Bill in line with the Convention;**
- **conduct effective investigations and carry out prosecutions with respect to all allegations of anti-union violence and discrimination; and**
- **put adequate and effective enforcement mechanisms in place to ensure that the principles and rights protected by the Convention are effectively applied in practice.**

**The Committee repeats the Committee of Experts invitation to the Government to accept an ILO direct contacts mission in order to tackle the pending issues and report progress to the Committee of Experts before its November 2018 meeting.**

**Another Government representative** indicated that all the comments of the Committee members had been duly noted, as had the conclusions reached by the Committee. He pledged, once again, his country's full commitment to respect all the articles of the Convention, and to ensure that all levels of Government fully complied with the Convention's obligations. However, that would involve engaging the social partners in a time-consuming process of constructive dialogue. Social dialogue and consensus-building, which were essential to an enabling industrial relations environment, required the patience and cooperation of all. He therefore appealed to the Committee for more time to allow the process to continue, with the expectation that full compliance would be achieved. His Government further solicited technical assistance from the ILO to strengthen its capacity to drive and deliver the process of engagement with the social partners. He expressed confidence that, with perseverance and cooperation, the process would mature and flourish as an example to be followed. He also expressed the view that the proposed direct contacts mission was premature, in light of the proactive steps taken by his Government and the social partners. He assured the Committee that the report to the next ILC session in 2019 would reflect full or substantial compliance, both in law and in practice, with all the observations of the Committee of Experts, and reaffirmed his Government's commitment to comply with the provisions of the Convention.

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### **Equal Remuneration Convention, 1951 (No. 100)**

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**GEORGIA (ratification: 1993)**

**A Government representative** outlined the measures undertaken to ensure gender equality and equal remuneration for men and women in the labour force. In line with international commitments, Georgia had made significant progress in adopting legislative changes and implementing policy reforms to foster gender equality and encourage eco-

conomic empowerment of women. National laws and policies had been developed to ensure and promote gender equality, prohibit all forms of discrimination against women and girls, and encourage women's participation in political, economic and social processes. National legislation protected gender equality in all spheres, including labour and employment. The Constitution recognized equality of all people before the law: (i) pursuant to article 14, everyone was free by birth and equal before the law, regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, and place of residence; (ii) pursuant to article 38, all citizens were equal in social, economic, cultural and political life, irrespective of their national, ethnic, religious or linguistic affiliation; and (iii) article 30 specified that the protection of labour rights, fair remuneration, safe and healthy working conditions and the working conditions of minors and women were determined by the Labour Code. The fundamental principles defined in the Constitution were further elaborated in different legal acts. Many of the rights and protections to ensure gender equality in labour relations were provided for in the Labour Code and the Law on the Public Service, which determined equality in the public sector concerning access to employment, terms of employment and working conditions, including remuneration and career development. The Law on Gender Equality constituted a core legal instrument for promoting gender equality, including equality in employment. The Law on the Elimination of All Forms of Discrimination was also an important mechanism for the protection of women and girls from direct and indirect discrimination and unequal treatment.

Nevertheless, there remained legislative and policy gaps related to gender equality. The Government continued to harmonize the legal framework with international standards, pursuant to the timeline for the transposition of European Union (EU) Directives, as agreed in the EU–Georgia Association Agreement. The Government had committed to implementing the EU Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in employment and occupation matters. The Directive provided that, for the same work or for work of equal value, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration must be eliminated. The Government, in close cooperation and consultation with the social partners, was working on the transposition of the Directive into national legislation. On 27 October 2015, a new Law on the Public Service had been adopted, which stipulated that the remuneration system for public servants was based on the values of transparency and fairness, and on the principle of equal pay for equal work. In 2018, in order to further strengthen anti-discrimination and equal rights at work, amendments to the following laws had been developed with the active participation of the social partners, and submitted to Parliament: the Labour Code; the Law on the Elimination of All Forms of Discrimination; the Law on the Public Service; and the Law on Gender Equality.

The legislative framework alone did not guarantee enjoyment of equal rights and non-discrimination and, without effective enforcement mechanisms, progress could not be achieved. The main institutional frameworks to promote and enhance gender equality were the Council for Gender Equality in the Parliament and the newly established Inter-Agency Commission on Gender Equality, Violence against Women and Domestic Violence, within the executive branch. Both institutions were responsible for inter-agency coordination, monitoring the implementation of laws and development of national action plans on gender equality. In this respect, a two-year work plan on gender equality

had recently been adopted, with a special focus on awareness-raising campaigns. In addition, the Gender Equality Department of the Public Defender's Office served as an independent monitoring body on gender issues. Finally, the Government representative reiterated the commitment to making steady progress towards achieving gender equality and complying with international labour standards.

**The Employer members** recalled that this fundamental Convention had been ratified by Georgia in 1993. Since 2002, the Committee of Experts had repeatedly expressed concerns at the absence of national legislation giving full expression to the principle underlying the Convention. It was the first time that the application of the Convention by Georgia was being examined by the Committee on the Application of Standards. They recalled that the Convention required, by means appropriate to the methods in operation for determining rates of remuneration, that the principle of equal remuneration for men and women for work of equal value was applied to all workers. According to the Committee of Experts, while the Constitution, the Labour Code, the Law on Gender Equality and the Law on the Elimination of All Forms of Discrimination included certain provisions relating to equality, they did not specifically commit to the principle of equal remuneration for men and women for work of equal value, and the Government had not advised whether any consideration was being given to reviewing the relevant provisions in this respect.

Noting the existing legal prohibition of discrimination against women and girls, and the adoption last month of an Action Plan referred to by the Government, the Employer members appreciated the Government's recognition of legislative gaps and its reaffirmed commitment to work on the issues raised by the Committee of Experts, implement related EU Directives, and undertake tripartite consultations with the social partners and the Council for Gender Equality in this respect. The Employer members encouraged the Government to take steps without delay to ensure that national legislation enshrined the principle of equal remuneration for men and women for work of equal value. As regards the gender pay gap in Georgia, however, its root causes remained unclear, and it appeared to prevail in the public sector. They encouraged the Government to provide information to the Committee of Experts of the work undertaken to implement the 2014–16 National Action Plan on Gender Equality, which, *inter alia*, aimed at promoting gender equality in the economic sphere. Information should also be provided on the steps taken to better understand the source of the gender pay gap and on concrete measures adopted to tackle it. The Employer members concluded by expressing their appreciation of the Government's commitment and invited the Government to continue to work with the ILO in a constructive manner.

**The Worker members** recalled that, over the years, the Committee of Experts had noted shortcomings with respect to Georgia's implementation of the Convention in practice, highlighting specifically the incompatible legislative framework and severe inequalities. In 2012, the Public Defender had exposed the persistent gender segregation in the labour market. The situation had clearly not improved since. The labour market participation rate for women between the ages of 15 and 64 stood at about 60 per cent, 18 to 20 percentage points below male participation rates. Records showed that traditional household responsibilities, especially childcare, reduced female labour force participation significantly. Despite relatively similar levels of education between men and women, occupational segregation remained rife, with certain sectors predominantly female (education, health and social services) and others predominantly male (transportation, construction, public administration and manufacturing). They regretted that the gender pay gap between men and women remained high,

around 37 per cent, and was clearly attributable to industrial and occupational sex segregation, both vertical and horizontal, within and across establishments and sectors. Even at the enterprise level, the Bureau of Statistics had found that 60 to 67 per cent of eligible men received bonuses, premiums or health insurance under various conditions, whereas the rate was between 33 and 41 per cent for women in similar situations. Female representation in decision-making positions remained shockingly low. The Worker members underlined the legislative and regulatory gaps in relation to the Convention, as highlighted by the Committee of Experts: (i) section 2(3) of the Labour Code of 2006 prohibited discrimination of any kind in employment relations, but this was not sufficient because the principle of “equal pay for men and women for work of equal value” went beyond that of “equal pay for equal work”, in order to allow comparisons between work of a different nature by determining its value. This facilitated the entrance of women into male-dominated occupations, which were usually accorded a higher economic value, instead of just ensuring that pay was equal in a particular job or sector; (ii) recognizing the persistence of social and cultural inequalities between men and women, sections 4 and 6 of the Law on Gender Equality of 2010 specifically guaranteed gender equality, prohibited workplace violence, intimidation, and harassment, and ensured equal opportunity in employment. This was good, but not sufficient. Ensuring equal opportunity did not guarantee equal remuneration for work of equal value, nor did it guarantee the enhancement of the capabilities of women to enable them to take advantage of the opportunities granted; (iii) the Law on the Elimination of All Forms of Discrimination provided for the elimination of all forms of discrimination to ensure equal rights for natural and legal persons; and (iv) article 38 of the Constitution, as well as the Law on the Public Service and the future law on remuneration for public institutions, protected the equality of all citizens and created the framework for addressing issues of sex-based discrimination in employment without, however, addressing the principle of equal remuneration between men and women for work of equal value specifically. As indicated, these laws were necessary to address the inherent biases of discrimination, but not sufficient to ensure equal pay for men and women for work of equal value. Indeed, reports revealed that substantial gender gaps in average monthly nominal wages existed even in female-dominated sectors. Even among men and women with similar levels of education, significant inequality remained in the average salary distribution, notably because men mostly occupied private sector jobs, whereas women were more evenly distributed between in the private and public sectors.

The Government was encouraged to review and amend these laws, in consultation with employers’ and workers’ organizations, in order to promote more proactive measures for raising awareness, and enforcing the application of, the principle of equal remuneration for men and women for work of equal value, including through legally established or recognized machinery for wage determination and job evaluation and/or collective agreements at the national, sectoral and enterprise level. The Worker members noted the adoption of the 2014–16 National Action Plan on Gender Equality and the establishment of both the Inter-Ministerial Commission on Gender Equality and Women’s Empowerment and the Inter-Agency Coordinating Council for the Government’s Action Plan on the Protection of Human Rights. Despite these efforts, the systemic nature of the situation had not changed: institutions for the enforcement of measures to address gender equality and anti-discrimination remained weak or non-existent. The abolition of the Labour Inspection Services raised concerns about institutional inefficiency and ineffectiveness, despite the National Programme for Monitoring Labour

Conditions and the Department of Inspection of Labour Conditions set up under the auspices of the Ministry of Labour, Health and Social Affairs. This new Department’s mandate focused on safety conditions and related complaints and did not specifically address sex-based occupational segregation and pay gap concerns. There were no adequate and effective enforcement mechanisms for applying the principle of equal remuneration between men and women for work of equal value, despite the endemic and persistent nature of sex-based occupational discrimination and inequalities. According to the Public Defender, the recommendations of the Labour Inspectorate should be made binding in the Labour Code to ensure their enforcement.

The Worker members urged the Government to realize the full scope of the Convention and to take concrete steps to review the national framework in order to address the root causes of gender discrimination, gender stereotypes regarding women’s aspirations, preferences and capacities, as well as the promotion of women’s access to a broad range of employment opportunities at all levels.

**The Employer member of Georgia** stated that the gender policy had always been one of the top priorities of the Georgian Employers Association (GEA), but that joint efforts. The GEA intended to develop the adequate approach through undertaking specific activities. First, it was necessary to conduct surveys in the business world to ascertain the real situation with regard to payment policies, careers and social conditions. Based on the result of those surveys, the corresponding activities and measures could be implemented, such as through information sessions on the best international practices related to the implementation of the Convention and, on that basis, determination of possible steps and measures in Georgia; training activities at company level; and conducting social and gender audits with a view to developing action plans for tackling gender issues. Second, a special working group should be established within the Government, where adequate legislative proposals could be developed supporting the social conditions of employed women. Specific activities should also be conducted together with trade unions in certain sectors with respect to management and trade union leadership, and local gender policies should be developed in collaboration with the local authorities. Third, youth entrepreneurship and related education, with a focus on social and gender thematics, should be supported. The speaker expressed his belief that, together, the social partners could devise and implement actions that would lead to a tangible improvement of the situation.

**The Worker member of Georgia** appreciated the consideration given to the issue by the ILO and its constituents and stated that without due attention from international labour institutions and the democratic community, problems that were perceived as being of little relevance at the moment, tended to gradually and extensively erode standards and conditions of work. The current problem of imbalance in wages between men and women was particularly alarming. The wage gap had reached 104 per cent in 2016, despite positive trends over the past decade, and currently stood at 52 per cent. The factors that had resulted in such a huge wage gap were clear and obvious: the year 2006 was the exact year that labour inspection had been abolished. The absence of an authority in charge of supervising labour relations implied a lack of compliance with basic labour standards and rights, including the principle of equal pay. Although, due to a commitment under the EU–Georgia Association Agreement, labour inspection had been re-established, its current mandate did not comply with ILO standards, since it did not have the power to conduct inspections to monitor compliance with requirements of labour legislation. Moreover, the speaker emphasized that the most pressing issue remained the lack of real and effective social



dialogue, which would facilitate the resolution of many existing problems hampering the prosperity and economic stability of the country. Despite the fact that the Convention had been ratified in 1993, the persistence of such a significant wage inequality demonstrated that international Conventions were being ratified only as a matter of form. Over the past twenty years, no working mechanisms to define “work of equal value” had been established, and no relevant policies or awareness-raising campaigns had been undertaken to address issues on equality and protection of women’s rights in labour relations. With respect to equal pay, it should also be noted that the current legal instruments determining the minimum wage had been adopted back in 1999. Thus, in the private sector, the minimum wage was significantly lower than in the public sector to about US\$55. Notwithstanding years of constant demands to establish an adequate minimum wage level, the authorities had persistently ignored the numerous appeals from trade unions, human rights activists, non-governmental organizations and even large transnational corporations. On the basis of official data provided by the Statistical Department of Georgia, it was possible to evaluate the real picture at national level of gender inequality in the world of work. For example, in 2016, the average monthly nominal salary of men was about US\$450, and US\$295 for women. The speaker emphasized that, while the Government had committed to radically change the current situation, the trade unions had no illusions regarding the elimination of gender discrimination through a one-time solution. This required an integrated approach and a long-term and active policy. It was necessary for societies across the world, especially conservative and traditional ones with obsolete stereotypes, including in Georgia, reconsider their views on the role and rights of women in modern life. This goal could be achieved only through the joint efforts of all national and international institutions, and the entire civilized world, in order to eradicate all forms of discrimination, and above all, violations of women’s rights and freedoms everywhere.

**The Government member of Bulgaria**, speaking on behalf of the EU and its Member States, as well as Bosnia and Herzegovina, Montenegro and Norway, stated that national legislation did not give full expression to the principle of equal remuneration for men and women for work of equal value, and expressed concern that this issue had been raised several times by the Committee of Experts without being addressed by the Government. The legislative package submitted to Parliament at the end of 2017, which included amendments to the Labour Code, the Law on Gender Equality, and the Law on the Elimination of All Forms of Discrimination, should address the gaps identified by the Committee of Experts and by the Public Defender. Measures should be taken in consultation with the social partners without delay, in order to further review the legislation, including section 57(1) of the Law on the Public Service, and bring it into full compliance with ILO Conventions, particularly with the principle of equal remuneration for men and women for work of equal value. The gender wage gap was persistent and significant in every sector of the labour market, including in female-dominated sectors. This phenomenon did not only concern wages, but also social benefits and bonuses. The underlying causes were perhaps linked to occupational gender segregation and gender discrimination. Despite existing legal provisions, gender-based discrimination was still very common in practice at the recruitment stage and in job advertising. The speaker called on the Government to take measures to reduce the gender pay gap and address its underlying causes, and to promote women’s access to a wider range of job opportunities at all levels, including management. She also called for concrete follow-up to the recommendations made by the Public Defender, in particular to improve

awareness among employers. Finally, the speaker called on the Government to take measures to ensure effective enforcement of the principle of equal remuneration for work of equal value, including adequate labour inspections, awareness-raising campaigns on the laws and procedures available, and strengthening the capacity of judges and other authorities to detect and address pay inequalities between men and women.

**The Worker member of Norway**, speaking on behalf of the Worker members of the Nordic countries, expressed deep concerns regarding the absence of legislation giving full expression to the principle of equal remuneration for men and women for work of equal value in Georgia. The Georgian Trade Union Confederation (GTUC) had actively worked to improve conditions for women in the workplace and had encouraged women to increase their trade union participation. Statistics and facts regarding gender equality in the country were lacking, and the level of awareness around gender issues and women’s rights needed to be increased. Available statistics showed that women’s position in the labour market was very precarious: women were the first to lose their jobs when companies fired people, they often took jobs far below their skill level, and earned only about 60 per cent of what men earned. In the informal economy, where women constituted 50 per cent of the workers, protection mechanisms were virtually absent, and workers were particularly vulnerable to discrimination. Women in the informal economy had to survive on very low wages and were often subjected to sexual harassment. Considering that there was widespread discrimination in employment in Georgia, both in terms of recruitment, selection and wages, the speaker urged the Government to give full legal expression to the principle of equal remuneration for men and women for work of equal value, therefore strengthening women’s economic freedom, ensuring women a place in law-making processes and participation in the labour market on equal terms with men. In Georgia, a substantial gender gap in average monthly nominal wages existed in every sector of the labour market, including in female-dominated sectors such as education and health care, and even among men and women with similar levels of education. The Government had not indicated whether any consideration had been given, in consultation with the social partners, to reviewing the provisions of the Constitution, the Labour Code and the Law on Gender Equality. Moreover, the Law on the Elimination of All Forms of Discrimination, while including a general prohibition of discrimination based on sex, did not refer to the principle of equal remuneration for men and women for work of equal value. The speaker urged the Government to implement the conclusions to be adopted by the Committee and to amend the national legislation so as to ensure conformity with the Convention.

**The Worker member of the United States** indicated that there were problems in law and practice in Georgia. The principle of equal remuneration for men and women for work of equal value was not sufficiently reflected in the general prohibition of discrimination contained in existing labour legislation, including the Law on the Elimination of All Forms of Discrimination of 2014. The lack of a systematic approach, in law and practice, to ensuring equal remuneration for men and women for work of equal value was illustrated by the statistics on wages and other compensation reported by the Committee of Experts. For example, in 2016, women earned on average 65 per cent of men’s salary, while men were approximately two times as likely as women to receive bonuses, premiums and employer-paid health insurance. The solution to the problem was not only legislative. With respect to enforcement, the Labour Inspection Service had been dismantled in 2006 and re-established in 2015. Since 2015, a sufficient labour inspectorate (beyond the monitoring of health and safety conditions and

forced labour) had not been established. Its mandate was still insufficient to monitor compliance with a full range of labour standards, including those covered by the Convention. As a result, there was no adequate and effective enforcement mechanism to ensure the application in practice of the principle of equal remuneration for work of equal value. Labour inspection institutions had to be re-established to ensure compliance with new legislation that would define equal pay clearly and in compliance with the Convention, articulating the key concept of “work of equal value”. The methodological shortcomings to evaluate the value of jobs were a challenge not only for legislators, but also for the labour inspectorate charged with monitoring compliance. It was therefore necessary to aim at full compliance with the Convention in both the public and private sectors, as the Government implemented its “State Strategy of Labour Market Formation and its Implementation Action Plan 2015–18” by amending the Labour Code to align it with international labour standards. In addition, it was necessary to provide the labour inspectorate with sufficient methodology guidance, training and funds to ensure that the new legislation was applied in practice. In addition to these measurable quantifiable challenges on wages and benefits, the country faced cultural challenges in addressing entrenched and often implicit bias against women. The underlying causes of those inequities had to be addressed by recognizing them and engaging in awareness-raising activities. According to national trade unions, many employers treated women as “problem-causing” workers, who would often be absent and demanded additional privileges, such as maternity leave. Such situations led to gender discrimination in employment, remuneration and career advancement. The underlying causes of these inequities were a concern for everybody. There were no concrete policies in place to provide meaningful assistance to all workers regarding work–life balance and the combination of family responsibilities with occupational duties. Until such measures were taken, women would be charged with family responsibilities and expectations in practice, which entailed lower levels of promotion and remuneration.

**The Government representative**, duly noting the valuable comments of the Committee, reiterated that her Government acknowledged the existence of legislative and policy gaps and was taking significant steps and measures to harmonize national legislation with international labour standards and best practices. However, the root causes of the established gender pay gap lay in gender discrimination, the social norms of society and the social role of women therein. It was therefore important to develop strategies and awareness-raising campaigns with a view to changing attitudes and mainstreaming gender into social and labour policies. The Government was taking action to foster women’s participation in the labour market and had already identified women and young persons as the target population for empowerment. She highlighted the Government’s readiness to work towards improving the legislative framework and institutionalizing the implementation mechanisms in the area of gender equality, in particular by strengthening the capacity of the newly established labour inspection service and gradually broadening its mandate to enable it to be a fully-fledged labour inspectorate that would also cover issues such as the gender pay gap and women’s rights in the workplace.

**The Worker members** stated that, when examining cases on the application of the Convention, the broader context of women’s empowerment and gender non-discrimination should not be forgotten. The Convention rightly placed remuneration at the heart of combating discrimination against women. Historical attitudes and stereotypes had consigned women to certain jobs, and this kind of segregation had traditionally subordinated women’s aspirations to

those of men and lowered their social and economic standing. As a result, jobs predominantly performed by women were undervalued in comparison to work of equal value performed by men. To tackle this, the Convention required that wage rates be determined according to objective criteria, free from gender bias, and that these rates be established excluding any consideration related to the gender of the worker. Achieving this would serve as an important contribution to combating occupational gender segregation and other forms of unequal treatment. They called on the Government to take concrete steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value by amending the Labour Code, the Law on Gender Equality, the Law on the Elimination of All Forms of Discrimination, and the Law on the Public Service. Moreover, adequate and effective enforcement mechanisms should be put in place to ensure that the principle of equal remuneration was applied in practice, and awareness-raising measures should be adopted to ensure that workers could avail themselves of their rights under the Convention. The Worker members hoped that more detailed information would be received from the Government about the specific measures taken to reduce the gender pay gap and address its underlying causes. In this regard, it would be beneficial for the Government to avail itself of ILO technical assistance.

**The Employer members** welcomed the Government’s efforts and its constructive approach to the issue of gender equality in the workplace as regards equal opportunity and treatment. However, they concurred with the Worker members that the main obligation under the Convention, over and above gender equality, was to ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value. Therefore, the Employer members encouraged the Government to take steps to ensure, in consultation with the social partners, that national legislation expressly enshrined the principle of equal remuneration for men and women for work of equal value; and to provide a full report to the Committee of Experts on the legislative amendments envisaged to this end. They further encouraged the Government to supply information concerning the recently adopted National Action Plan on Gender Equality, in particular its impact on efforts to ensure respect for the principle of equal remuneration for men and women for work of equal value. Noting the concerns raised by the Committee of Experts and the interventions made concerning the gender pay gap, the Employer members considered that a better understanding of the root causes of the gender pay gap in Georgia would be helpful, and cautioned that some of the causes could be extraneous to the principle underlying the Convention and could instead be related to occupational gender segregation, distinct participation of men and women in the private and public sectors, or discrimination in employment based on sex, as defined by the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Lastly, the Employer members expressed their optimism and encouraged the Government to avail itself of ILO technical assistance and to continue the process of implementation in close cooperation and consultation with the social partners.

### **Conclusions**

**The Committee took note of the submissions of the Government representative and the discussion that followed.**

**The Committee welcomed the legislative efforts of the Government to ensure gender equality, however it noted that the Government has not made efforts to ensure the application of the principle of equal remuneration for men and women for work of equal value as required by Convention No. 100. The Committee noted with concern the abolition of the Labour In-**

spection Service and the absence of an equivalent replacement to ensure the enforcement of the rights and principles protected by the Convention.

Taking into account the Government's submissions and the discussion that followed, the Committee recommended the Government to:

- ensure that national legislation, in particular the Labour Code, the Law on Gender Equality, the Law on Elimination of All Forms of Discrimination and/or the Law on the Public Service, expressly commits to the principle of equal remuneration for men and women for work of equal value in consultation with the social partners;
- implement effective enforcement and detection mechanisms to ensure that the principle of equal remuneration for men and women for work of equal value is applied in practice;
- take steps to raise awareness among workers, employers and their organizations of the laws and procedures available in order to allow them to avail themselves of their rights;
- continue to provide information on decisions handed down by the judiciary, and cases handled by the Office of the Public Defender;
- continue to provide gender-disaggregated data on labour market participation and remuneration;
- provide the Committee of Experts with information related to the 2018–20 Georgian National Action Plan on Gender Equality adopted in May 2018 and its potential impact on the principle of equal remuneration for work of equal value in law and practice; and
- avail itself of ILO technical assistance in implementing these recommendations.

The Committee encourages the Government to report on the measures taken to implement these recommendations to the Committee of Experts before its November 2018 session.

A Government representative thanked the Committee for the fair and constructive recommendations contained in the conclusions. He mentioned that his Government was pursuing reforms as a priority to harmonize law and practice with international labour standards and the standards of the EU following the signature of an association agreement between Georgia and the EU.

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**Abolition of Forced Labour Convention, 1957 (No. 105)**

**CAMBODIA (ratification: 1999)**

A Government representative stated that the Committee of Experts had played a crucial role in ensuring the fulfilment of all international labour Conventions, as well as other relevant international human rights instruments. The Government of Cambodia had also been committed to do its utmost to respect all its international obligations. As enshrined in the Constitution, both labour rights and human rights were protected in law and in practice in Cambodia. Forced labour was explicitly prohibited under section 15 of the Labour Law. Referring to the definition of forced labour under the Forced Labour Convention, 1930 (No. 29), as well as to its exceptions, the speaker highlighted that the Law on Prisons aimed at providing education, reformation and rehabilitation to prisoners to reintegrate them into society, to prevent the recurrence of offences and to offer safe and secure custody, good health and humane treatment of prisoners in accordance with international principles and the United Nations Rules for the Protection of Juveniles Deprived of Liberty. Section 68 of the Law on Prisons incorporated all international standards and best practices applied in some developed countries on the use of the prison industry. Therefore, it was inappropriate to interpret that provision to be in violation of Conventions Nos 29 and 105. Section 68 provided that low-risk prisoners who had been assessed as physically capable should be assigned to

work as part of the prison's daily routine, or to perform any work in the public interest and for the benefit of the community, or assigned to participate in the prison industry, prison handicraft and prison farming programmes. The speaker expressed his grave concern at the Committee of Experts' comments and conclusions on the application of Convention No 105. Regarding the request for updated information concerning the situation of freedom of association in Cambodia and the roadmap to deal with this issue, the speaker provided assurances that such information would be provided. He stressed that, as the national elections were forthcoming, the situation was heavily politicized. Moreover, some non-governmental organizations (NGOs) and civil society had no hesitation to discredit, demonize and ultimately to destroy the Royal Government of Cambodia and the ruling party whose achievements unquestionably satisfied all Cambodian people.

The Employer members pointed out that the application of Convention No. 105 by Cambodia was being discussed by this Committee for the first time. There were only two relevant observations made by the Committee of Experts in respect of Cambodia's compliance with the Convention, one in 2015 and the other in 2017. The observations referred to the inconsistent application of the Penal Code of 2009 and reported instances of political figures and trade unionists held in custody for offences for which the Code mandated only a fine. No mention of any person subjected to conditions of forced labour while in detention was made. For a breach of the Convention to occur, however, it was necessary to point to instances of persons being subjected to banned activities. In the absence of such evidence clearly pointing to a breach of the Convention, a case should not be discussed by the Committee, nor be double-footnoted. It was not sufficient to assume that detention in itself connoted forced labour. The fact that detention may or may not have been legal was not material to the question of whether the Convention had been breached. The observations that formed the background to this case drew heavily on the 2014, 2016 and 2017 reports of the UN Special Rapporteur on the situation of human rights in Cambodia. These reports drew attention to, and expressed deep concern about, human rights issues in Cambodia. These issues were of concern to all and the Employer members were conscious of the strategic regional and global concerns and calls for pressure to be brought to bear on Cambodia in this respect. However, this Committee should not permit itself to be used as a vehicle of wider concerns, be they in respect of Cambodia or in any other situation. The mandate and the duty of the Committee was to examine cases of breaches of ratified Conventions, not to pursue issues more properly dealt with in other jurisdictions. Thus, the conclusions on this case should be limited to observing that the inconsistent application by Cambodia of the Penal Code created risks that a detained person may be subjected to pressures involving forms of forced labour. In the absence of evidence pointing to such instances, this Committee should limit itself to asking the Government for an assurance that no persons, detained or not, were or would be subjected to conditions of forced labour. That was the approach adopted by the Committee of Experts in its 2015 observation when it had requested the Government to take the necessary measures to ensure that no sanctions involving compulsory labour could be imposed as a punishment for holding or expressing political views. It was arguably not within the competence of this Committee to develop conclusions on practices that, while of concern in themselves, were not breaches of a labour standard ratified by Cambodia.

The Worker members recalled that Cambodia's serious failure to respect fundamental rights and principles at work had been examined by the Committee almost every year for the past decade, unfortunately with very disappointing results. The Committee of Experts had double footnoted

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this case due to its concern over the legislative and practical measures undertaken by the Government and there were no reasons to call that decision into question. Basic civil rights, including the right to free speech and the right to associate and assemble, were not guaranteed in the country. On the contrary, workers and citizens were systematically subjected to heavy criminal penalties involving compulsory labour for exercising their rights protected under the Convention. Recourse to sanctions involving forced labour or compulsory labour as a means to censor the expression of opposing views on political, social or economic matters or to punish participation in strikes was clearly prohibited under Article 1 of the Convention. The right to associate and assemble provided the means through which citizens sought to secure the dissemination and acceptance of their views and thus clearly fell under the remit of protection provided by the Convention. Yet trade union leaders and members were effectively barred from enjoying these rights. This Committee and other ILO supervisory bodies had repeatedly condemned the imprisonment of Cambodian trade unionists for expressing their views and engaging in peaceful activities, including strikes. The Worker members deeply regretted that, despite very clear recommendations to the Government, the crackdown on trade unionists continued. The number of trade unionists facing criminal charges or imprisonment in reprisal for peaceful trade union activities was steadily increasing. The Cambodian Labour Confederation alone counted at least 26 leaders and members who were currently threatened with criminal punishment for expressing their views on problematic social and economic policies. Recently passed labour laws or those that were under discussion seemed to be designed to tighten the grip on trade unionists even further. The Committee of Experts and also the UN treaty bodies, had criticized the 2016 Law on Trade Unions and the 2015 Law on Associations and Non-Governmental Organizations (LANGO), which effectively denied freedom of association rights to teachers, civil servants and domestic workers. Despite the amendments made to the draft Minimum Wage Law, the Law remained problematic particularly as it prohibited the dissemination of research on wages, which had not been submitted to the National Tripartite Council within 15 days. This restriction could have a severe impact on academic freedom, and economists and academics could be potentially restricted in their ability to disseminate, access and discuss vital research on economic and social issues. Moreover, the draft Law provided for heavy and disproportionate administrative fines with no explicit right of appeal. These fines, if unpaid, would lead to criminal proceedings. Considering the likely inability of many workers and union leaders to afford heavy fines, these provisions cumulatively would lead to the effective criminalization of the peaceful exercise of fundamental freedoms. These issues were clearly connected to last year's discussion with respect to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In its conclusions, the Committee called on the Government to ensure that freedom of association could be exercised in a climate free of intimidation and violence against workers, employers and their respective organizations. It also requested the Government to hold consultations with its social partners in order to develop a time-bound roadmap for the implementation of the recommendations. In its engagements with the direct contacts mission which visited the country in March 2017, the Government admitted that the Law on Trade Unions was defective in many ways. It was therefore disappointing that, even though the recommendations were issued one year ago, the Government only started to hold consultations a few weeks ago. The Government should explain what caused this excessive delay and how it intended to overcome its tardiness.

The Worker members expressed their deep concern at the deteriorating political and social atmosphere, including the prosecution and imprisonment of political opponents and human rights defenders. While the offences of public defamation and insult under the Penal Code were punishable with fines only, the law had been applied in an arbitrary manner in order to punish political opponents and human rights defenders with penalties of imprisonment. The UN Special Rapporteur on the situation of human rights in Cambodia had noted that the range of provisions in the Penal Code used to curtail freedom of expression was ever-increasing and insisted that laws must be applied consistently by the Government and the courts. The Rapporteur had warned that the criminal punishment of activists may create an atmosphere of fear and intimidation that could negatively affect the right to freedom of expression, leading to self-censorship. Moreover, the clampdown on trade unions and civil society activists had coincided with the dissolution of the main opposition party, the Cambodian National Rescue Party (CNRP), by the Supreme Court. While the Law on Political Parties was amended in 2017, it retained its problematic provisions. Various offences related to the administration or management of a political party which had been dissolved, or whose activities had been suspended by a court, or whose registration had been refused, were punishable with sanctions of imprisonment for a term of up to one year, which involved compulsory labour. A total of 118 CNRP members had been banned from political activity for five years. It was impossible not to share the Committee of Experts' deep concern over the wide-scale detentions and prosecutions targeting the opposition party, civil society and trade unions. The absence of legal guarantees of freedom of expression, freedom of peaceful assembly, freedom of association, as well as freedom from arbitrary arrest, clearly exposed workers and citizens to the imposition of compulsory labour as a punishment for holding or expressing political or ideological views. In light of the lack of independence of the judiciary, as noted in 2008 by the direct contacts mission, this was of particular concern. The ability of the judicial system to discharge its mandate was compromised by the lack of capacity; the judiciary was subject to political interference, which compromised its ability to exercise its functions in an impartial and independent manner. The UN Special Rapporteur had noted that access to justice was still denied to many, and expressed concern at the prevalence and excessive length of pre-trial detention. Criminal proceedings were marred by inconsistencies and irregularities; different judges applied different standards of proof. This practice stood in contradiction with the principle that everyone charged with a criminal offence had the right to know and challenge the evidence against him or her. Consistency and fairness, especially in criminal cases, required that the standard of proof must be the same in all similar cases. The general elections were imminent in Cambodia. Fundamental freedoms and the rule of law would be meaningless if they were not upheld during times of contentious debate. Freedom of expression and freedom of association were crucial to democracy, social progress and inclusive economic growth. Restricting these rights under the threat of compulsory labour constituted not only a denial of basic freedoms but represented a serious stumbling block in the country's path to democracy and prosperity.

The Employer member of Cambodia considered that anything not related to the application of Convention No. 105, such as matters relating to the Minimum Wage Law, the Law on Trade Unions, sanctions of imprisonment or any other sanction except that of forced labour, should be struck from the Record of Proceedings as not being relevant to the case. The discussion of this case should be limited to forced labour. As there was no evidence of a clear

breach of the Convention, it was unacceptable that Cambodia was discussed by the Committee yet again. She highlighted the impact the discussion in this case could have on the decision of other governments and businesses to engage with and invest in Cambodia. The mere discussion of this case under Convention No. 105 would tell the world (or strongly imply) that Cambodia engaged in forced labour. This was not the case as there was no evidence presented to that effect. The Cambodian employers had a deep interest in the work of the Committee to address challenges to the application of Conventions. They were present to address challenges to protect their business and investment environment. Cambodia had a vibrant and dynamic economic environment that was changing and diversifying quickly. The engagement of governments and investors around the world was necessary for the growth and creation of good quality jobs in Cambodia. Every country deserved a fair and due process of review by the Committee of Experts. However, Cambodia had been unfairly sanctioned with a double footnote. The evaluation of the Committee of Experts demonstrated that there was no breach of the Convention, only possibilities which were the same for other countries with similar legislation. The Conference Committee should review only the most serious breaches of Conventions. A key outcome of the discussion in this case should be a call to review the transparency and integrity of the double-footnoting procedures.

**The Worker member of Cambodia** affirmed that the leaders and members of the independent trade unions still faced serious problems including murder, detention, discrimination, violence and punishment when they were trying to exercise their rights. In 2004, Chea Vichea, Ros Sovanareth and Hy Vuthy had been murdered. In 2013, during a general strike demanding a higher minimum wage for garment workers, five workers had been killed, 23 workers had been jailed for months, and more than 30 others had been injured. The right to public assemblies and strikes had been restricted and unions could only meet members in private places. The criminal charges against six union leaders for taking part in the 2013 strikes were still effective. The Government was requested to drop the charges against them, to enforce the recommendations of the Committee and provide the reports of the three committees charged with investigations of the murders and violence in the 2013 strike, with the purpose of bringing the perpetrators to justice and compensating victims. Between 2014 and 2017, union leaders and thousands of workers were faced with violence from third parties or the police when they exercised their rights in industrial actions, 26 workers had faced criminal charges and 17 of them had been jailed from two to eight months. The unions had brought these cases to the Committee in 2016 and 2017. The Committee had specifically asked the Government to resolve these cases, but there had been no progress and in one case new charges had been put up against the leaders. Following the recommendations made by the Committee, the Government had committed itself to enforce them with a roadmap of concrete actions and two consultations had been carried out. The speaker invited the Government to finalize a time-bound roadmap to amend the Law on Trade Unions and the LANGO so as to bring them into conformity with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to amend the Penal Code and the Law on Peaceful Demonstration to bring them into conformity with Convention No. 105.

**The Government member of Bulgaria**, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Montenegro and Albania, Bosnia and Herzegovina, and Norway, referred to the EU's promotion of the core labour standards as part of its 2015 Action Plan on Human Rights, which featured the eradication of forced labour and the protection

of freedom of association and the right to organize. Cambodia had benefited from the duty-free and quota-free access to European markets through the "Everything But Arms" (EBA) arrangement under the Generalised Scheme of Preferences. The EU was the largest market for Cambodia's exports, especially for the garment sector. In return, the EBA regime required Cambodia to comply with its obligations under the core international human rights principles and labour Conventions, to which the EU and its citizens attached great importance. The speaker recalled that the EU had expressed its concern over the deterioration of democracy, human rights and the rule of law. The inclusion of penalties of imprisonment involving compulsory labour in provisions that had been used to target those expressing dissenting political or ideological views was also a matter of great concern. These included the relevant provisions of the Law on Political Parties of 2007 and the Penal Code related to incitement to disturb public security by speech, writing, picture or any audiovisual communication in public or to the public, publication of commentaries intended to unlawfully coerce judicial authorities, and discrediting judicial decisions. The speaker requested the Government to ensure that these provisions were used only when fully justified by the facts of the case and only in connection with violence or incitement to violence. The application of the Penal Code, the Law on Trade Unions, the LANGO and the Law on Peaceful Demonstration should not lead in practice to punishment involving compulsory labour in situations covered by Convention No. 105. No penalties involving compulsory labour should be imposed for the peaceful expression of political views or views opposed to the established system. She strongly urged the Government to cease using the judiciary as a political tool to harass, intimidate, arrest and prosecute political opponents, trade union members, members of civil society, labour rights activists and human rights defenders. It was the EU's intention to closely monitor the situation, while remaining ready to assist Cambodia in meeting obligations linked to democratization, human rights and the rule of law, and in supporting its economic and sustainable development.

**The Government member of Thailand**, speaking on behalf of the Association of Southeast Asian Nations (ASEAN), reaffirmed their strong commitment to the elimination of forced labour, in keeping with the ASEAN Labour Ministers' Work Programme 2016–20, and the Work Plans of the Subsidiary Bodies. ASEAN member States looked forward to their continued cooperation with the ILO in implementing regional commitment to its goals. The speaker welcomed the progress that had been made in promoting labour rights and the Government's assurance that forced labour had been strictly prohibited both in law and in practice. He encouraged the Government to continue its efforts to promote labour rights, decent working conditions and harmonious industrial relations through social dialogue.

**The Worker member of Germany**, speaking on behalf of the German Confederation of Trade Unions (DGB) and the Dutch, Danish, Finnish, Norwegian and Swedish trade unions, stated that the Cambodian Government was violating this Convention in law and in practice. Section 68 of the Law on Prisons provided explicitly that prisoners could be obliged to perform compulsory labour. The Government used imprisonment as a deliberate means to obstruct the activity of trade unionists and to penalize activities which were critical of the Government. Legal provisions that forbade insulting the monarchy, incitement to crime or to the disturbance of public order, defamation, bribery of witnesses or damaging national interests were systematically misused. The improper use of these provisions of criminal law was particularly problematic. Through the formulation of a very extensive scope of application, these legal provisions were used inappropriately to strategically intimidate and repress opponents of the regime. A trade union activist

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was sentenced in 2017 to two years' imprisonment for incitement to serious crime because he had called, in a radio interview, for the removal of trade preferences by the United States and the EU, and journalists had been charged with defamation because they had asked the inhabitants of a village about their voting behaviour. Pre-trial detention was also being used arbitrarily for long periods of time and without due legal process. The arbitrary misuse of prison sentences, which were always accompanied by compulsory labour under the existing legislation, created a climate of threats and intimidation, in which it was impossible not only for trade unionists but also for civil society as a whole to exercise fundamental rights such as freedom of expression, freedom of assembly and freedom of association – human rights which were protected as a matter of principle by the Cambodian Constitution. She called upon the Government to bring both its law and its practice into line with this Convention and to put an end to the repression of trade unionists and dissidents.

**The Worker member of Indonesia**, speaking on behalf of the Confederation of Indonesia Prosperity Trade Union (KSBSI) and the Korean Confederation of Trade Unions (KCTU), insisted that no worker should be charged or arrested for legitimate activities. He noted the Committee of Expert's concern that trade union members, human rights defenders and NGO representatives continued to be subjected to threats, harassment, arrest, pre-detention and prosecution on charges of defamation and public insult. Although under the Penal Code, those offences were punishable only by fines, various trade union members had received penalties of imprisonment. The speaker highlighted instances of arbitrary and repressive application of criminal laws where workers had protested unfair dismissals of trade union leaders or failure to enforce arbitral awards and court orders. On 14 February 2018, four union leaders of the Workers Friendship Union Federation were summoned to court and sent for pre-trial detention for having organized a strike. In 71 instances since the last national election in 2014, trade unionists had been taken to court by employers and authorities for such criminal offences as defamation, intentional violence and damage, or interfering with traffic during labour protests. Under the Penal Code, they could receive prison terms ranging from six months to five years. A coordinator of the agricultural association was jailed for six months under articles 377 and 378 of the Penal Code, which provided for penalties of imprisonment from six months to three years, and fines from 1 million to 6 million riels. On 6 February 2016 protest against the 2015 dismissal of 45 employees attempting to form a branch of the Cambodian Transport Workers Federation had ended with a violent attack in which bus drivers had been arrested and 14 people injured. An officer of the Cambodia Informal Worker Association had been arrested on charges of aggravated intentional violence, obstructing public officials and obstructing a public road. On the same day, four leaders of independent trade unions, including Ath Thorn, President of the Cambodian Labour Confederation had also been charged, although none had been present. The speaker underscored the need to stop the misuse of laws to criminalize workers and trade unionists. He called on the Government to take urgent, concrete action to comply with the Committee of Expert's call to fully respect trade union rights and to ensure trade unionists' ability to act in a climate free of intimidation or violence.

**The Government member of Switzerland** expressed deep concern at the detention measures, treatment and judicial processes to which members of the opposition party, NGO representatives, trade union members and human rights defenders were subject. They had been punished and imprisoned for their activities, and their prison sentences included an obligation to work while in prison. In that regard, he

called on the Government of Cambodia to take the necessary steps to guarantee freedom of opinion and expression, freedom of association and the right to peaceful assembly. Those rights were an integral part of the human rights framework and enshrined in the fundamental labour Conventions. He also encouraged the Government to undertake all the legal changes needed to abolish sentences that included an obligation to work, in order to comply with this Convention.

**The Worker member of France** said that the violations of Convention No. 105 were part of an arbitrary practice that was contrary to all values of humanism and respect for universal human dignity, in view of the fact that through the LANGO law, the Government of Cambodia was using extremely coercive measures including forced labour as a means of intimidation and retaliation. The general requirement of NGO neutrality towards political parties under section 24 of the LANGO law allowed arbitrary interpretations by the administration, which sought to suspend activities, impose fines and cancel the registration of NGOs. The same provision also authorized the Ministry of the Interior to cancel registration following an extremely vague allegation of endangering public and national safety. Accordingly, the Ministry of Foreign Affairs had ordered the National Democratic Institute (NDI) to close and to expel all its foreign staff on 23 August 2017. The Foreign Ministry had asserted its authority on the basis of section 34 of the LANGO to put an end to the activities of any international civil society organization that had not registered a memorandum of understanding with the Ministry. The order had come after the NDI had been accused of providing the Cambodia National Rescue Party (CNRP) with a "malicious" plan to overthrow the Government. Moreover, on 28 July 2017, the governor of the Ek Phnom district in Battambang published a letter ordering all commune chiefs in that district to report on all NGOs and associations operating in the region. The letter indicated that organizations needed to obtain the permission of the district authorities before conducting activities in that district. Commune chiefs were required to publish reports on NGOs and associations which were active in that district. The letter also indicated that commune chiefs who failed to report such information would incur penalties, and that was what the Cambodian Government was using as a means of intimidation. The grounds for charges under the LANGO were vague, subject to interpretation and thus entirely devoid of neutrality and objectivity. NGOs and civil society organizations must now submit annual reports to the Minister of the Interior detailing their activities and finances. This allowed the Government to check associations' accounts, question some of their choices and even fabricate false evidence to discredit them. Such contrived offences, aimed at silencing civil society, were classified as defamation or disruption of public order, and those two offences were liable to severe punishment in Cambodia. A striking example was the length of the pre-trial detention of the leaders of the Cambodian Human Rights and Development Association (ADHOC), who had been held in such detention with forced labour for 427 days. Taking into account the incalculable number of possibilities of falling foul of the LANGO, the speaker called upon the Cambodian Government to fully commit to completely eradicating all recourse to forced labour, both as a form of intimidation or preventive measure to silence free speech and as a punishment for any sort of crime.

**The Worker member of Australia** recalled that her delegation had repeatedly registered its deep concern over the situation of labour rights in Cambodia, where trade union members faced ongoing discrimination, harassment, threats, pre-trial detention, arrest and imprisonment for seeking to exercise their fundamental rights despite the ratification of the Convention in 1999. The Government's

persistent non-compliance with international labour standards, particularly concerning freedom of peaceful assembly, freedom of association and freedom from arbitrary arrest, required the Committee's ongoing scrutiny. The right to peaceful assembly, premised on a notification procedure of the Law on Peaceful Demonstration, had been turned into a system of permission. Arbitrary interpretations and enforcement of the law increased uncertainty and the risk of sanctions for those seeking to exercise that freedom. Concrete examples included, in 2016 and 2017, Phnom Penh City Hall's use of armed police to bar 2,000–3,000 members of a consortium of independent unions from peacefully marching to the National Assembly for a May Day celebration; restricting NGOs such as the Cambodian Human Rights Action Committee from rallying to celebrate the Human Rights Day (10 December 2016), threatening "measures" if protestors were to disobey; and rejecting the request of 200 Khmer Krom to deliver a petition to the National Assembly (22 June 2017). Similarly, the authorities of Banteay Meanchey province had warned villagers against joining the CNRP and NGO celebrations on Human Rights Day; Battambang's Bovil district's provincial administration had rejected permission for the Boeung Bram community to march on Human Rights Day; Kampot authorities had denied three requests for celebrations; and Takeo authorities had forbidden the Khmer Krom Federation from celebrating International Human Rights Day in several villages and communes. More explicit threats by government officers had clearly violated Article 1 of the Convention. In a speech, the Prime Minister Hun Sen had threatened to "eliminate 100 or 200 people" if they supported the "colour revolution" to ensure Cambodia's stability. The Prime Minister had repeated his readiness to use weapons and jail to curb demonstrations or challenge to 2018 election results. Likewise, the Minister of Social Affairs, Vong Soth, had warned of using bamboo rods against anyone protesting against the 2018 election. Prime Minister Hun Sen had ordered garment industry union leaders to ensure that factory workers did not organize political protests or associate with the remnants of the since-dissolved opposition party. The speaker urged the Committee to issue its strongest statement against the Government's persistent breaches of the Convention and to maintain its supervision over the matter.

**The Government representative** thanked the delegates for their constructive interventions and comments. Clarification as to the grounds on which Cambodia was double footnoted was needed. In the Government's opinion, this was linked to the upcoming July 2018 elections. Some delegates disguised the session as a political platform to tarnish the Government's reputation, efforts and achievements. To express their political discontent, they should have used a different forum. In Geneva, a number of UN institutions and mechanisms dealt with human rights, the rule of law and democracy issues. The speaker recalled that the session of the Human Rights Council could be used by those wanting to improve the situation of human rights in the country. The International Labour Conference was the forum to discuss labour laws and relevant Conventions. It was not proper to use this forum to make political propaganda in order to give preferences to other political parties or individuals. Regarding the situation of freedom of association, the Government and the relevant parties, including the ILO, had agreed on the way forward to improve it. In reply to the statement by the EU representative, the speaker pointed out that while the EBA scheme had considerably helped the people and economy of Cambodia, the country's sovereign interests should be respected. He urged the international community to respect Cambodia's sovereignty, its peace, stability and economic development.

**The Worker members** stated that there was no effective guarantee of basic civil liberties in Cambodia, and those

who exercised the right to freedom of expression and assembly became targets for criminal prosecution, imprisonment and compulsory labour. Trade unionists, human rights' defenders, the political opposition and virtually anyone who adopted views opposed to those of the Government had come under enormous pressure involving detentions and prosecutions. Legislative provisions on public defamation had been applied in a selective manner to punish critical opinions. The Worker members expressed very deep concern over the lack of impartiality and independence in the judiciary, as well as the excessive pre-trial detention periods aimed at punishing those who seemingly opposed the current Government. This was particularly worrying in the context of the upcoming elections, during which free debate and exchange of views became even more important. The Government had therefore an obligation to take legislative measures to ensure that penalties involving compulsory labour were not imposed in order to silence and censor the peaceful expression of political opinions. The right to association and assembly provided the means through which citizens could seek to secure the dissemination and acceptance of their views and must therefore also be protected. Moreover, Article 1(d) of Convention No. 105 prohibited the imposition of compulsory labour for organizing or peacefully participating in strikes. The Government must ensure that freedom of association could be exercised in a climate free of intimidation and violence. All individuals who had been imprisoned for having exercised their right to freedom of expression and assembly must be released immediately and unconditionally. Institutional reforms were also necessary in order to guarantee the independence and impartiality of the judiciary. Freedom of expression and peaceful assembly, freedom of association and freedom from arbitrary arrest should be guaranteed as safeguards against the imposition of compulsory labour for exercising these rights. This required a serious commitment to undertake extensive reforms on a number of laws, which were clearly not in conformity with Convention No. 105, including the Law on Political Parties, the Penal Code, the Law on Trade Unions, the LANGO, the Law on Peaceful Demonstration and the Draft Minimum Wage Law. Freedom of expression and assembly, the right to strike and freedom from forced and compulsory labour were extremely important issues for working people but also for the values of the ILO as a whole. Therefore, the Government needed to work with the ILO in order to give full effect to Convention No. 105. A double-footnoted case meant that the Committee of Experts had serious concerns. The Worker members referred in this respect to section 68 of the Law on Prisons under which convicted prisoners who had been assessed as physically capable should be assigned to work as part of the prison's daily routine and disagreed with the request to strike comments concerning the Law on Trade Unions and the draft Minimum Wage Law from the Record of Proceedings.

**The Employer members** reiterated that while it was undeniable that there were serious issues of concern regarding the situation of human rights in Cambodia, as noted by various UN bodies, including the UN Special Rapporteur, the Committee had to limit itself to dealing with Convention No. 105. The fact that this was a double-footnoted case meant that this was a serious case. However, no evidence demonstrating the existence of forced labour in the country had been provided. While there was a potential risk that forced labour could be imposed, there was no evidence that it had occurred. In these circumstances, and considering serious concerns regarding the application of various legislative provisions establishing sanctions in practice, the Government should be asked to give assurances that it would not be imposing forced labour.

### **Conclusions**

The Committee took note of the information provided by the Government representative and the discussion that followed.

Taking into account the Government's submissions and the discussion of the case that followed, the Committee urged the Government to:

- take measures in law and practice to ensure that no penalties involving forced labour or compulsory labour may be imposed in compliance with Article 1(a) of Convention No. 105, including the amendment of existing legislation that permits forced labour; and
- the Committee calls on the Government to avail itself of ILO technical assistance to address this recommendation. The Committee also asked the Government to report in detail on the measures taken to implement this recommendation to the next meeting of the Committee of Experts in November 2018.

The Government representative reiterated that forced labour had no place in Cambodia and that his Government was willing to provide factual and legal elements to shed light on this misunderstanding or misinterpretation of the Convention and of Cambodia's relevant law and regulations that had given rise to the wrongful allegation that such practices existed. Despite his respect for the work of the Committee of Experts, any review that went beyond the Convention's scope was not helpful to its application. Mutual understanding and close collaboration between social and development partners were effective tools for resolving misunderstandings and tensions. The existing social dialogue and tripartite mechanisms were especially critical to maintaining Cambodia's hard-earned peace, stability and development. He welcomed the assistance of the ILO in promoting labour rights and decent work in accordance with international labour standards.

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

#### **BAHRAIN (ratification: 2000)**

A Government representative provided information concerning the measures taken by the Government to comply with the conclusions adopted by the Committee at the 106th Session of the International Labour Conference (June 2017). The Government had taken the following measures: (i) reported on the measures taken to implement the commitments contained in the Tripartite Agreements of 2012 and 2014 in connection with the reinstatement of the dismissed workers following the events of February and March 2011, providing detailed information on all the cases settled and agreed upon with the social partners, notably in relation to the list of the 165 dismissed workers that was annexed to the Supplementary Tripartite Agreement of 2014; (ii) provided a report dated 31 August 2017 on the measures taken to implement the Convention; and (iii) accepted the ILO's technical support via a direct contacts mission, in accordance with the letter addressed to the Director-General on 15 April 2018. In reply to the Committee of Experts' comments, the Government highlighted the following points. First, regarding the measures taken to implement the commitments contained in the Tripartite Agreements of 2012 and 2014, 98 per cent of all cases involving the dismissal of workers following the 2011 events had been settled. The workers had returned to their work whether in the private or public sector preserving their employment-related rights and benefits, including retirement benefits. Moreover, cooperation with relevant stakeholders was continuing with a view to finalizing the settlement of all 165 cases mentioned in the list annexed to the Agree-

ment. The Government's efforts concurred with the National Tripartite Committee's measures to reintegrate these workers either into their previous positions, or to provide them with financial compensation, or even place them in alternative employments with the same pay and benefits. Cooperation between the relevant stakeholders was ongoing to resolve the few remaining cases, and the Ministry of Labour and Social Development remained open to finding appropriate solutions for the workers concerned.

Second, regarding the measures taken to ensure that the legislation covered all recognized prohibited grounds of discrimination, the speaker indicated that the conclusions adopted by the Committee in 2017 had been taken on board, and a comprehensive review of national legislation had been launched in order to consider the amendments necessary to prohibit and criminalize discrimination in labour legislation in the private sector. In this regard, the Council of Ministers had already approved an amendment to the Labour Law for the Private Sector on this matter, and information on any further developments would be provided to the Office. Third, regarding the measures taken to protect migrant workers, this category of workers benefited from mechanisms to submit labour complaints or formulate litigation and appeals against administrative and judicial decisions. Furthermore, a migrant worker could transfer to another employer under the conditions set out in the legislation, namely after one year of employment with the current employer, with the obligation to provide at least three months' advance notice and under the condition that the worker hold legal residence in the country. Migrant workers who had been subjected to abusive practices by their current employer, such as non-payment of wages or deprivation of fundamental rights set forth in the law, were allowed to change their employer without complying with the conditions and legal periods set forth above. One important practical step had also been taken through the flexible work permit scheme that aimed to regularize the situation of migrant workers in irregular situations. Under this scheme, a migrant worker who had a flexible work permit and had signed a formal employment contract, would be covered by the national laws and regulations of the country governing the employment relationship. Referring to the Committee of Experts' requests for information on the measures taken to raise awareness among migrant workers, the speaker underlined that the national legislation concerning residency had been made available and disseminated in several languages as part of an awareness-raising campaign. Raising awareness of migrant workers' rights was not only the responsibility of the Government, but also the responsibility of the embassies of labour-supplying countries, trade unions and civil society organizations of foreign communities, such as cultural and social clubs. This was the purpose of the "amnesty" periods that had been organized by the Government from 2006 to date, which sought to correct the situation of more than 100,000 migrant workers in irregular situations without imposing any penalties on them or charging them administrative fees. Fourth, regarding the measures taken to ensure equality of opportunity and treatment between women and men in employment and occupation, women's participation in the labour market had increased to around 39 per cent in all sectors of the economy, and the country was considered to be the "best climber in the world on the sub-index of participation and economic opportunities" for women according to the World Economic Forum's 2015 report. A report would be sent in the near future on this topic. Fifth, regarding the measures taken to ensure that sexual harassment was prohibited under the labour legislation, it would be appropriate to seek cooperation with the ILO in order to benefit from its expertise on this topic and enable the development of national legislation in line with international labour standards and other national practices.



**The Employer members** recalled that Bahrain had ratified this fundamental Convention in 1977. The application of the Convention by Bahrain had been the subject of observations by the Committee of Experts in 2012, 2016 and 2017 and had been discussed by the Committee on the Application of Standards for the first time in 2017. The observations of the Committee of Experts focused on the following areas: (i) legislative coverage of all recognized prohibited grounds of discrimination and the application of legislation to all workers; (ii) promotion of the principle of equality of opportunity and treatment between men and women in employment and occupation; and (iii) prohibition of sexual harassment in law and in practice. Taking into account the 2017 conclusions adopted by the Committee on the Application of Standards, the information provided by the Government and its willingness to examine, with ILO support, the possibility of formulating a comprehensive definition of discrimination in compliance with the Convention, the Employer members encouraged the Government to ensure that: (i) national legislation covered all recognized prohibited grounds of discrimination as set out in Article 1(1)(a) of the Convention; (ii) national legislation addressed discrimination in both its direct and indirect forms and discrimination in employment and occupation was prohibited in law and in practice; and (iii) all workers were covered by the protection of anti-discrimination legislation in both the private sector and civil service. In addition, taking into account the Government's indication that it had taken steps to promote the principle of equality of opportunity between men and women in employment and occupation and appreciating the Government's commitment to provide more statistical information, the Employer members requested the Government to: (i) provide information on the steps taken regarding the position of women in the labour market; and (ii) continue to provide statistical information on the participation of men and women in the labour market, disaggregated by sector, occupational category and position in both the public and private sectors, and the numbers of women benefiting from vocational training.

With regard to the comments of the Committee of Experts relating to section 31 of the Labour Law in the Private Sector, which prohibited night work and work in certain sectors and occupations for women, and noting the Government's previous explanation that such measures aimed to protect women from work that was against their dignity, capacities and constitution, as well as the Government's statement before the Committee that women received privileges such as maternity leave and protection against work-related risks, the Employer members expressed concern at the existence of national legislation based on stereotypes regarding women's professional abilities and role in society, which was in contravention of the principle of equality of opportunity between men and women in employment and occupation set out in the Convention. In light of the Government's stated willingness to consider legislative revision, the Employer members encouraged the Government to take the above into account when reviewing the so-called "protective" legislation so as to ensure respect of this principle, and to provide information to the Committee of Experts on all measures taken in this regard. Furthermore, welcoming the Government's condemnation of sexual harassment at the workplace and its commitment to cooperate with the ILO, the Employer members called on the Government to ensure that sexual harassment was adequately prohibited in national legislation and to provide clarification as to existing complaint procedures in this regard. In conclusion, they welcomed the Government's constructive approach to the issue and encouraged it to continue on this path.

**The Worker members** expressed regret that the conclusions adopted by the Committee at its previous session had been given only partial effect. The direct contacts mission

suggested by the Government aimed to assist in implementing these conclusions. However, the fact that the mission had been accepted belatedly (April 2018) meant that the Office had not yet been able to organize it, thus delaying the implementation process. In its observations, the Committee of Experts referred to five major problems with the application of the Convention. First, in respect of the Tripartite Agreements of 2012 and 2014 concluded between the Government, the General Federation of Bahrain Trade Unions (GFBTU) and the Bahrain Chamber of Commerce and Industry (BCCI) with a view to settling the cases of suspensions, dismissals and sanctions imposed on persons who had participated in political demonstrations in February 2011, the Government had provided the Committee of Experts with a report on the measures taken to fulfil those Agreements and had concluded that a solution had been found for almost all of the persons concerned. However, 64 of these cases were still pending because the employers had refused to reinstate those workers. Furthermore, the financial compensation for most of the reinstated workers had not yet been paid by the respective employers, despite the terms of the Tripartite Agreements. Even where workers had been reinstated, discrimination had regrettably been noted: the workers of an aluminium company had had to sign an agreement renouncing their rights, wages, and benefits or annual leave for the period they had been dismissed; 184 workers of an enterprise in the energy sector had not been paid for the period of dismissal; others had received a significant pay cut following their reinstatement, had been assigned to different posts from those they occupied prior to dismissal, or had been demoted. It was clear that the Tripartite Agreements were far from having been fully applied.

Second, Bahraini legislation was still not in conformity with the Convention as, on the one hand, it did not include all the grounds of discrimination mentioned therein and, on the other, it did not apply to domestic workers, security guards, nannies, drivers and cooks. As the conclusions adopted by the Committee in this regard had not been implemented, the expected amendments should be more explicitly defined: (a) the scope of application of the Labour Law of the Private Sector of 2012 (Law No. 36/2012) should be extended to domestic workers and persons regarded as such, including agricultural workers, security house-guards, nannies, drivers and cooks; (b) sections 39 (wage discrimination) and 104 (discriminatory termination) should explicitly cover the grounds of discrimination listed in the Convention. It was particularly important to incorporate these amendments. Acts of discrimination had occurred during the reinstatement of trade union leaders and workers following the events of 2011, in breach of the Tripartite Agreements of 2012 and 2014. The legislation, if not amended, would therefore always allow discrimination in employment based on political opinion. This was what had occurred in 2012, when workers in the aluminium industry had been asked to give up their membership in the GFBTU in order to be reinstated. Additionally, a member of that Federation, who was also a member of the tripartite committee for the reintegration of the unemployed, had been dismissed for a period of six weeks, then reinstated without compensation and forced to take annual leave. The principles of non-discrimination should be applied, in law and practice, both in the private sector and in procedures for access to the public sector. In this regard, the Government maintained that there were no cases of discrimination and that no such complaints had been received; however, several examples demonstrated the contrary.

Third, the Government affirmed that a flexible work permit system had been put in place to enable migrant workers in an irregular situation to regularize their status, enabling them to benefit from social insurance, unemployment insurance and health-care systems. This was a crucial point,

since over 77 per cent of the workforce in the country were migrant workers. However, the system did not apply to skilled workers, workers who had escaped abusive employers, or domestic and agricultural workers. The workers eligible for the permit could only work without a sponsor provided that they covered certain costs, such as annual fees for work permits, health care and a social insurance contribution. This amounted to treating workers as though they were self-employed workers for whom employers had no responsibility. Furthermore, a valid passport had to be presented for a permit to be granted. Migrant workers in an irregular situation, however, did not generally have their passports, as they were most often kept by their previous employers. The Labour Market Regulatory Authority continued to permit employers to include a clause in employment contracts restricting approval of a transfer to another employer for a specified period, which constituted a moderate version of the *kafala* system. The unified employment contract, adopted in 2017, extended only partial protection of the Labour Code to domestic workers, who were only covered if they were recruited by agencies and not by private individuals. The cases of physical and sexual violence towards female migrant domestic workers were also deplorable. Legislation on migrant workers was, therefore, still incompatible with the Convention.

Fourth, in the report sent to the Committee of Experts, the Government had outlined a number of steps taken to promote equality between men and women, but no information was provided on the impact of these steps. The lack of improvement with regard to special protection measures from which women were supposed to benefit was equally regrettable: not only were women prohibited from entering certain professions (beyond what was necessary to protect maternity), but discriminatory practices existed in certain sectors (particularly air transport) that undermined maternity protection (maternity leave classed as unpaid leave or dismissal on grounds of pregnancy).

Fifth, the Committee had adopted conclusions on the lack of a definition and explicit prohibition of sexual harassment in law, but those conclusions had not been followed up. The argument that the lack of harassment complaints showed that there was no need to make the changes requested was unfounded: first, in the absence of a specific framework for harassment, other channels – such as laws on human trafficking – were used; second, a lack of complaints was not the same as saying that harassment did not happen; last, as the Committee of Experts had pointed out, other facts could explain the lack of complaints, such as fear of reprisals, lack of access to complaints mechanisms and means of redress, or even a lack of awareness. The speaker concluded by expressing the hope that the Government would take note of the fact that the delay in implementing the Committee's recommendations, inertia and sometimes even denial of reality were incompatible with progress and the quest for social justice, and that it would act in a determined way to eliminate all forms of discrimination.

**The Employer member of Bahrain** stated that, following last year's discussion, it was important to highlight the close tripartite cooperation between the social partners and the Government through bilateral and tripartite committees. He recalled the key role played by the BCCI in resolving the situation of those who had been dismissed, by persuading companies to provide satisfactory and compatible settlements, ensuring sound working relations and safeguarding the rights of all parties. Companies had covered the insurance contributions of dismissed workers during the period of separation to ensure continuous coverage without interruption. Moreover, the Committee on the Application of Standards and the ILO should acknowledge all the measures and initiatives taken by the Government to combat discrimination and to apply the principles of the

Convention. The procedures available in the country to guarantee the rights of workers, such as complaint mechanisms, grievance procedures and the right to litigation, constituted pioneering measures contributing to the effective protection of workers' rights. The speaker considered that the panoply of regulations and measures adopted by the Government were progressive and had had a significant positive impact on the workers of Bahrain. With regard to the issue of equality of opportunity between men and women in employment and occupation, it was important to highlight the increasing percentage of women's participation in the labour force year after year, which had reached about 39 per cent of the total national workforce. Bahraini women had proven their ability to reach the highest levels of employment, including CEOs of major companies in the country, and had developed sophisticated business models. Moreover, during the recent elections of the BCCI board of directors on 10 March 2018, three women had been elected to the board. The speaker emphasized the importance of continuing to hold fruitful tripartite meetings, which contributed to the adoption of measures promoting decent work opportunities and equality and combating discrimination. Technical cooperation programmes, in collaboration with the ILO, would support the development of common relations and raise the level of compliance with international labour standards.

**The Worker member of Bahrain** welcomed the acceptance by the Government of a direct contacts mission and inquired about its time frame, stressing the need for the mission to meet with all the relevant parties who had participated in the adoption of the Tripartite Agreements. The matters dealt with in the Agreements had not yet been resolved, as there were still workers who had not been reinstated and who had been without work for more than seven years. There were even a number of workers who had not returned to their former positions and had been demoted to lower level jobs. It was inaccurate to say that this case was closed, as the National Tripartite Committee had held only two meetings during the past year and had made no progress in this regard. The speaker also considered that re-examining the justification of the 165 cases did not make sense, as they had already been discussed and finalized within the framework of the Tripartite Agreement of March 2014. Regarding the dismissed workers who had been rehired in other jobs or who had obtained commercial registers, it was important to record that this had occurred because of their personal persistence when they despaired of being reinstated. There was not any support received from the Ministry of Labour in this regard. Currently, 64 cases of dismissal among the 165 were still pending. In order to facilitate the quick resolution of these cases, the GFBTU had selected a priority group of 37 cases of workers who had been working in the biggest government-owned companies and public institutions and had submitted the list to the Government. The speaker further insisted that this initiative was not meant to do away with the rest of the 165 cases. The speaker also insisted on the importance of respecting the Tripartite Agreements as constituting a binding contract between the three parties, which aimed to strengthen social dialogue under the auspices of the ILO.

These Agreements had provided a legal framework complementing the national labour law, and therefore should not focus only on the reinstatement of the dismissed workers, although this matter was at the heart of the Agreements. In addition, it was crucial to take the following measures as specified in the Tripartite Agreement: (i) avoid the recurrence of dismissals of workers for the same reasons as in the complaint. The GFBTU had been regrettably registering cases of dismissal and suspension of workplace entry badges on the same discriminatory background mentioned in the complaint, and the Ministry of Labour and

Social Development was accordingly kept aware of this situation; (ii) establish a tripartite mechanism/body to follow-up on cases of discrimination in employment and occupation and to ensure conformity with the Convention, as proclaimed in both the Convention and the Tripartite Agreement. For instance, section 39 of the Labour Law of the Private Sector had ignored the comprehensive definition of discrimination enshrined in the Convention and had limited it to the subject of remuneration, thus leaving the door open to other forms of discrimination in employment and occupation; (iii) provide financial compensation and social insurance coverage to the reinstated workers for the period of the dismissal; (iv) ratify 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), as there were tens of thousands of workers in the government sector who had been denied the right to organize under Circular No. 1 of 10 February 2003 on the right of civil service workers to join workers' unions, the establishment of unions in public sector institutions was illegal, in violation of the Constitution of Bahrain, which did not distinguish between workers in the private and public sectors as far as the right to establish trade union organizations was concerned; and (v) ensure respect for the Constitution of Bahrain, which proclaimed in its article 37 that international Conventions and Treaties, once ratified, had the force of law. Therefore, all requirements contained in the Convention were legally binding. The speaker expressed his readiness to continue to cooperate with the Government and the social partners in order to better implement the provisions of the Convention and the Tripartite Agreement.

**The Government member of Kuwait**, speaking also on behalf of the Government members of the United Arab Emirates, Saudi Arabia, Oman and Yemen, welcomed the efforts made by Bahrain to give effect to the observations of the Committee of Experts and to fulfil its obligations relating to the application of the Convention. The Government had already undertaken to give effect to the conclusions of the Conference Committee at its 2017 session, and had fulfilled its commitments. It was necessary to give the Government sufficient time to implement all of the recommendations that had been made, particularly those relating to legislative amendments. The absence of a definition or a specific legal text did not necessarily mean that workers were deprived of protection. Their rights were protected by the administrative and judicial authorities. The action taken by the Government should be welcomed and it was to be hoped that the Committee would take into account the results achieved and the close cooperation between the social partners. The Government should also be encouraged to continue promoting social dialogue with a view to reinforcing decent work and ensuring equality between all individuals. The speaker called on the ILO to develop technical cooperation programmes in the countries mentioned, with a view to strengthening commitment to the implementation of international labour standards.

**The Government member of Bulgaria**, speaking on behalf of the European Union (EU) and its Member States, as well as Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Norway, recalled that these countries attached great importance to the respect of human rights, as safeguarded by the fundamental ILO Conventions and other human rights instruments. The EU was engaged in promoting their universal ratification and implementation, as part of its Strategic Framework and Action Plan on Human Rights. Regrettably, this case had already been discussed in the Committee last year, as well as at the ILO Governing Body some years ago following a complaint made by workers under article 26 of the ILO Constitution. According to the allegations, suspensions and various forms of sanctions had been imposed on trade union

leaders and members as a result of demonstrations in February 2011. In 2012 and 2014, tripartite agreements had been reached, and a National Tripartite Committee had been created to ensure follow-up on the cases. The updated information submitted by the Government regarding the settlement of the cases was welcomed but it was necessary to receive evidence that the 165 cases of dismissed workers had been resolved. The speaker asked the Government to indicate what conditions had to be fulfilled in order to obtain a certificate of rehabilitation for workers who had been convicted by a judicial decision. She recalled the Committee's conclusions adopted in 2017, in particular that the Government had been requested: (i) to formulate a definition of discrimination that covered all workers in all forms of employment, and to prohibit direct and indirect discrimination based on all grounds covered by the Convention; and (ii) to ensure comprehensive protection of civil servants against discrimination through the amendment of Legislative Decree No. 48 of 2010 regarding the civil service. It was regrettable that no measure had been taken to address these two issues. The speaker called on the Government to provide information on the specific measures adopted to ensure the effective protection against discrimination, based on all the grounds set out in the Convention, of migrant workers, in particular as regards the very vulnerable domestic workers who were mostly women. She welcomed the new legislation rendering it mandatory for employers to deposit the salaries of domestic and unskilled workers in bank accounts, and looked forward to its effective implementation before the end of 2018. Noting with interest the process initiated by the Government with a view to abolishing the *Kafala* system and the introduction in 2017 of a flexible work permit system in order to allow migrant workers to change employers, she called on the Government to ensure that any rules adopted to regulate this right did not impose conditions or limitations that would increase the migrants' dependency on their employers and thus their vulnerability. In view of the allegations of the International Trade Union Confederation (ITUC) regarding the limitations of the flexible work permit system, the speaker requested the Government to provide information on the practical implementation of the system, including the number of cases where transfer to another employer had not been approved. The Government was invited: (i) to provide more information on efforts made to inform migrant workers and their employers of existing mechanisms to advance their claims to the relevant authorities; and (ii) to enhance the capacity of competent authorities and institutions to identify and address cases of discrimination. The speaker noted with interest the information provided by the Government on measures taken with regard to equality of opportunity and treatment between men and women in employment and occupation and indicated that further information on the concrete impact of such measures, notably on increasing the number of women in leadership positions and improving their situation in the labour market, would be welcomed. In view of the fact that, despite being prohibited in the Penal Code, sexual harassment was neither defined nor prohibited in labour law, and given the sensitivity of the issue, the heavier burden of proof and the limited scope of the Penal Code, the Government was called, once again, to include provisions to that effect in the labour or civil law, to take measures to prevent sexual harassment in the workplace and to provide remedies to victims and impose dissuasive sanctions on perpetrators. The lack of complaints did not mean that there was no harassment in practice. The speaker encouraged the Government to avail itself of ILO technical assistance, in order to adopt the legislative and practical measures necessary to address the issues raised by the Committee of Experts.

The **Employer member of Kuwait** welcomed the close cooperation between the social partners in bipartite and tripartite commissions. The Government had made a positive contribution to the action taken with regard to the cases of workers who had been dismissed in the public and private sectors following the events of February and March 2011. The Government had played an active role, in collaboration with the employers, to find a satisfactory solution through the reinstatement of the workers, while guaranteeing good labour relations and the protection of their rights. The Committee should take into consideration the initiatives taken by the Government to combat discrimination and to give effect to the principles set out in the Convention. Procedures had been established for that purpose to safeguard the rights of workers, including access to justice and the right to lodge complaints. Those progressive measures were contributing to the protection of workers, not only against discrimination, but also against any violation of their rights. With reference to equality of opportunity for men and women, there had been a significant increase of participation of women in the labour market and they benefited from the privileges set out in the national legislation. In practice, women occupied positions with high levels of responsibility in the same way as men, including as ministers, ambassadors and presidents of administrative boards in the private sector. In conclusion, he encouraged the Government to avail itself of ILO technical assistance, which would contribute to the development of harmonious mutual relations and the promotion of international labour standards.

The **Government member of the United Arab Emirates** said that his country appreciated the efforts made by the Government to fulfil its obligations in relation to the ILO, including to give effect to the observations made by the Committee of Experts on discrimination in employment and occupation. The Government however needed more time to put the observations into practice. It was making substantial efforts to strengthen the rights of workers and to provide comfort and well-being for the residents of the country, as illustrated by the legislative reforms undertaken. Indeed, workers and employers were protected against any form of discrimination, work permits were granted in a flexible manner and the protection of wages was guaranteed, as well as the right to change employer. More time would be needed to assess the impact of the effect given to the observations of the Committee of Experts, as legislative reforms required time to deliver results. Finally, the technical assistance provided by the ILO was greatly appreciated.

The **Worker member of the Philippines** stated that many Filipinos considered themselves lucky to be working in “progressive and very open” Bahrain. While working, they even brought their families to reside and live in that country. There were 60,000 Filipinos living and working in Bahrain, and they included professional, skilled and semi-skilled workers as well as household domestic workers. About half of the overseas Filipino workers were domestic workers, and Bahrain had been the first and only country in the region to include, though partially only, domestic workers into its labour law. However, the national legislation did not comply with ILO standards concerning domestic workers. Domestic workers remained excluded from critical protections, such as a fixed minimum wage, limits on working hours, mandatory rest hours or weekly days off, and the recent flexible work permit system adopted by the Government would not be enough to tackle exploitation of workers. First of all, not all categories of workers were eligible to apply for this system. For example, skilled workers and “runaway workers”, a category that included workers who had escaped abusive employers, were not eligible for the system. Also, the unified contract for migrant domestic workers only covered those workers recruited by

agencies, and could not be considered as a full protection. Under the unified contract, employers should declare, among other things, the nature of the job, work and rest hours and weekly days off. Yet, the responsibility to translate the contract and inform the domestic worker of all details of the job offer remained solely with the recruitment agencies, allowing the possibility of misinforming the domestic workers about the terms and conditions of the job. Domestic workers were particularly vulnerable to excessive working hours, and many domestic workers worked up to 19 hours a day with no rest day. The speaker concluded by urging the Government to amend national labour legislation to ensure that all migrant workers were fully covered by the provisions of labour law, in order to protect them from any direct or indirect discrimination.

An **observer representing Education International (EI)** indicated that the situation of teachers and public service workers in Bahrain remained extremely serious. Discrimination, mostly based on sectarian or political grounds, was still firmly entrenched. This prevented many teachers from exercising their profession and vocation, affected their working conditions, and prevented them from being able to associate in trade union organizations. Public sector unions were still prohibited. The Bahrain Teachers Association (BTA) had been dissolved by the authorities in April 2011 and its leaders, Mr Mahdi Abu Dheeb and Ms Jalila Al-Salman, had been accused of political activism and arrested. Mr Abu Dheeb had been released after five years of imprisonment, following intense pressure from the ILO and the international trade union movement. The severe detention conditions had taken a serious toll on his health. No detailed explanation had been given by the Government regarding the reasons for his conviction and detention. Travel bans had been imposed on both Mr Abu Dheeb and Ms Al-Salman on a recurring basis in past years (as recently as September 2017), preventing them from speaking freely about the plight of teachers and unionists in Bahrain. Many other teachers who had been involved in the peaceful protests of 2011 had also been discriminated against on grounds of opinion, belief and trade union affiliation: they had lost their jobs and had not yet been reinstated nor had they received any compensation. The BTA could not operate or communicate efficiently with teachers who were afraid to report what had happened to them, as long as the Government remained hostile. Meanwhile, the Ministry of Education had hired 9,000 expatriate teachers, whereas at least 3,200 Bahraini graduates with degrees in education remained unemployed, all of them belonging to the Shia community. It should also be noted that expatriate teachers were employed on more favourable terms and conditions and were fast-tracked into positions, while Bahraini teachers had to qualify through exams and lengthy assessments.

The **Worker member of the United States** noted the Government’s acknowledgement that the lack of a definition of sexual harassment in legislation was problematic. The GFBTU had received reports of harassment establishing that sexual harassment certainly occurred, even if there were no officially reported cases. Sexual harassment was a serious form of sex discrimination in violation of the Convention and formed a barrier for women in the workplace. Without a definition of sexual harassment, women could not point to a standard in order to inform their employers that something unacceptable was happening; likewise, employers did not have a guideline to measure when supervisors were acting inappropriately. As sexual harassment involved one person asserting power over another, laws preventing it were particularly important at work, where the power dynamic already tipped in the employer’s favour. The general penal provision outlawing violence and aggression was inadequate to address sexual harassment in the workplace, because it focused on sexual assault. However, sexual harassment encompassed a range of activities

far broader than that, and holding individuals accountable under penal law failed to impose any obligations on employers to provide harassment-free workplaces. That legal scheme, therefore, acted more as a mechanism for punishment than as a tool for prevention and elimination of sexual harassment in the world of work, as envisaged by Article 2 of the Convention. The speaker hoped that the Committee's conclusions would include recommendations for a law broadly defining sexual harassment, including prohibitions on unwelcome sexual advances, requests for sexual favours, any kind of verbal or physical harassment of a sexual nature and offensive remarks about a person's sex, so that both hostile environment and quid pro quo harassment would be unlawful. This law should cover both domestic and migrant workers. Also, a mechanism should be created whereby victims of harassment could lodge complaints that would be investigated and prosecuted, while the existing laws should be amended accordingly, including the Labour Law of the Private Sector and Legislative Decree No. 48/2010. Finally, the speaker called for an educational campaign on this topic.

**The Government member of Egypt** welcomed the efforts made by the Government for the reinstatement and compensation of dismissed workers. The amendments to the Labour Code offered the best guarantee of the rights of migrant workers, for example, by permitting them to change employers without imposing abusive conditions. The amendments also enabled workers to obtain work permits under less strict conditions. The increase in the participation rate of women on the labour market showed the Government's efforts to actively give effect to the provisions of the Convention. The speaker encouraged the Government to strengthen its cooperation with the ILO in order to improve the application of the provisions of the Convention in law and practice.

**The Worker member of Norway**, speaking on behalf of the Worker members of the Nordic countries and the United Kingdom, recalled that migrant workers constituted around 77 per cent of the workforce in Bahrain. Many were exploited and deprived of their economic and social rights. In May 2017, the Ministry of the Interior had introduced a pilot scheme for a flexible working permit for limited categories of migrant workers in irregular situations, permitting them to work without a sponsor, provided that the workers covered certain costs, such as fees for work permits, health care and social insurance. It was anticipated that the Ministry of the Interior would issue up to 2,000 permits per month. However, many workers who had a sponsor were not eligible for the flexible work permit scheme, such as skilled workers and workers who had escaped abusive employers. Moreover, workers had to provide a valid passport in order to apply for a permit and many migrants were not in possession of their own passports. In addition, domestic workers and agricultural workers were excluded from this scheme. It was estimated that there were more than 100,000 domestic workers in Bahrain, who were excluded from a number of labour law provisions. The speaker further emphasized that there was no minimum wage protection. The wage gap between migrants and nationals was huge, and migrant workers were excluded from insurance for old age, disability and death. According to the 2017 Trafficking in Persons (TIP) Report, issued by the United States Department of State, officials from the Government and non-governmental organizations had reported that physical abuse and sexual assault of female domestic workers were significant problems in Bahrain. In addition, domestic workers often worked up to 19-hour days with minimal breaks, being only partly covered by the labour law and without receiving overtime pay. National laws excluded private homes from labour inspection, effectively resulting in a total absence of labour inspection into the conditions of work of domestic workers.

The speaker concluded by expressing full support for the recommendations of the Committee of Experts, urging the Government to take quick and urgent action to ensure legal protection for migrant workers.

**An observer representing the International Transport Workers Federation (ITF)** indicated that, in December 2017, the ITF and the GFBTU had been received by the country's Minister of Labour and Social Development to discuss maritime labour issues. At that meeting, the Government had expressed its firm commitment to protecting the labour rights of maritime workers and the Minister had reiterated his willingness to cooperate with international workers' organizations such as the ITF. The speaker hoped that this commitment to protecting workers' rights would also translate into a pledge by the Government to fully implement the Tripartite Agreements of 2012 and 2014. There were still a number of workers named in the annexes to the Tripartite Agreements (including transport workers) whose cases had not been resolved. Those workers needed to be reinstated or offered alternative employment and receive financial compensation and statutory entitlements for the entire period of their dismissal. The speaker recalled that this was the second consecutive year that the Committee on the Application of Standards had examined Bahrain's failure to develop a legal framework to protect the rights of women workers in line with the Convention and to enforce existing legal provisions. With regard to the latter, despite several provisions in the law relating to maternity protection, the country's leading airline maintained policies and practices that directly contravened these laws. At the airline, not only was maternity leave unpaid, but the worker was also required to pay the employer's social security contributions during the leave period. Pregnant migrant workers were forced to vacate their paid company accommodation and find an alternative one at their own expense. Incredibly, a pregnant worker could expect her employment contract to be automatically terminated once she declared her pregnancy – with no guarantee of reinstatement. In three recent cases, crew members had not been reinstated after maternity leave. While the Bahrain Civil Aviation Law required annual medical assessments for flight crews, the airline took advantage of this requirement in order to carry out compulsory pregnancy testing. The company's recruitment practices were no better. The airline had recently listed vacancies for cabin crew on its website, but only single persons without children had been invited to apply. Distinctions in employment based on pregnancy or maternity were considered to be discriminatory under the Convention, as they could only, by definition, affect women. The Committee of Experts had repeatedly stressed that discrimination on these grounds constitutes a serious form of discrimination on the basis of sex. In conclusion, the speaker urged the Government to bring its legislation into line with the Convention, in consultation with the social partners, and to resolve the outstanding cases covered by the Tripartite Agreements within 12 months. He also called on the Government to ensure that its labour inspectorate was adequately resourced to tackle gender-based discrimination in the workplace.

**The Government member of Switzerland** said that he supported the statement made by the Government member of Bulgaria on behalf of the European Union and its Member States, as well as Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Norway.

**The Employer member of Algeria** said that she had closely followed the Government's statement that the Labour Ministry had redressed the situation of dismissed workers, either by reinstating them or by offering them a new job. With regard to other workers, the Government had had recourse to social insurance. There did not seem to be any discrimination in employment in the country, but the Com-

mittee of Experts was nevertheless requesting the promulgation of supplementary legislation. In this regard, ILO technical assistance was greatly appreciated. The legislative reform undertaken by the Government, in consultation with the social partners with a view to promoting migrant workers' rights, was a strong example of tripartite willingness to ensure good working conditions without discrimination. The Government was taking measures to ensure that women held significant positions in the labour market, while also guaranteeing that sexual harassment was prohibited in labour law. The rate of women's participation in the labour market, both in the private and public sectors, hovered between 36 and 39 per cent. She hoped that the Committee of Experts would take into consideration the efforts made by the Government and that the Office would provide the technical assistance necessary to strengthen Bahraini labour law in conformity with the Convention.

**An observer representing the World Federation of Trade Unions (WFTU)** indicated that workers' organizations in the public sector benefited from the same privileges as those in the private sector. Moreover, dispute resolution mechanisms were available to examine the application of the legislation.

**The Worker member of Sudan**, speaking also on behalf of the Worker members of Bahrain, Kuwait, Morocco, Saudi Arabia and the United Arab Emirates, affirmed that the Bahraini people, without distinction, enjoyed freedom to participate in political life and that there was no discrimination based on political opinion. Similarly, there had been no dismissals on the basis of political opinion. All those who had been dismissed during the events of 2011 had been reinstated. Moreover, all allegations made by the ITUC concerning such dismissals were unfounded, ill-intentioned and did not reflect reality. According to an international investment bank, foreign workers living in the country enjoyed very good working conditions. In this regard, Bahrain was ranked in second place among the Gulf countries and tenth place worldwide. With regard to equality of opportunity in employment and occupation, Bahraini women occupied senior posts. In 2017, women occupied 48 per cent of public sector posts, 37 per cent of senior management posts, 59 per cent of middle-management posts and 32 per cent of decision-making positions in the executive branch. In addition, the country had the highest rate of independent business women (28 per cent) among the countries in the Middle East and North Africa. According to a 2016 ILO report, there had been an increase in the rate of women in positions on companies' executive boards (from 12 to 14 per cent). These changes constituted real success, since certain posts had for a long time been monopolized by men, particularly political, parliamentary, judicial, diplomatic and military functions. In conclusion, no one could deny the progress that had been made to protect workers, and the insistence on placing Bahrain on the list of individual cases, while omitting many countries which imprisoned, killed and persecuted workers' representatives, was surprising.

**The Worker member of Spain** considered that, seven years after the demonstrations of 14 February 2011, the situation had reached a tipping point as the Bahraini people had been placed under pressure by various means. In terms of issues relating to the implementation of the Convention, reference should be made to a number of measures, including forced unemployment, the non-hiring of workers for political reasons and the withdrawal of Bahraini nationality. The latter was a particularly worrying practice for Bahraini workers who, in many cases, had been stripped of their nationality for political reasons. Over the previous six years, the system had gradually started punishing and silencing political opponents and defenders of civil liberties, including trade union leaders. Since 2012, a total of 719 people had been stripped of their nationality, and

213 citizens had been stripped of their nationality in 2018 alone. This was a clear violation of the Universal Declaration of Human Rights, which established that all people had the right to nationality and that nobody could be arbitrarily deprived of it. The consequences were dramatic: citizens who had had their nationality revoked were considered migrant workers and, under Legislative Decree No. 36 of 2015, were denied all rights and benefits, including social security benefits, despite having contributed to the system for years. The situation was playing out against the backdrop of a labour market which largely depended on a migrant workforce that was unskilled and badly paid. The public sector mainly employed people born in the country, while immigrants were mainly employed in the private sector. For example, Mr Hussein Khair Mohammadi, Vice-President of a trade union at enterprise level, after refusing to be pressured into leaving his trade union post, had had his nationality revoked in January 2017, along with his right to work and to social security. Such practices were discriminatory and were blatant violations of Article 5 of the Convention.

**The Government representative** reaffirmed his Government's commitment to take into consideration the Committee of Experts' comments, and underlined the following: (i) the resolution of the cases of the dismissed workers had not yet been closed and the process was still ongoing; (ii) the certificate of rehabilitation was a procedure under the Criminal Procedure Law and not necessarily a condition for employment in some companies; and (iii) the flexible work permit scheme had been a positive step that guaranteed the rights of the workers concerned. Regarding the prerequisite of a valid passport, this problem should be resolved by the relevant embassies. The speaker reaffirmed the Government's commitment towards the ILO supervisory bodies, and highlighted the importance of ensuring more transparency in the selection of the list of cases.

**The Worker members** drew the Government's attention to the fact that the objective of the Committee's conclusions was to generate specific changes. The Government should therefore: (i) take the necessary measures to enable the direct contacts mission to be carried out as soon as possible; (ii) ensure the proper implementation of the Tripartite Agreements and communicate detailed information on this subject to the Committee of Experts; and (iii) adopt a definition of discrimination in the legislation that is in conformity with the Convention, ensuring that this legislation covered all categories of workers, especially those most in need of protection. They reiterated that the Labour Law of the Private Sector of 2012 (Law No. 36/2012) should be amended to extend its scope of application to domestic workers, and persons regarded as such, and set out, in articles 39 and 104, all the grounds of discrimination listed in the Convention. Legislative Decree No. 48/2010 should be amended to ensure that public workers enjoyed adequate protection against direct and indirect discrimination in employment and occupation, on all the grounds set out in the Convention. This protection should not only be provided for in law, but also in practice. With regard to migrant workers, application of the flexible work permit scheme should be extended to skilled workers, domestic and agricultural workers, and workers who had fled their employers due to abuses. All social contingencies should be covered, including old age, and all contributions should be paid by the employer. It was essential to extend application of the labour law to all domestic workers, irrespective of how they were recruited, and to ensure that they benefited from all protections provided for in law, particularly the right to a minimum wage and limits on working hours. In addition, measures effectively protecting women's rights should be adopted, including measures to enable women to access certain occupations and maternity protection. The

Government was also invited to formulate legislation defining and explicitly prohibiting sexual harassment.

The Employer members welcomed the commitment of the Government to continue to cooperate with the social partners and to provide additional information to the Committee of Experts regarding measures taken to ensure conformity with the Convention. They took due note of the statements made by several members of the Committee, welcoming the efforts undertaken by the Government, acknowledging positively the increased participation of women in the labour market, calling on the Committee on the Application of Standards to recognize the efforts made and encouraging the Government to continue to strengthen social dialogue and to avail itself of ILO technical assistance. The Employer members noted in a positive spirit the Government's acceptance of a direct contacts mission, which would assist in the submission of additional information to further assess the situation. Furthermore, they called on the Government to ensure that: (i) the national legislation covered all recognized prohibited grounds of discrimination set out in Article 1(1)(a) of the Convention, and a comprehensive definition of discrimination was formulated in the legislation in compliance with the Convention; and (ii) discrimination in employment and occupation was prohibited in law and practice both in the private and public sectors. The Government should continue to furnish information concerning measures taken on the above and in regard to the position of women in the labour market. They also encouraged the Government to take advantage of the review of "protective" legislation to ensure, in law and practice, respect for the principle of equality of opportunity and treatment between men and women in employment and occupation. Lastly, the Employer members urged the Government to ensure that sexual harassment was adequately prohibited in national legislation, and to provide the Committee of Experts with information on steps taken to this end.

### Conclusions

The Committee took note of the oral statements made by the Government and the discussion that followed.

Taking into account the Committee's conclusions of 2017, the Committee notes with interest the Government's stated commitment to accept a direct contacts mission in short order.

The Committee noted the Government's stated commitment to formulate a comprehensive definition of discrimination in line with the Convention. The Committee regretted the absence of information with respect to allegations concerning the operation of the flexi-scheme and its impact on the labour protections afforded to migrant workers.

Taking into account the Government's submission and the discussion that followed, the Committee called upon the Government to:

- provide further information on the measures taken to implement the commitments contained in the Tripartite Agreements of 2012 and 2014 in connection with the Government's efforts to comply with Convention No. 111 to the Committee of Experts for its November 2018 session;
- ensure that all the outstanding cases of reinstatement and compensation for the cases falling under the scope of the Tripartite Agreements are resolved expeditiously;
- ensure that the Labour Law in the Private Sector of 2012 and Legislative Decree No. 48 of 2010 cover all recognized prohibited grounds of discrimination set out in Article 1(1)(a) of the Convention, in both direct and indirect forms, and undertake measures to ensure that discrimination in employment and occupation is prohibited in law and practice;

- ensure that migrant workers as well as domestic workers are included in the protection of anti-discrimination law;
- repeal any provisions that constitute an obstacle to the recruitment and employment of women in order to ensure equality of opportunity and treatment in employment of women; and
- ensure that sexual harassment is explicitly prohibited in the civil or labour law and that necessary steps to introduce preventive measures are taken.

Having noted the Government's stated commitment to accept a direct contacts mission, the Committee encouraged the Government to address the Committee's recommendations. The Committee requested that the Government reports in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2018.

The Government representative referred to his Government's opening statement which was clear and contained a lot of information on the application of the flexible work permit system. Further information would be provided in the course of the year. The fact that the flexible work permit system was a pilot being implemented for the first time in the region should be taken into consideration. His Government was ready to cooperate with the ILO and accepted the recommendations, noting that these were the same as those adopted following the previous discussion in 2017. Contact would be maintained with the Office to identify a suitable time for the direct contacts mission, which he expected would lead to a successful outcome.

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### Employment Policy Convention, 1964 (No. 122)

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#### LIBYA (ratification: 1971)

A Government representative expressed surprise that the Committee on the Application of Standards had included his country in the list of cases prepared by the social partners, as his Government had never failed to respect its ILO constitutional commitments. Referring to the Committee of Experts' comments regarding the complicated situation in the country, the speaker hoped that his Government would soon be able to provide detailed and comprehensive information on its envisaged labour market strategy and means of achieving its employment goals. Indeed, the National Reconciliation Government recognized by the international community had encountered difficulties in being accepted in some parts of the country, which made it challenging to undertake any surveys or studies, or to acquire detailed and adequate information. Hence, more time than usual was called for. Moreover, the existence of a parallel government placed some labour offices in the municipalities (which were affiliated to the Ministry of Labour of the National Reconciliation Government, but were geographically under the control of the parallel government) in a difficult situation with regard to administrative procedures.

Regarding the comments made by the Committee of Experts concerning the Government's establishment in 2012 of a committee to revise the Labour Market Strategy, the speaker stated that the National Planning Council had issued the Libyan National Strategy for Human Development and Empowerment for 2013–14 (the "Strategy"). The Strategy focused, among other things, on: (a) transformational training for graduates whose qualifications did not meet labour market requirements; (b) encouraging self-employment through the creation of small and medium-sized enterprises (SMEs); and (c) establishing a comprehensive database for human resources and job opportunities to determine the extent of the developmental and economic reality in the country in order to identify human resource requirements. The Strategy also specified six main strategic goals in relation to training and the workforce, which were

to: (a) increase the rate of full and decent employment for all those able to work; (b) address the problems of seasonal and disguised unemployment and consider activating the social security law to avoid criminal behaviour that could result from an interruption of income; (c) emphasize the adoption of vocational guidance and counselling methods for new entrants to the labour market, and enlarge the participation of the private sector in vocational and technical training; (d) increase the number of seminars and studies dealing with human resources and enabling participation in these at home and abroad, as well as working to review the policies, activities and procedures of recruitment and development of legislation to respond to globalization and liberalization of world trade and the information age; (e) change the path of women's work through empowerment and capacity building: (i) participate effectively in economic activity; (ii) affirm the trend towards equality of opportunity; (iii) change the stereotypical image of women's work; and (iv) reorganize the labour market to respond to the requirements and methods of economic activity in the era of globalization and informatics; and (f) consider the growing number of persons of working age as an opportunity rather than as a problem and develop methods and mechanisms of training and vocational and technical rehabilitation, which respond to the introduction of advanced methods in the field of training, continued distance training, transformational training and other training modalities. Concerning the latest statistics of the labour market, despite the difficulties on the ground, the Information and Documentation Centre in the Ministry of Labour and Rehabilitation (the "Centre") issued some statistics. These, however, did not cover the entire country and related only to the western region of the country. The Centre clarified that the number of jobseekers who had been registered up to 31 December 2017 totalled 137,000, but that 12,000 were excluded, as they were found to be holding two jobs, despite the fact that civil servants were prohibited by law from doing so. Another 11,000 jobseekers were excluded from the total due to being registered twice in areas where labour offices had been newly established. Therefore, the number of registered jobseekers in the western region alone totalled 88,000. Moreover, the Libyan Multi-Purpose Survey Project 2017–18 was being implemented and the survey results were expected to assist in the development of an employment policy with the participation of the social partners.

As for SMEs, the National Programme for Small and Medium-sized Enterprises was established to develop a culture of innovation in the community and to create a supportive environment for them. In October 2017, the National Reconciliation Government launched a pilot programme to finance SMEs, with the aim of providing job opportunities to youth and limiting unemployment. The programme would provide financial loans to entrepreneurs through commercial banks backed with guarantees from the Lending Guarantee Fund. In addition, business incubators were to be set up throughout the country to provide assistance for projects, and to train those responsible for the projects and prepare plans for them. Commercial banks would undertake to finance up to 60 per cent of the project's cost, provided that supporting project funds contributed 30 per cent of the total value of the project and the beneficiary of the project paid 10 per cent of the remaining cost. Regarding the comments in the Committee of Experts' report observing that the number of persons with disabilities had increased in recent years due to the ongoing conflict, it was worth noting that a special programme had been created for people with disabilities. The General Authority of Families of Martyrs, Amputees and Missing Persons (the "Authority"), in collaboration with the National Programme for Small and Medium Enterprises, had established a special programme for entrepreneurs, known as

"Support Me". On the issue of migrant workers and their presence in the informal economy, the speaker noted that migrants in an irregular situation were reluctant to regularize their situation through registration, due to their fear of being repatriated and their desire to migrate to Europe through the country as one of the transit States south of the Mediterranean. In spite of this, the Government, in cooperation with neighbouring countries, countries of origin and relevant international organizations, had made significant and positive progress in reducing irregular migration, urging migrants to obtain legal status in the country so as to enjoy their rights guaranteed by law for voluntary employment or voluntary repatriation. The Presidential Council of the National Reconciliation Government attached special importance to the right of women and persons with special needs at work without neglecting the rights to education, health, development and other rights that respect the religious and cultural identity of the Libyan people. In this regard, the Council issued Decree No. 210 of 2016 on the establishment of a support and empowerment unit for women employed in state institutions. The resolution aimed to implement policies and programmes to empower women to access their political, economic and social rights and to remove obstacles that limit the exercise of their role in a positive and effective manner.

In conclusion, the speaker considered it important that the ILO and the international community continue to provide the necessary support to the Presidential Council of the National Reconciliation Government to: (a) build and develop institutions and strengthen its authorities throughout the State; (b) support its policy to implement an effective disarmament, reintegration and a decent work programme for young people, and respect for human rights; and (c) preserve dignity and progress in development. More time would, therefore, be requested to respond to the observations of the Committee of Experts.

The Worker members indicated that the leader of the most representative union of the country was unable to attend the International Labour Conference due to the Government's failure to submit the person's name for accreditation and that the relevant complaint would be registered with the appropriate bodies. The speaker acknowledged the conflict situation in the country. According to the reports of the United Nations Support Mission in Libya (UNSMIL), ongoing hostilities across the country continued to result in significant civilian casualties and constantly destabilized the UN-backed National Reconciliation Government. In the month of April alone, there had been 31 civilian casualties. The Government had very limited effective control over security forces. The conflict had destroyed the economy and impaired the delivery of public services. There were reports of over 200,000 internally displaced people. Law enforcement and the judicial services were barely off the ground. The Government reported that companies had left, the number of young people with disabilities resulting from the war was on the rise and the migration situation was out of control. Despite improvements in the conditions of the country in 2011 and 2012, when the war and mayhem commenced, the current situation had become dire. The Government, therefore, had a duty to continue to push for more progress towards stabilizing the country and ensuring economic growth and employment. The Committee of Experts had called on the Government, over a period of years, to inform the ILO of the general situation and trends in the Libyan labour market and the manner in which it achieved its employment objectives in accordance with the Convention, which required each ratifying State to adopt and pursue a frontline policy designed to promote full, productive and freely chosen employment to address unemployment, underemployment and to raise levels of living within member States. The Convention also challenged the dogma that economic growth, guided only by the invisible



hand of market forces, would naturally lead to higher levels of employment and improved living standards for all. It obliged member States to adopt an employment policy aimed at ensuring: (i) that there was work for all who were available for and seeking work; (ii) that such work was as productive as possible; and (iii) the existence of a free choice of employment with the fullest possible opportunity for each worker to qualify for, and to use his/her skills and endowments in, a job for which he/she was well suited. In this process, mutual relationships between employment objectives and other economic and social objectives were to be observed and the stage and level of economic development duly taken into account.

The Government had indicated that the 2004 Employment Policy had undergone several amendments to take current reality into account. The Government further indicated that it had commissioned a committee in 2012 to modify the labour market strategy focused on: (a) measures to address unemployment arising from the halting of development projects due to the war; (b) education and training programmes to address labour market needs; and (c) measures targeting the informal economy and the participation of migrants in labour-intensive activities to achieve full employment. Complying with the Convention would provide the Government with an opportunity to place employment at the heart of economic and social development policies. Based on the assumption that there was a unified Government able to achieve some reasonable stability to ensure a level of macro-stability, the economic prognosis for the country forecast a growth of 15 per cent in 2018, and an average 7.6 per cent growth in 2019–20. It was expected that both the fiscal and current account balances would significantly improve, with the budget and the current account running surpluses as from 2020 onwards. However, it was expected that high inflation and weak basic service delivery would likely increase poverty and exacerbate socio-economic exclusion. The speaker drew the Government's attention to the security crisis that could engender an economic hopelessness, and recommended that the Government be guided by the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), which sets out measures to be taken to generate employment and decent work for prevention, recovery, peace and resilience in crisis situations arising from conflicts. Pursuant to Recommendation No. 205, the Government was urged to: (i) promote full, productive, freely chosen employment and decent work as vital elements to promoting peace, preventing crises, enabling recovery and building resilience; (ii) ensure good and stable governance and combat corruption and clientelism; and (iii) respect, promote and realize fundamental principles and rights at work, other human rights and other relevant international labour standards as appropriate and applicable. In this vein, the speaker expressed concern that the labour relations law limited the right of workers to form and join independent unions. The right to strike was also significantly restricted. The existing labour law required that all collective agreements conform to the "national economic interest", which threatened the free collective bargaining allowed under the labour relations law. The law also gave the Government the power to set and cut salaries without consulting workers. These actions and legal provisions violated the Convention, which provided in its Article 3 that representatives of employers and workers should be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies. The Committee of Experts had pointed out that the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), provided important guidance for the Government. It required member States, in consultation with the most representative organizations of

employers and workers, to promote full, productive and freely chosen employment, and to ensure greater access to income-earning opportunities and wealth creation leading to productive and sustainable employment and to increase economic participation of disadvantaged and marginalized groups. The Committee of Experts had also indicated that there was a need for the Government to establish a labour market information system in compliance with Article 2 of the Convention. Data from the labour market situation and trends were the basis for economic planning, useful comparisons over time, employment target setting and assessing the impact of policy measures. The Government also needed to pay attention to the increasing number of young persons with disabilities as a result of the conflict. The Convention required workforce needs to be met, which meant that labour market measures such as skills development, counselling and other forms of training should be provided to people with disabilities to ensure that they could thrive in the labour market. Regarding the migration crisis in the country, the Government should take account of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), which called for policies to be adopted to ensure that international migration took place under conditions designed to promote full, productive and freely chosen employment. In that light, the Government should be supported to fulfil its duty to adopt measures to respond to the needs of all categories of persons with difficulties in finding employment, including migrant workers. To conclude, the speaker recalled the short-term measures taken by the European Union to support the Government to enforce border controls to curb the use of the country's territory as a transit route for migration to Europe. The long-term and more sustainable strategy should be in line with Recommendation No. 169 to adopt measures, including the implementation of economically and socially viable public investment and special public works programmes, particularly with a view to creating and maintaining employment, raising incomes, reducing poverty and better meeting basic needs.

**The Employer members** recalled that, since the ratification of the Convention in 1971, the Committee of Experts had made six observations and 12 direct requests on the conformity of national law and practice with the Convention. It was the first time that the case of Libya was being examined by the Committee on the Application of Standards relating to the present governance in the context of this Convention. The Employers referred to the provisions of Articles 1 and 3 of the Convention, which set out the obligation to declare and pursue, in consultation with the social partners, an active policy designed to promote full, productive and freely chosen employment which took due account of the stage and level of economic development in the country and the mutual relationships between employment objectives and other economic and social objectives. With respect to those Articles of the Convention, the Committee of Experts took note of the information provided in the Government's report on: (i) the introduction of several amendments to the active employment policy with the aim of bringing it into conformity with the reality on the ground and achieving the employment objectives by focusing on several pillars, which included measures to combat unemployment resulting from the halting of development projects due to the war, education and training measures, among others, focusing on the informal economy and the participation of migrants in labour-intensive activities; (ii) the increased participation of women in the labour market, which had risen by 250 per cent between 2007 and 2012; and (iii) the increase in the number of young persons with disabilities as a result of the conflict and the rise in irregular migration.

With respect to the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee on the Application

## Employment Policy Convention, 1964 (No. 122)

*Libya (ratification: 1971)*

of Standards examined the case of Libya in 2017 in relation to the Government's non-compliance with the Convention. During the examination of the case, it was emphasized that the country was in a state of internal war, facing the worst of political crises and an escalation of violence, which included the bombing of hospitals and schools. In this respect, the Employer members regretted that those devastating events were happening in the absence of the rule of law, when there were no valid counterparts and a state of war existed within the country involving various governments and internal guerrilla factions. Sustained and urgent international assistance was required to put an end to the cycle of chaos and widespread abuse that was affecting the country. The rule of law, a fundamental aspect which should never be forgotten, and a single and effective Government, were the beginning of any solution to the chaos prevailing in the country. It was difficult for the Government to intervene effectively in the labour market without the situation of internal warfare first coming to an end and control being re-established over its territory. In that context, the Employer members referred to the Preamble to Recommendation No. 205, which highlighted the importance of: (i) employment and decent work as being vital in promoting peace, preventing crises caused by conflicts, enabling recovery and building resilience; (ii) developing responses, through social dialogue, to crisis situations caused by conflicts, in consultation with the most representative employers' and workers' organizations and, as appropriate, with relevant civil society organizations; (iii) creating or restoring an enabling environment for sustainable enterprises, taking into account the resolution and conclusions concerning the promotion of sustainable enterprises adopted by the International Labour Conference at its 96th Session (2007); (iv) the existence of accessible and quality public services for economic recovery, development, reconstruction, prevention and resilience; and (v) international cooperation and partnerships among regional and international organizations to ensure joint and coordinated efforts. Recognizing the complexity of the situation in the country, the Employer members hoped that the Government would in due course be in a position to provide the Committee of Experts with information on: the labour market strategy; the manner in which it was considered that employment objectives would be achieved; the progress made in the compilation and analysis of labour market data; the measures adopted to promote the establishment and development of SMEs and to increase the labour market participation of persons in vulnerable situations; and updated statistical information. In that respect, they invited the Government to avail itself of ILO technical assistance. Lastly, the Employer members launched an urgent call to the international community and to employers' and workers' organizations to work together in a coordinated manner with a view to bringing the armed conflict to an end as soon as possible. They also called on the ILO to support the Government through technical assistance with the aim of re-establishing labour institutions in Libya so that the objective of full, productive and freely chosen employment could be achieved, in accordance with the provisions of the Convention.

The Worker member of Italy recalled that, in its comments, the Committee of Experts took note of the information provided by the Government in relation to the establishment in 2012 of a commission to modify the labour market policy, which included measures such as the promotion of the participation of migrants in labour-intensive activities. However, such commitment did not materialize.

According to the 2018 Amnesty International report, at least 7,000 migrants and refugees were languishing in Libyan detention centres where abuses were rife, and food and water were in short supply. According to the UN High Commissioner for Refugees (UNHCR), only in April 2018,

the Coast Guard intercepted 1,485 women, men and children at sea and brought them back to the country. Once intercepted, refugees and migrants were transferred to detention centres run by the Department for Combating Illegal Migration (DCIM). Furthermore, in its 2017 observation on Libya's application of the Forced Labour Convention, 1930 (No. 29), the Committee of Experts observed that migrants had been subjected to financial exploitation and forced labour. While acknowledging the complexity of the situation unfolding in the country, the speaker stressed that any labour market strategy or employment policy developed by the Libyan authorities should not compromise human and workers' rights or promote exploitation. Instead, it should ensure basic respect for human rights and access to basic public services for the most vulnerable groups. The speaker added that the Government could not be considered a safe country to be assigned the responsibility of managing migratory movements along the central Mediterranean route to Europe. In light of bilateral relations with the European Union, it was unacceptable to tolerate pushbacks or collective expulsions. New safe and regular channels to Europe for migrants and refugees should be established, including through humanitarian resettlements and visas. The speaker also raised a concern regarding the application of Article 3 of the Convention by Libya, which requires member States to take fully into account the views of social partners when designing and implementing an active employment policy. Finally, the speaker concluded that it was regrettable that the General Federation of Libyan Trade Unions could not express its views in this respect, as they were not allowed to be members of the Libyan delegation.

The Government member of Egypt appreciated the information provided by the Government which outlined its efforts in providing employment opportunities and welfare to groups in vulnerable situations. Of particular importance was the strategy issued by the Government to: (a) develop human resources with an interest in vocational training; (b) encourage SMEs to address unemployment; (c) empower women and ensure their effective participation in the labour market; and (d) establishment of the special financial programme for persons with disabilities to enable them to set up their own projects. All of these efforts were undertaken by the Government in spite of the difficult circumstances that the country was facing. This demonstrated the Government's full awareness of the importance of providing decent and productive work for every jobseeker and these factors should be taken into consideration when examining the country's case. The Government was encouraged to continue its efforts to attain the projected goals of its labour market strategy. In this regard, the ILO was urged to provide the Government with the necessary technical assistance.

An observer representing the International Transport Workers Federation (ITF), also speaking on behalf of the Dockers' and Seafarers' Union of Libya, considered that all the participants were united in recognizing the complexity of the situation in the country. The economy had been decimated by years of conflict. The participants also recognized the Government's efforts to generate employment and decent work to resolve its predicament. With regard to the participation of women in the labour market in Libya, the speaker highlighted that, while the proportion of economically active individuals in the country was only 46 per cent of the total working-age population, the figure for women was less than 27 per cent, which meant that the total number of women in the workforce was barely one third that of men. Moreover, according to a recent report of the Friedrich Ebert Foundation, female labour market participation in the country was limited to only four sectors: public administration; education; health care; and social security. In this respect, the speaker indicated that there were

certain administrative practices that encouraged women's employment only in certain sectors. The unsavoury phenomenon of violence and harassment against women workers constituted another deterrent to female labour market participation. In order to promote productive employment for women, it was important to *put in place programmes providing education and vocational training, as well as to re-establish the rule of law to guarantee women's security.* In relation to the maritime sector of the country, the speaker highlighted that Libya was one of the North African countries with a coastline on the Mediterranean Sea basin, whose waters were commonly associated with the perilous journeys made by desperate migrants experiencing conflict and hardship. At the time, out of the country's 16 ports, 14 were in operation. However, underinvestment and a lack of resources made some port operators struggle to pay their workers not to mention poor infrastructure in some ports which led to significant occupational safety and health deficits, as well as security concerns. Marine insurers and unions alike continued to advise shipowners to warn crews of the volatility of the situation, including oil smuggling activities off the western coast of the country. The maritime sector was seen as having great potential. It was, therefore, hoped that a holistic approach would be adopted to develop a policy that would fully revive the ports and shipping industries, in order to create long-term, stable and productive employment. While fully cognizing the difficulties on the ground, it was necessary that the Government put in place an employment policy, in consultation with the social partners, with a view to stimulating economic growth and development and overcoming unemployment and underemployment in accordance with the Convention. In doing so, the Government should be directed by Recommendation No. 205, which provided guidance to ILO member States on the measures to be taken to generate employment and decent work for the prevention, recovery, peace and resilience in crisis situations arising from conflicts. Trade unions and international workers' organizations were ready to provide assistance in order to ensure decent work for all workers.

**The Government member of Iraq** welcomed the information provided by the Government. Given the difficult situation in the country due to the war and the consequent lack of security, sufficient time should be provided to the Government to reply to the comments of the Committee of Experts. Technical assistance of the ILO was highly appreciated in order to enable the country to implement the Convention.

**The Worker member of Burkina Faso** considered that words relating to the implementation of the Convention were irrelevant. What was important, in the name of morality, dignity and human integrity, was to pay tribute to the memory of all the Libyans massacred during the imperialist attack on the Libyan people, and those who were continuing to lose their lives as a result of the collateral damage linked to that destabilization. The inertia of international institutions, and particularly African institutions, in response to the political, economic, social and military disarray, which was having an inestimable human impact on the country and the Sahel-Saharan strip, was to be regretted. In that context, the issue of employment was a cruel reality. An employment policy which took into account the profound aspirations of the Libyan people for the development of their country, and which respected the human values of solidarity, needed to be adopted as a matter of the utmost urgency, and in compliance with the Convention and the corresponding Recommendation. In response to the cases of slavery in the country, it was important to encourage and express solidarity with the Libyan people in their fight to rebuild the country on the foundations of the human values of equality, integrity and solidarity. He urged trade unionists and other civil society organizations in Libya to

continue showing solidarity and to resist the ravages of imperialism, and he called on the ILO to provide technical assistance.

**The Government member of Algeria** welcomed the Government's report and the efforts made, despite the transitory situation in the country, to implement an employment and workforce development policy with a view to promoting training and development and tackling unemployment. Support for SMEs, the promotion of women's entrepreneurship and the creation of a database of human resources to strengthen empowerment and development over the 2013–40 period would contribute to fostering a new vision of public policy in the short and medium term, thus making employment a lever for economic policy coherence. The measures taken by the Government to consolidate labour market information and ensure the monitoring and evaluation of employment policy through the collection of precise data during its implementation were noted with satisfaction. Furthermore, the conduct of studies, the provision of data on employment policy measures, the registration of job vacancies in collaboration with the social partners and the Ministry of Labour information and documentation centre, were greatly appreciated. In that context, the pilot programme launched in 2017 to finance SMEs to improve employability and the spirit of entrepreneurship and the initiative in the area of self-employment for women, men and young persons were highly commendable. The measures taken by the Government to manage cases of undocumented migrant workers in collaboration with neighbouring countries, countries of origin and international organizations were to be welcomed warmly. It was also necessary to promote the relationship between migration and development and to strengthen the database of those workers. In conclusion, he reaffirmed that there could be no social and economic stability without job creation and that decent work was the cornerstone of social cohesion. To meet those commitments, it was necessary to support the Government's efforts for the political, social and economic stabilization of the country. ILO technical assistance was highly appreciated in that regard.

**The Government representative** thanked all the participants in the discussion and stressed that the National Reconciliation Government was committed to pursuing its cooperation with the ILO. The 2018 National Report on Human Development was expected to be issued in a short space of time. It aimed to establish frameworks to improve the labour market and the economic competitiveness at national level. Moreover, a report on the application of the Convention would be submitted to the Committee of Experts at its next session. The speaker underscored the commitment of the Government to implement a national employment policy in line with the Convention. Although the country's economy depended on oil, and such resource had been facing instability on the international market, the Government would, nevertheless, continue to take the necessary measures to reduce the unemployment rate. The Government was also committed to pursue consultations with the social partners to achieve social peace and social protection. The data extracted from the 2017–18 survey would be used to develop indicators on the labour force in different regions of the country. He reaffirmed the Government's commitment to ensure equal levels of development, with special attention to remote areas.

**The Employer members** noted that the information provided by the participants during the discussion highlighted the situation faced by Libya. All participants were in agreement regarding the situation in the country and the efforts that the Government was making to create employment. The Government had requested time to achieve the objectives set out in the Convention and ILO technical assistance for that purpose. This was an indication of the Govern-

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ment's goodwill to resolve the problems relating to the implementation of the Convention. In this context, the Employer members reiterated their earlier statement concerning the importance of recognizing the complexity of the situation in the country. They hoped that the Government would soon be in a position to supply the information that the Committee of Experts had requested, with the help of ILO technical assistance, which the Government itself had requested, together with workers' and employers' organizations. In particular, they hoped that the Government would provide information on the labour market strategy, the manner in which it was envisaged that the employment objectives set out in the Convention would be achieved, the progress made in compiling labour market information, the measures adopted to promote the development of SMEs, the action taken to promote the labour market participation of persons in vulnerable situations and up-to-date statistical data on the labour market situation.

The Worker members emphasized that international labour standards were even more relevant in the midst of conflict. The Government had indicated that it had taken steps to modify its labour market strategy and to amend the employment policy, taking into account the current reality, including unemployment, underemployment and workforce skills development. The Convention prohibited discrimination in employment against women, young people, workers with disabilities, older workers and migrants. The Government should thus provide information on the strategies to increase labour market participation of persons vulnerable to decent work deficits, including statistical data segregated by age and sex. It confirmed that the process of modifying the labour market strategy and amending the employment policy was inclusive and carried out in consultation with workers' and employers' organizations, as required by Article 3 of the Convention. Article 1 of the Convention requires governments to ensure full, productive and freely chosen employment. In this regard, the Government was called upon to: (a) avail itself of the guidance of relevant ILO Recommendations, such as Nos 169, 189 and 205; (b) pay special attention to the over 200,000 internally displaced and the overall migration crisis; (c) ensure that young people and migrant workers had access to employment opportunities; (d) provide updated and detailed information on the labour market strategy and employment policy and the manner in which employment objectives were being realized; and (e) provide the Committee of Experts with up-to-date statistics on the employment situation, taking account of the level and trends of employment, unemployment and underemployment, as well as the available skills of the working population, especially young persons. For this purpose, the Government should establish a system for collecting data to enable analysis and assessment of the employment situation in the country, as well as empirical measurement of its compliance with the Convention. The Committee of Experts had highlighted the unique role of SMEs and, therefore, the relevance of the guidance provided by Recommendation No. 189. The Government should thus provide information on the steps and programmes it had developed to encourage setting up SMEs. The Government was urged to seek ILO assistance and support to help address the issues raised relating to compliance with the Convention.

### **Conclusions**

The Committee took note of the information provided by the Government representative and the discussion that followed.

The Committee highlighted the impact and consequences of conflicts on poverty and development, decent work and sustainable enterprises, and recognized the importance of employment and decent work for promoting peace, enabling recovery and building resilience.

Taking into account the Government's submission and the discussion, while acknowledging the complexity of the situation prevailing on the ground and the presence of armed conflict, the Committee requested the Government to provide information regarding:

- updated statistics on the labour market, disaggregated by sex and age;
- information on the labour market strategy and the way in which employment objectives are expected to be achieved;
- information on progress made in the compilation and analysis of labour market data; and
- information on measures to promote the establishment and development of SMEs as well as measures introduced to increase the participation in the labour market of people in vulnerable situations.

The Committee urges the Government to submit a detailed report to the Committee of Experts for its next session in November 2018.

The Committee urged the Government to avail itself of ILO technical assistance to adopt and implement without delay an active policy designed to promote full, productive and freely chosen employment in consultation with the most representative employers and workers organizations.

Finally, the Committee called on the ILO, the international community and employers' and workers' organizations to collaborate with the goal of re-enforcing the labour administration system in Libya so that full, productive and freely chosen employment could become a reality in Libya as soon as possible.

The Government representative recalled that as already indicated, the deadline of November 2018 was too short and more time was needed for his Government to respond to the request by the Committee of Experts. In spite of this short deadline, his Government would do its utmost to implement the recommendations of the Conference Committee.

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**PLURINATIONAL STATE OF BOLIVIA (ratification: 1977)**

A Government representative recalled that the essence of the Convention was the protection of workers and that the complaints originated from employers. The Employers were using the Convention to question a successful economic model, in their nostalgia for privileged policies that benefited them, and to endeavour to ensure that the State did not set decent wages for workers. The Government was implementing economic and social policies that protected sectors which had historically been excluded and discriminated against. Dialogue, consultation with the various partners and the quest for consensus were the methods used, in accordance with national and international law. The Convention had been adopted to supplement other instruments intended to protect workers from wages that were unduly low. A policy was being implemented for the gradual and systematic raising of the minimum wage and the complaints of the employers appeared to be directed against social justice. The Preamble to the Convention reaffirmed the role of States in protecting groups of wage-earners who were in a disadvantage position in relation to their employers. The role of the State in the protection of workers was a constitutional mandate, which would not be abandoned on the basis of an inappropriate interpretation of the Convention. The central objective of the Convention was set out in Article 1, which required the establishment of a system of minimum wages which covered all groups of wageearners. The essential characteristic of the Convention was the fixing of the minimum wage, and not necessarily social dialogue, which was a tool for the achievement of that objective. There was a specific Convention on social

dialogue, which was not the subject of the present discussion and which had not been ratified by the Government. Article 4(2) of the Convention referred to full consultation in connection with the establishment, operation and modification of wage-fixing machinery, or in other words in the development of the legislative provisions governing the process of the determination of the minimum wage, but not in the annual determination of its level. Since 2006, the Government's wage policy had been intended to reduce the enormous economic differences and to favour sectors that were traditionally excluded, that is those who earned less, by increasing their wages above the inflation rate, while maintaining the sustainability of public and private investment. That was the premise for the annual increases in wages. In that respect, he emphasized that the legal interpretation of the Convention needed to be more rigorous and not lose sight of the fact that its spirit was the protection of wage-earners in light of the intrinsic asymmetry with employers. Minimum wages were determined within the following institutional framework: (1) article 49 of the Constitution provided that the law shall regulate labour relations, including the determination of general and sectoral minimum wages and wage increases; (2) section 52 of the General Labour Act provided that remuneration or wages shall be fixed by the central Government; and (3) section 8 of Presidential Decree No. 28699 of 1 May 2007 provided that employers and workers may agree on remuneration freely, and that it had to be above the minimum national wage determined by the Government. The institutional framework was therefore established and had its origins in the Political Constitution, which had itself been the subject of consultation with workers, employers and the people as a whole, as it was the product of a Constituent Assembly and a referendum for its approval.

Historically, there had been factors in the relations between employers' and workers' organizations which had worked in favour of employers and undermined collective bargaining mechanisms at the sectoral level. That situation obliged workers to have recourse to the State to uphold their claims, including in relation to wages. Since 2006, the Government had been adopting measures with a view to increasing unduly low wages, in full compliance with the spirit of the Convention, and giving effect to the dialogue and consultation mechanisms with the sectors concerned, within the framework of the Constitution and the legislation in force. The Government had quadrupled the minimum wage, which had been US\$63 in 2005 (one of the lowest in the region), and was now US\$295. Nevertheless, even though it had been quadrupled, the minimum wage continued to be lower than the needs of workers and their families. The wage increase had been determined taking into account the criteria set out in Article 3 of the Convention: (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits and the relative living standards of other social groups; and (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment. The Government's wage policy was proportional to economic growth and national production, which had also quadrupled as a result of the economic and social productive and community model implemented. Gross domestic product (GDP) had grown from US\$9,568 million in 2005 to US\$37 billion in 2017. The increases were not therefore arbitrary, but rises based on a solid and growing economy. The wage increase had also been determined taking into consideration the positions of workers and employers, with which the Government was promoting regular dialogue and consultation, as demonstrated by the repeated round-table meetings established at the highest level of the Government with the representatives of the Confederation of Private Employers

of Bolivia (CEPB). The World Bank acknowledged that the country was among the foremost in the region in terms of reducing wage inequalities. In accordance with the Gini labour index, the wage gap over the past ten years had improved from 0.53 per cent to 0.44 per cent. As a result of the economic model, it had been possible to reduce extreme poverty from 38.2 per cent to 17.9 per cent over the period 2005–17. Over 3 million people had escaped poverty and the majority of the population (58 per cent) had an average income which enabled them to live well. The wage policy was generating higher domestic demand, which was also very beneficial for the private sector, in which profits had quadrupled, increasing from Bolivian bolivianos (BOB) 8,663 million in 2006 to BOB27,766 million in 2017. The economic model was based on the following pillars: the nationalization of natural resources and industrialization, the strengthening of domestic demand, the redistribution of wealth and large public investments. Those pillars guaranteed the following results: economic stability, employment generation, the reduction of the unemployment rate, and constant economic growth, which contributed to reducing poverty and the levels of inequality. As demonstrated by the figures, private employers were benefiting greatly from the economic, political and social stability, as well as the legal security guaranteed by the Government since 2006, to make investments and embark upon new initiatives with the security of obtaining optimal results. Employers needed to grant social security and stability to men and women workers, who depended on them, instead of which some of them were organizing the premeditated bankruptcy of enterprises, which they were abandoning. He regretted the baseless accusations of the employers, who were making use of procedural arguments to limit the just and equitable increase in the minimum wage in accordance with the provisions of the Convention, and the decision to include the case in the list for discussion by the Committee. On the contrary, governments should be encouraged to improve the standards of living of their populations in accordance with the objective of the Convention and in light of human rights.

**The Employer members** thanked the Government for its information. Even though the case was being examined by the Committee for the first time, it was not unconnected with the comments of the Committee of Experts, which had made observations on the subject in 2013, 2014, 2017 and 2018. The Committee of Experts had asked the Government to adopt urgent measures to ensure thorough consultations with the most representative employers' and workers' organizations and their direct participation in the minimum wage fixing machinery. They also noted with concern that the CEPB and the International Organisation of Employers (IOE) had been alleging, since 2006, the systematic failure to include employers' organizations in consultations on minimum wage fixing. This year, the Committee of Experts had recalled once again that the Convention provided for full consultation with the social partners on the establishment, operation and modification of wage-fixing machinery, and that the active participation of workers' and employers' organizations was essential to allow optimum consideration of all relevant factors in the national context. There was a need to verify whether the recommendations of the Committee of Experts had been taken into consideration. The Government was a very long way from complying with the Convention, in terms of both wage-fixing machinery and the criteria used for fixing wages. With regard to the former, Article 4 of the Convention established the requirement for consultation with the social partners, in conformity with the most fundamental standards of the ILO, of which tripartite dialogue was a cornerstone. The key features of such dialogue were good faith and the desire to reach consensus. Whenever such consensus was not possible, whoever was responsible for

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taking a decision must incorporate into it the views of those who had participated in the dialogue. The Convention used the term “full consultation”. The Government therefore needed to make further efforts to facilitate and deepen the dialogue. By stating that the CEPB had not explicitly asked to be part of the decision-making on minimum wage fixing, the Government was disregarding its obligation as the entity responsible for full consultation. The employers had asked to be part of the dialogue on minimum wages, as reflected in the reports of the Committee of Experts. Senior government officials, such as the Minister for Economic Affairs and the Minister for the President’s Office, had declared in recent statements to the local media that employers would not participate in decision-making on minimum wages and that since 2006 it had essentially been government policy to fix wage increases only with the workers. The Government had confirmed that policy to the Committee and was claiming a new reading of the Convention, under which consultation of the social partners on wage adjustments would no longer be valid. The Committee could not accept a government disregarding social dialogue and needed to respond with the same severity in the case of failure to consult employers.

With regard to the failure to comply with the elements that needed to be taken into account to determine minimum wage levels, the Committee of Experts had referred to a statement by the Government that minimum wage fixing took account of inflation, productivity, GDP, GDP per capita, the consumer price index, economic growth, unemployment rates, market fluctuations and the cost of living. Such a statement was inaccurate. There were two benchmarks for wages in Bolivian legislation. First, there was the national minimum wage, which was universal for all workers, without differentiation between groups of wage-earners, which was desirable for economic and legal reasons and was permitted by the Convention. Second, there was the so-called “basic wage” (*haber básico*), which applied to all workers and could not be less than the national minimum wage. That was fixed through individual or collective bargaining between employers and workers. However, ministerial decisions were issued annually requiring the parties to negotiate increases in the “basic wage” within a set time, otherwise fines or other penalties would be incurred by the employer. Between 2006 and 2018, the national minimum wage had risen by 312 per cent and the “basic wage” by 149 per cent, with both figures being very much higher than aggregate inflation over that period. The national minimum wage was higher than GDP per worker, which meant low productivity per worker. They asked whether the productivity index, enterprise sustainability and the creation of more and better jobs were taken into account in fixing the minimum wage. The Government’s wage policy explained the growing precarity in employment, the increase in unemployment rates and the rise in informality indicators (around 61 per cent of the active population). The percentage of workers being paid a wage lower than the national minimum wage had also risen, precisely because of the increase in informality. For the public sector, there had been a fall in protected employment and a rise in temporary employment. However, they noted that the Government was applying the criteria of the Convention in the public sector, where it assumed the role of employer. To apply wage increases, public enterprises were required to conduct an analysis of net profits and financial resources in each enterprise, with the obligation to demonstrate financial sustainability and the required level of operating profit. In conclusion, the Government was deliberately failing to consult the employers’ organization and to take into account the technical criteria that should provide a basis for minimum wage fixing.

**The Worker members** said that, in 2017, the national minimum wage had been increased by Presidential Decree

No. 3161 of 1 May 2017, taking into account a number of recommendations made by the Bolivian Central of Workers (COB) and, according to information received, socio-economic factors such as inflation, productivity, GDP, GDP per capita, the consumer price index, economic growth, unemployment rates, market fluctuations and the cost of living. The minimum wage now stood at BOL2,060, which was 335 per cent higher than in 2006. Fixing the minimum wage was important for a number of reasons. First, wages represented a crucial source of income for households, and as a result had an enormous influence on the standard of living of the population. Second, they were a source of personal fulfilment. Third, when the State set the minimum wage, it was guaranteeing that workers could cover the essential needs for their survival. The Preamble to the ILO Constitution proclaimed the urgent need to improve working conditions, in particular by guaranteeing an adequate living wage. The minimum wage enabled workers and their families to live in dignity, bearing in mind the level of economic development. Although it was true that economic factors could affect increases in the minimum wage, it should not be forgotten that the minimum wage was essential in avoiding the impact of economic situations on workers and households with the lowest incomes, which were the most vulnerable. The Minimum Wage Fixing Recommendation, 1970 (No. 135), provided that “[m]inimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers”. The fundamental aim of the minimum wage was to provide workers with the necessary social protection in terms of minimum acceptable wage levels.

Nevertheless, as the Committee of Experts had pointed out in its observations, the Convention required full consultations with the representative organizations of employers and workers concerned for the establishment, operation and modification of the machinery by which minimum wages were fixed and periodically adjusted (Article 4(2)). The active participation of those organizations was essential so that all relevant factors in the national context could be taken into account as fully as possible. To that end, the Committee of Experts had firmly urged the Government to take measures without delay, in consultation with the social partners, to guarantee their full and effective participation in the fixing and adjustment of the minimum wage. The minimum wage was one of the most important institutions, and should be fixed through the intervention of governments, in conjunction with workers and employers. It was a public standard aimed at ensuring that wages covered the bare necessities: food, housing, education, social security, recreation and holiday. It should also be a starting point for the setting of basic wages in collective agreements. Fixing the minimum wage also helped to ensure a series of rules of the game that were the same for everyone. The Worker members welcomed the fact that, in fixing the minimum wage, the Government’s intention had been to create sustainable wage policies in line with the United Nations 2030 Agenda for Sustainable Development. The issues of wage increases and unequal wages were placed high on that Agenda. Improving wages and enhancing opportunities for decent work were vital to eradicating poverty and reducing the inequality that existed in the country. The Worker members emphasized the importance of social dialogue and consultation with the social partners prior to fixing the minimum wage. Social dialogue should be institutionalized, with permanent tripartite structures to discuss public policy and a programmatic agenda to respond to the problems that affected society. However, once social dialogue had been institutionalized, good faith, input and responsibility were needed. In the end, the institutionalization of social dialogue should serve to: (1) generate sustainable and inclusive development to improve the quality of life

and social conditions; (2) give workers greater participation in the distribution of wealth in order to eliminate present inequalities; (3) promote decent work and wage levels that allowed people to live in dignity, with freedom of association and strengthened collective bargaining; and (4) reduce the gulf between extreme poverty and concentrated wealth, with a view to social inclusion. Without adequate wages and labour protection, society would be neither inclusive nor would it guarantee social cohesion.

**The Employer member of the Plurinational State of Bolivia** emphasized that in recent years Bolivian employers had been complaining to the ILO at the Government's systematic failure to give effect to the Convention since 2006 in relation to the requirement to hold full consultations with employers' organizations. The Government's wage policy had resulted in negative economic consequences for certain enterprises, which had neither effective mechanisms to control the legality of Government action, nor the legal security to restrain its conduct. The examination of the case by the Committee raised the expectation that, in an international forum, the Government could be called upon to reflect on the inclusion of all the partners in fixing the minimum wage. Articles 1 and 4 of the Convention established the requirement for full consultation with representative organizations of workers, as well as employers, in establishing the minimum wage system and, where appropriate, with groups of wage-earners to whom the system would apply. Article 3 of the Convention also set out the criteria to be taken into account in the fixing of minimum wage levels. With regard to full consultation, despite the complaints and comments that the CEPB had made repeatedly in recent years, the Government had made no changes. It had maintained its policy of removing employers' organizations entirely from participation and consultation. The Government had confined itself to holding meetings exclusively with workers' organizations, led by the COB. At no point had the Government benefited from the views, let alone the approval, of the CEPB, which had had to settle for finding out the decisions made from the national press and from the publication of legal bulletins. Moreover, Government representatives had, on repeated occasions, publicly refused absolutely to accept the participation of private enterprises in any kind of discussion on wage fixing. Among other public statements made on social media by Ministers of State, the Minister for the Office of the President had indicated that wages would be fixed only with workers, adding that he was part of a workers' government, not the entrepreneurial class.

Since 2006, not only had employers been refused permission to participate in wage fixing, but priority had been given to an inequitable system of participation, as the COB had been the only body asked to endorse wage increases. Fixing and increasing minimum wages with workers' representatives alone completely undermined the spirit of social dialogue and tripartism promoted by the ILO for the formulation of labour policies. Consultations were also required on the criteria to be taken into account in fixing minimum wage levels. Such consultations served to validate social dialogue as an appropriate and legitimate mechanism for the establishment of minimum wage fixing machinery. The Government had introduced disproportionate increases that were at odds with the economic situation. Since 2006, the national minimum wage had risen by 312 per cent on aggregate, as the combined result of annual increases. Those increases greatly exceeded annual inflation rates and ignored the existence of other economic factors, such as the requirements of economic development, productivity levels, increased rates of better decent work, the importance of achieving and maintaining high levels of employment, the preservation of decent work and the sustainability of enterprises. Moreover, in fixing wage increases, the Government was not taking into account the

ever greater informality on the labour market. Employers were also being required to negotiate agreements for submission to the Ministry of Labour within a limited period of time, under penalty of fines or other economic penalties. Some union leaders had used that situation to force employers to offer greater increases, in return for observing the formality of signing agreements. Finally, he called on the Committee to give its view on the complaint submitted and urged the Government to comply with all the terms of the Convention so as to safeguard and expand the market for decent work in the country.

**The Worker member of the Plurinational State of Bolivia** said that the Workers had been committed to complying with the Convention since its ratification. One of the reasons that justified the recent wage increases was that, since the 1980s, there had been a freeze in minimum wages, which had been partly due to the adoption of measures to privatize various State enterprises, including certain mining and cement enterprises. The freeze in minimum wages had ended in 2005, which meant that workers had suffered for many years. With regard to the application of the Convention, section 10 of the statute of the CEPB indicated that it "shall not assume the legal representation of its members, for the negotiation or settlement of specific and individual worker-employer disputes, and consequently had no legal status for summonses and notifications, or to accept complaints or lists of claims from any labour sector, which involve or are addressed to its entities, or are made through the Confederation". For many years, workers had been prevented from participating in social dialogue at the same level as the Government and employers. Progress in the participation of workers had only been made recently, as workers now even participated in the auditing of state enterprises in strategic sectors. However, in the case of certain private enterprises, a significant number of workers (over 400) had seen their work affected, as they had been required to take collective holidays or had been dismissed on the grounds that the enterprises were in deficit, or were unable to pay minimum wages or increase wages. He suggested that legislation could be adopted for the creation of social enterprises so that workers could take over the management of several enterprises that had declared to be in deficit. Currently, certain enterprises, for example in the mining sector, were managed by the workers themselves, who had technical, economic and financial autonomy. In such enterprises, wages might or might not be increased, as they were subject to the profits made by the enterprise, or in other words, if there were no profits, there would be no wage increases. In that regard, the workers considered that job stability and the sustainability of workplaces were essential.

**The Government member of Paraguay** speaking on behalf of the group of Latin American and Caribbean countries (GRULAC), thanked the Government representative for the information provided. The Convention had been adopted taking into consideration the need to further protect workers against unduly low remuneration. He also thanked the Government for the efforts made to take into account the positions of both social partners when fixing the minimum wage. As stated in the 2030 Agenda for Sustainable Development, sustained, inclusive and sustainable economic growth was essential to achieve prosperity, which was only possible if wealth was shared and action taken to combat income inequality. To that end, the social stability of workers was an essential concern for the Government. He also welcomed the information provided on the progress made in reducing wage inequality through a real increase in the minimum wage. He encouraged the Government to continue its efforts to strengthen consultation mechanisms with the social partners.

**The Employer member of Uruguay** noted that the Government had clearly and systematically failed to comply with

the Convention. The Government established minimum wages through negotiations with workers, without consulting the most representative organizations of employers. Beyond any inconsistencies regarding the increases in and methods used to fix minimum wages, the ILO needed to be alert to situations in which the social partners could not express their opinions. That was a serious situation in which the ILO could achieve its full potential by providing assistance through its regional offices to achieve a reasonable balance in labour relations. Policies which were not in conformity with the fundamental principles of work led to abuses that could not be tolerated, regardless of the social sector driving them. The ILO had all the tools to collaborate with the Government with a view to contributing to the strengthening of a more harmonious system of labour relations in which the employers could be heard. It was crucial to avoid violations of fundamental labour principles.

**The Worker member of Uruguay** recalled that the ILO had been born out of the fact that only in such an institution could everyone be equal. Minimum wages guaranteed that those who were the weakest had a wage floor below which they could not be paid. On behalf of the trade union movement in his country, he offered cooperation and assistance to the Government and trade union movement of the Plurinational State of Bolivia.

**The Government member of the Bolivarian Republic of Venezuela** endorsed the statement by GRULAC. The Government's objective was to protect workers against excessively low pay with a view to eliminating poverty and ensuring that workers could cover their needs and those of their families, taking into account economic factors. In conformity with the Convention, the minimum wage had to be set in consultation with the social partners. Even if the consultations were not binding, they contributed to labour peace and helped the Government to take the appropriate decisions, as outlined in the comments of the Committee of Experts. In setting the minimum wage and subsequent increases, the Government took into account socio-economic factors, such as inflation, productivity, GDP, economic growth, market fluctuations and the cost of living. He encouraged the Government to strengthen consultation mechanisms with the social partners, which would contribute to labour peace and allow for wage increases that benefited workers and the world of work.

**The Worker member of El Salvador** indicated that laws in every country of the world required governments to maintain wage policies that were in line with the needs of the population and with macroeconomic factors. That involved striking a balance between the wage demands of workers and their families and the vision of some employers that refused increases in the minimum wage on the pretext that companies did not have the capacity to support such rises. The term minimum wage meant the minimum required to eat, dress and keep poverty and marginalization at bay. He asked how it would be possible to build a decent society if workers were forced to simply accept the minimum available through the system. Unions needed to be organized to ensure that workers and governments responded to demands for higher salaries in light of the cost of living. The Government's decision to increase the minimum wage took into account technical aspects of the economy, such as economic growth, the claims of workers and therefore the dynamics of social dialogue. The index of minimum wages in Latin America showed that several countries with weaker economies than that of Bolivia, including Guatemala, Honduras, El Salvador, Costa Rica and Panama, had better wage conditions, for which their governments deserved credit and recognition. The economy of the Plurinational State of Bolivia was making progress in terms of the consumption and demand for products and services. However, a great deal remained to be done in relation to wages and decent work.

**The Government member of Egypt** thanked the Government for the information provided on the measures taken to implement the Convention. She praised the efforts made by the Government to increase wages, close the economic gaps, ensure the sustainability of investments, boost investment in the public sector and increase resources in a fair manner. She encouraged the Government to commit fully and to engage in dialogue with the social partners.

**The Government member of Ecuador** agreed with the statement made by GRULAC and welcomed the information provided by the Government. Achieving sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all required great resolve and the commitment of the different social partners and the Government. Constructive tripartite social dialogue would facilitate a consensus based on respect for human beings. She noted the Government's efforts to achieve agreement with the social partners in fixing the minimum wage. She also welcomed the progress made in reducing wage inequality through a real increase in the minimum wage. In conclusion, she encouraged the Government to continue its efforts to strengthen consultation mechanisms with the social partners.

**The Government member of India** thanked the Government for its commitment to fulfil its international obligations and for the information provided on the positive steps undertaken to reduce wage gaps and levels of poverty and to raise standards of living. The participation of the relevant social partners, and especially those representing the most vulnerable, would contribute to the achievement of the objective of the Convention.

**The Government member of Cuba** endorsing the statement by GRULAC, considered that the Conference Committee, when examining the case, should take into account the information provided by the Government on compliance with the Convention. The Government had increased the minimum wage in recent years in proportion with economic growth and productivity in the country. That had been achieved through a process that took into account the opinions of the social partners, in line with the institutional framework established by law. She also praised the Government as one of the first in the region to reduce wage inequality and other types of inequality, thereby facilitating the achievement of social justice. The Government was not only in compliance with both the procedural aspects of the Convention, but also with its objectives to improve living standards for workers and the population.

**The Employer member of Honduras** drew attention to the fact that the Government had increased the minimum wage without social dialogue and without consulting the employers. After the CEPB had received no response to its request to participate in the consultations, Government ministers had stated that, as a government of workers, it only needed to consult the workers. Employers did not know whether the criteria set out in Article 3 of the Convention had been taken into account in the Government's negotiations with the COB, namely economic productivity factors, when deciding on increases in the minimum wage. He also emphasized that, in addition to imposing an increase in the minimum wage, they were also required to conclude wage agreements with trade unions within a limited period of time under threat of fines and penalties. The exclusion of employers from minimum wage fixing violated the provisions of the Convention and the principles of social dialogue and tripartism, which were the cornerstone of the ILO. The Committee must urge the Government to comply with the Convention and to allow the employers to participate in consultations.

**The Government member of Uruguay** noted with special interest the specific characteristics of ensuring compliance with the Convention in the region where, in many cases, he



considered that trade unions did not have sufficient training, capacity or support to fully develop procedures for the setting of minimum wages. In that regard, he highlighted the recent good practice in his country in relation to social dialogue, tripartism, consultation and collective bargaining. The Government of Uruguay was at the disposal of the Government to develop a cooperation plan aimed at strengthening and developing existing mechanisms in the country. Finally, he encouraged the Government to continue its efforts to develop social dialogue and tripartism.

**The Government member of Algeria** expressed support for the Government, which had confirmed its commitment to implementing the Convention through the adoption of measures aimed at: (i) increasing minimum wages and reducing wage inequalities to respond to the needs of workers and their families; (ii) fixing minimum wages in consultation with employers' and workers' representatives; and (iii) encouraging dialogue and consultation, as well as ensuring compliance with the minimum wage rates that had been fixed. The Government was engaged in a process of economic reform and was addressing a number of priorities in the areas of social justice and fundamental rights. The setting of minimum wages in proportion to economic growth and productivity was in conformity with the provisions of the Convention. The Government had taken measures aimed at social cohesion, reduced unemployment and inclusive growth. He invited the Committee to take the Government's detailed replies into consideration.

**An observer representing the International Organisation of Employers (IOE)** emphasized the importance of the case. The Government had shown little respect for the private sector and the creators of decent work. It was not only a matter of non-compliance with the requirement of consultation for the fixing of minimum wages, in accordance with the Convention, or an obligation arising out of a technical provision of a Convention. It was a case of a serious failure to comply with the fundamental principles that had inspired the creation of the ILO. Public statements by senior leaders conveyed unacceptable contempt for employers' organizations. Such a worrying attitude was dangerously close to harassment of employers and an attack on freedom of enterprise and decent work. He called for these elements to be taken into account when drafting the conclusions on the case.

**The Government member of Bangladesh** thanked the Government for the information provided and welcomed the efforts made to protect and promote workers' rights, including through increasing minimum wages since 2005. The Government had taken into account the socio-economic context as well as the position of both the social partners. Considering its compliance with the objective and procedures required by the Convention, it would be advisable to close the case.

**The Government member of Iraq** recalled that the Convention established that minimum wages had to be set in consultation with the social partners. While acknowledging that this could be difficult to implement in practice, he indicated that it appeared that in this case, the Government had taken into account the reservations of the employers.

**The Employer member of Mexico** noted with concern the Government's statement, as it recognized the violation of the Convention which it had ratified and under which it was bound, and that it had not fully consulted, and did not intend to fully consult the most representative organizations in the near future. The Government had indicated that its actions were based on the fact that the law allowed it to determine minimum wage levels unilaterally. That was alarming, not only because it breached one of the obligations of the Convention, but it also undermined basic ILO principles, including social dialogue and full and effective consultation, which were the basis of relations between

employers, workers and governments. However, it was reassuring to hear the Worker members reaffirm the importance of the institutionalization of the consultations to which the Convention referred. Social dialogue was also essential in labour relations because it allowed agreements to be made and prevented the polarization of the partners. Social dialogue was recognized as one of the four strategic objectives in the ILO Declaration on Social Justice for a Fair Globalization, 2008. No State could be allowed to knowingly and deliberately fail to engage in from the consultations that it was required to hold on the pretext that it was acting in the interests of one of the partners in the labour relationship. There was therefore an issue of procedure and legal conformity that needed to be defended, as those principles were non-negotiable.

**The Government representative** reiterated that the essence of the Convention was the creation of conditions of equality and the eradication of poverty, and that the Government was mindful of those fundamental aspects. The complaint was groundless because the Government constantly held consultations with all economic actors in formulating its economic policy, including its wage policy, and private enterprise benefited from forums for dialogue at the highest level, sometimes even with the President. Fixing the minimum wage served as a means of redistributing wealth, obliging entrepreneurs to share their profits. For the first time in history, their profits had increased four-fold. The wage policy had enabled millions of Bolivian citizens to escape from extreme poverty. The Government would continue to uphold the mechanisms provided for in law for the fixing of the minimum wage. He considered the claim that there was a policy of destroying the private sector to be untrue and unfounded, as permanent consultation mechanisms existed with private enterprise at the highest level. Entrepreneurs had been consulted constantly about a range of national economic issues. Moreover, agreements had been signed with the Government to maintain economic stability, increase production and protect jobs. With regard to wage bargaining, he referred to the information sent to the Committee of Experts. Both private entrepreneurs and workers published proposals concerning the minimum wage. For instance, in 2017, the CEBP had suggested a freeze in the minimum wage and a 3 per cent increase in the basic wage at a meeting with the Ministers of the Economy and of Planning. For its part, the COB had proposed a 10 per cent increase in the basic wage and a 15 per cent increase in the national minimum wage. Taking into account the positions of both parties, as well as technical and economic considerations, the Government had decided on a 3 per cent increase in the national minimum wage and a 5.5 per cent increase in the basic wage. He objected to the claim that wage increases were a threat to private enterprise. The Government was safeguarding economic and legal stability, as shown by the increase in the number of private enterprises from around 65,000 in 2005 to 295,000 in 2017, with a 4 per cent increase from 2016 to 2017. The number of salaried workers had tripled. In 2005, there had been only just over 500,000, but now there were more than 1.8 million. That situation was also reflected in expanded social security coverage and the growth of decent work, which was ignored by employers. The Declaration of Philadelphia established the fundamental principle that poverty anywhere constituted a danger to prosperity everywhere, giving rise to the obligation to promote better standards of living. While it respected and valued the contribution that the private sector made to the economy, the Government would hold fast to its decision to reduce poverty and pursue economic, political and social equality for the majority of Bolivian citizens. He therefore reiterated that the complaint was groundless and was intended to call into question the Government's policy of social justice and wealth redistribution, which it did not intend to renounce.

The Worker members thanking the Government for the information provided, reiterated that social dialogue was the best tool for growth with equality. It allowed governments and the social partners to develop a common strategy to promote decent work, and consequently, inclusion and social justice. Social dialogue was of critical importance in the formulation of policies designed to respond to domestic needs. As stated by the Committee of Experts in its previous observations, the minimum wage system provided for by the Convention was intended to serve as a social protection measure to reduce poverty, by guaranteeing decent levels of income, particularly for unskilled and low-paid workers. It was intended to protect workers from unduly low wages. As emphasized within the Organization, the existence of a minimum wage helped to ensure that everyone benefited from a fair distribution of the fruits of progress, and that all individuals who were in employment and needed such protection were paid a minimum living wage. The Preamble to Recommendation No. 135, which made particular reference to developing countries, emphasized the importance of adopting criteria to ensure that minimum wage systems were an effective instrument of social protection for the promotion of economic and social development strategies. Minimum wages must also be an integral part of policies to reduce poverty and inequality, including the wage gap that existed between men and women. In that respect, they welcomed the fact that the Government was implementing wage policies intended to preserve the real value of remuneration for workers with the lowest incomes, and which ensured a fair distribution, reduced excessive inequalities in wages and income, and reaffirmed consumption as a fundamental pillar of a sustainable economy. The setting of the minimum wage, which was contested by Bolivian employers, had taken into account economic factors of interest for employers, including productivity, GDP, economic growth and market fluctuations. Nevertheless, the Government was responsible for ensuring compliance with the Convention and they therefore urged it to do so in a correct and comprehensive manner, including through the adoption of objective quantitative methods for the determination of the minimum wage which ensured the active participation of the most representative organizations of employers and workers. The requirement to establish procedures that ensured effective consultation with employer and worker representatives was inherent to the ILO standards system as a whole. The focal point of the system was the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which the country had also ratified. In conclusion, the Worker members called on the Government to guarantee the full and effective participation of the social partners in the setting and adjustment of the minimum wage.

The Employer members expressed appreciation of the statements of the members of the Committee and said that emphasis should be placed on the extent to which the positions of the Worker, Employer and many Government members who had spoken during the discussion coincided with regard to the importance of social dialogue and consultation of the social partners on the subject of minimum wages. Another area of agreement was that good faith should be demonstrated by all parties in the conduct of dialogue. Improving the income and living standards of workers was a shared concern for workers and employers and was of strategic importance for the goal of the elimination of poverty. That common goal could not be achieved without taking into account the needs of some and the possibilities of others, and of course the economic circumstances of the country. Discarding both viewpoints signified a clear loss for society as a whole, while ignoring just one of the parties constituted serious discrimination and unacceptable bias. The intention to improve workers' income would be of little use if it resulted in the growth of

the informal economy, as that would mean that incomes improved for a few people, while informality increased for many more, who would lose both income and social and employment safeguards. Moreover, in reply to the statement made by the Worker member of the Plurinational State of Bolivia regarding the prohibition in the statutes of the CEPB concerning the scope of its activities, the Employer members wished to clarify that prohibition related to intervention in individual labour disputes of its members. They also emphasized that the case under discussion was also a source of concern for workers and governments who were advocating the implementation of democratic methods to govern the destiny of their nations. It placed a question mark over social dialogue, which was one of the fundamental principles of the ILO. At present, Bolivian employers were being silenced by the Government, which had indicated that it would not comply with the Convention that it had ratified. In future, it might be the workers or employers of some other country who would be silenced. The Committee should not let a situation of this kind go unnoticed, as it would undermine the credibility of the ILO supervisory system. They reiterated their concern at the statement made by the Government representative, as there was no doubt that the Government's conduct would not change and that it was in violation of the Convention. It was essential for the Government, with the legitimate desire to convene and fully consult the social partners, to review the wage-fixing machinery. For those reasons, the Employer members called for the gravity of the situation to be emphasized in the conclusions to the case. They requested the Committee to make an urgent appeal to the Government: (1) to hold full consultations with the social partners on wage fixing and to report on those consultations to the Committee of Experts before its 2018 session; and (2) to accept a direct contacts mission and ILO technical assistance. Lastly, emphasizing the seriousness of the case, they called for the conclusions to be included in a special paragraph of the Committee's report.

### **Conclusions**

The Committee took note of the information provided by the Government representative and the discussion that followed.

The Committee noted with concern the dysfunctional operation of social dialogue and the current non-compliance with the provisions of the Convention.

The Committee recalled the importance of full consultation with the representative organizations of employers and workers concerned, as well as the elements to be taken into consideration in determining the level of minimum wages as set forth in Article 3 of the Convention.

Taking into account the Government's submissions and the discussion that followed, the Committee urged the Government without delay to:

- carry out full consultations in good faith with the most representative employers' and workers' organizations with regard to minimum wage setting;
- take into account when determining the level of the minimum wage the needs of workers and their families as well as economic factors as set out in Article 3 of the Convention;
- avail itself of ILO technical assistance to ensure without delay compliance with the Convention in law and practice; and
- accept an ILO direct contacts mission.

The Committee recommended the Government to submit a detailed report to the Committee of Experts by 1 September 2018 on the progress made in implementing these recommendations.

The Government representative thanked the Committee for its work. He noted the conclusions with concern, find-

ing that they were immeasurable and did not reflect the discussion. The conclusions did not explain which provisions of the Convention were the subject of non-compliance. Social dialogue was said to be dysfunctional without specifying the aspects which were not working. With regard to Article 3 of the Convention, he reiterated that this Article was complied with through the institutional wage-fixing machinery that derived not only from the law and agreements but also from the State's own Political Constitution, which had been the result of a Constituent Assembly and a referendum to approve it. That information supplied by the Government had also not been taken into consideration. The Committee must adopt technical conclusions and take account of the arguments put forward by the Government. It was regrettable that a Convention that claimed to protect workers' rights had been manipulated. Proof of that manipulation lay in the fact that the conclusions did not refer to the figures presented by the Government. He said that the Government would analyse the conclusions and consider how to implement them.

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

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**PLURNATIONAL STATE OF BOLIVIA (ratification: 1997)**

A Government representative, Minister of Labour, Employment and Social Welfare, indicated that the Plurinational State of Bolivia was appearing before the Committee because in 2014 a new Code for Children and Young Persons had been adopted with a much more protective and comprehensive vision for children and young persons. In response to an express request from some sectors of society, self-employed work by children had been recognized on an exceptional basis with a view to affording them better protection, thereby acknowledging a reality which tended to be ignored. Section 129 of the Code for Children and Young Persons set a minimum age for work of 14 years. On an exceptional basis, Defenders of Children and Young Persons could authorize work on their own account by children or young persons aged between 10 and 14 years, and work for another person by young persons aged between 12 and 14 years, on condition that it did not prejudice their right to education, was not hazardous, prejudicial to their dignity and overall development, and was not explicitly prohibited by law. The Committee of Experts had issued observations on that provision in 2015 and 2017, leading to the present discussion within the Conference Committee. Within the framework of the separation of powers, on 21 July 2017, the Plurinational Constitutional Court had issued ruling No. 0025/2017, declaring section 129.II of the Code for Children and Young Persons and other related articles (sections 130.III; 131.I, III and IV; 133.III and IV; and 138) unconstitutional. As a result, the reference to the exceptional age of 10 years for admission to work was no longer valid. The ruling was binding and compulsory, and was derogatory in effect (in accordance with article 203 of the Political Constitution and article 78.4 of the Code of Constitutional Procedure). On that basis, he considered that there could be no doubt that the provisions to which the Committee of Experts referred had been explicitly derogated. The minimum age for work of 14 years was in force, in accordance with section 129.I of the Code for Children and Young Persons, without exceptions, apart from those set out in the Convention. It should be noted that the ruling of the Constitutional Court made explicit reference to the Convention as an element in the findings relating to constitutionality, considering that Bolivia complied with its international commitments. In order to eradicate child labour from the country effectively, in addition to the legal framework, institutional action had been undertaken by labour directors and inspectors, based on three strategies: (i) a Prevention Strategy, through the development of capacities for

the application of fundamental rights aimed at children and young persons in educational establishments, parents, teachers, workers and employers; (ii) an Inspection Strategy, within the framework of which labour inspections were carried out, including routine and complaint-based inspections in places where children and young persons were working; and (iii) a Strategy of direct action for the physical protection of children and young persons engaged in work, in the context of which hearings were held to restore their fundamental and labour rights. Moreover, work by young persons was governed by Ministerial Resolution 442/04, which regulated the rights and obligations of adolescent workers (between 14 and 18 years of age) and established guarantees for labour, health protection and occupational safety and rights to food, recreation and training, and imposed sanctions for offences involving failure to comply with standards protecting adolescent workers.

The Ministry of Labour, Employment and Social Welfare (MTEPS), through its Fundamental Rights Unit, had begun to implement a system of temporary mobile offices in remote areas where no permanent MTEPS offices existed, with the principal objective of restoring the rights of workers. If complaints were received, inspections were carried out, hearings were held, information was provided and capacity-building action was undertaken for the application of the fundamental labour rights of children, young persons, parents and the population in general. In 2016 and 2017, some 26 temporary mobile offices had been set up in rural towns in the Oriente and Chaco Boliviano. In addition, within the framework of the Patriotic Agenda 2025, the Economic and Social Development Plan (PDES) and the Global State Planning System, the Government had established general policies for the integrated development of the State on the basis of the *Vivir Bien* (living well) vision. One of the objectives of the PDES was the elimination of the causes of child labour and adolescent work and labour exploitation. In order to reduce child labour by 2025, the Government had set itself the task of making progress in at least eight areas (eradication of extreme poverty, the socialization and universalization of services, health, education and sport, productive sovereignty with diversification, and food sovereignty). Child labour was the consequence of the economic and social policies that had prevailed in the country up to 2005, stemming from a colonial legacy of discrimination, violent dictatorships, and neoliberal policies that favoured protecting the interests of the oligarchy over the interests of the people. Those models had resulted in high levels of inequality and extreme poverty which, up to 2005, had affected almost 40 per cent of the population, and over 60 per cent of the population in rural areas. Until 2004, levels of access to education, housing, basic services and decent work had been very low. Since 2005, the Government, under the leadership of President Evo Morales Ayma, had been implementing a model of inclusive development with the objective of eliminating historical inequalities and eradicating poverty, with a view to eliminating the roots of the fundamental causes of child labour. With this objective, an integrated, social, community and productive model of development had been promoted, in which public, private, community and social roles coexisted and complemented one another in order to reduce poverty and promote well-being. Thanks to that model, child labour had fallen 50 per cent from 2008 to 2016, according to the Survey of Children and Young Persons carried out by the National Statistical Institute. Moreover, the number of labour inspections had grown exponentially, and policies such as mobile offices to prevent child labour and restore rights had been taken forward, in coordination with the relevant judicial authorities. Since 2005, the inclusive economic model which placed the economy at the service of social development had succeeded in: (1) reducing extreme poverty from 38.2 per cent in 2005 to 17.9 per cent

in 2017; (2) reducing inequality exponentially (in 2005, incomes among the richest population group had been 128 times higher than among the poorest); (3) reducing the Gini index from 0.60 in 2005 to 0.48 in 2014; (4) ensuring that the unemployment rate (4.48 per cent) was one of the lowest in the region; (5) increasing the minimum wage by more than 300 per cent between 2005 and 2018. The wage level and productive investment policies, which had generated greater internal demand, had also been very beneficial for the private sector, where earnings had increased fourfold since 2005. All of that progress was reflected in an improvement in the economic and living conditions of parents and children; and (6) building over 4,000 educational units. The Plurinational State of Bolivia was among the countries with the highest levels of primary school attendance in the region. Various programmes were being implemented at the national and local levels, such as the Juancito Pinto voucher and the Juana Azurduy Padilla voucher for mothers and children, both administered by central Government, and other social programmes implemented through local initiatives, such as school breakfast programmes and local monetary or other incentives devised by different agencies at state level to meet labour, education, health and environmental needs, within the framework of the Plurinational System for the Integrated Protection of Children and Young Persons (SIPPROINA). The result of combined public investment was that, since 2005, the school drop-out rate in primary education had been reduced from 4.5 to 2 per cent, while also achieving the result of over 41,000 children not dropping out of school and an increase of 40,000 in the numbers obtaining their baccalaureate, with a gender balance in addition. The quality of education had also been improved substantially. The number of stable primary school teachers had been increased by 15 per cent (more than 15,000 temporary teachers had been given long-term posts) and a model of inclusive education had been introduced which had been recognized and welcomed by various international bodies. The population also benefited from better access to health care. Over 1,000 health-care establishments had been established; in 2005 there had been only 2,800. The infrastructure had been boosted with new occupational equipment. All of that progress had had a very positive effect on child health. Between 2008 and 2016, there had been a reduction of almost 50 per cent in chronic malnutrition among children under 5 years of age, which had been recognized as a rapid reduction by the World Health Organization. Furthermore, over the past eight years, infant mortality had more than halved, thanks to improvements in prenatal and perinatal care. Those achievements were the result of public and social investment that had increased ninefold since 2005, placing the Plurinational State of Bolivia top in the region in terms of public investment, to which it allocated 12 per cent of its GDP. Finally, he emphasized that, as a result of the inclusive economic model, the middle class had increased by over 3,000,000 persons between 2005 and 2017 and that 58 per cent of the population had an average income which enabled them to “live well”.

**The Worker members** recalled that it was the second time in recent years that the Committee had discussed this case. On both occasions, the case had been double footnoted by the Committee of Experts, which had repeatedly noted with concern the situation of child labour in the country. In its conclusions in 2015, the Conference Committee had called on the Government to undertake legislative reform in consultation with the social partners in order to increase the minimum age for admission to employment, and to allocate the labour inspectorate with more human and technical resources. The Committee had also invited the Government to avail itself of ILO technical assistance. They noted that the Constitutional Court had in the meantime declared unconstitutional section 129 of the Code for Children and

Young Persons, which exceptionally authorized own account work as from the age of 10, and work in an employment relationship from the age of 12. The Plenary Chamber of the Constitutional Court had decided to declare the unconstitutionality of this provision since it was “incompatible and contradictory” with the Political Constitution of the State, the Convention on the Rights of the Child and Convention No. 138. They congratulated the Constitutional Court for this decision drawing on the international legal obligations of the Plurinational State of Bolivia. The Government should now take measures promptly in order to bring its legislation into line with the Convention. While the Convention allowed ratifying States whose economy and educational facilities were insufficiently developed to invoke the flexibility built into Article 2(4) of the Convention to specify a minimum age of 14 years, the instrument by no means allowed ratifying States to go below this threshold. In fact, ratifying States were expected to progressively raise the general minimum age to 16 years, and to eradicate child labour. The Convention provided that the specified minimum age could not be less than the age of completion of compulsory schooling. Full-time attendance at school or participation in approved vocational orientation or training programmes should be required and effectively guaranteed up to an age at least equal to that specified for admission to employment. Depriving children of opportunities for education and training condemned them to remain unskilled and thus perpetuated the poverty of a society. In recent years and to its credit, the Government of the Plurinational State of Bolivia had made education compulsory until the end of secondary school. This would in general require a child to go through 12 years of schooling, and, therefore, the age of completion of compulsory schooling would be at least 16 years. Allowing children to work as from the age of 10 would inevitably affect their compulsory schooling. Hence, the Code for Children and Young Persons was inconsistent with the national education law and was in clear violation of the Convention. The Worker members expressed their concern at the high number of children employed in the informal economy. While recognizing the results of measures taken by the Government to reduce the share of the informal economy, there were still too many children employed without protection in the informal economy. In the worst cases, they were engaged in forced begging, debt bondage, domestic services and commercial sex exploitation.

The Plurinational State of Bolivia’s capacity for effective labour inspection remained weak despite the significant number of children employed in hazardous employment. There were only 90 labour inspectors in the entire country, according to the Government’s report. In its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), the Government indicated that there were only six labour inspectors specialized in the elimination of child labour. There was no indication that this number had been increased. Given the large number of children engaged in child labour, as well as the scale of the informal economy, the number of labour inspectors remained inadequate. Weak labour inspection not only reduced the possibility of the detection of violations related to child labour, but also hindered the appropriate punishment of perpetrators. The Worker members took note of the positive measures undertaken by the Government in order to eradicate child labour, such as the Inter-institutional Subcommittee for the Elimination of the Worst Forms of Child Labour, which aimed to mobilize efforts and create synergies to prevent child labour and to provide care for victims. Moreover, the Government’s Economic and Social Development Plan aimed to eradicate the causes of child labour by increasing public spending on child protection. In this area, there had indeed been progress, with public expenditure increasing from 3.5 per cent in 2005 to 7.8 per cent in 2015. These policy

initiatives were commendable, but still fell short of the measures required for compliance with the Convention. The system introduced by the Code for Children and Young Persons had to be reformed without any delay. The Government should also immediately implement the ruling of the Constitutional Court by undertaking legislative reform in consultation with the social partners. They sincerely hoped that this discussion would be helpful in highlighting the urgency of these issues with the Government so that further progress could be made.

**The Employer members** expressed appreciation for the information provided and recalled that the discussion concerned a fundamental Convention and, as such, any lack of conformity with its provisions needed to be rectified as promptly as possible. They supported the designation by the Committee of Experts of the case as a double-footed one. Under Article 1 of the Convention, States undertook to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The ILO defined child labour as any work that deprived children of their childhood, their potential and their dignity and that was harmful to their physical and mental development. As such, it was work that was harmful to a child's physical, mental or moral well-being and interfered with schooling. According to the National Survey on Child Labour carried out in 2012 by the National Statistics Institute (INE), 491,000 children below the minimum age were engaged in work in the country, of whom 437,000 were engaged in hazardous work. Furthermore, 309,000 young persons aged from 14 to 17 were performing hazardous work. Those data showed the scale of the problem of child labour in the country. They also referred to the comments of the Committee of Experts on: (i) the lowering of the minimum age for admission to work under section 129 of the new Code for Children and Young Persons from 14 to 10 years for own-account workers and to 12 years for those working for others; (ii) the fact that the informal economy exceeded 70 per cent of the total economy, as it was the environment that was most conducive to child labour because it was beyond the scope of ordinary and general labour inspection; and (iii) the distinction made in the new Code for Children and Young Persons between fixing the minimum age at 10 for children working on their own account and at 12 for those working for others. In that respect, the Committee of Experts had requested the Government to take a range of measures, such as the drafting, in consultation with employers' and workers' organizations, of a new law to bring the national legislation into line with the Convention, and the provision of training and more human and material resources for the labour inspection services.

Moreover, the Constitutional Court, in its 2017 ruling, had found sections 129, 131, 133 and 138, among others, of the Code for Children and Young Persons to be unconstitutional as they were contrary to the Convention. International treaties formed part of constitutional law, therefore the above provisions of the Code for Children and Young Persons were not only contrary to the Convention, but also the Constitution of the country. The ruling of the Constitutional Court urged the Government to formulate public policies for the eradication of child labour, which should be designed and implemented in consultation with employers' and workers' organizations, as set out in the Convention. The Employer members concluded that, although the ruling of the Constitutional Court had overturned the provisions that breached the Convention, it had left a legislative loophole, as it was unclear which provisions were applicable. As a result, the Government still needed to amend the legislation explicitly so that it was in line with the Convention. To that end, they called for

amendments to be made in consultation with the most representative employers' and workers' organizations, in accordance with the Convention.

**The Worker member of the Plurinational State of Bolivia** highlighted the high rate of exploitation in the past, resulting from the application of Supreme Decree No. 21060 of 29 August 1985, which had privatized strategic public enterprises. He noted that, pursuant to the Supreme Decree, a large number of factories and mining enterprises had closed and many workers had been dismissed. Currently, child labour principally existed in the private sector (the Potosí mining sector, and the agricultural and livestock sectors in Eastern Bolivia), while it had been reduced in the public sector. Furthermore, while underlining the importance of working in a coordinated manner with the Government with a view to eradicating child labour, he drew attention to the signing in 2016 of an agreement between the workers and the Government, under which the adoption of all draft legislation must be agreed upon with the Bolivian Workers' Federation (COB). It was vital that this agreement be respected. He congratulated the Plurinational State of Bolivia, particularly the Constitutional Court, for the adoption of the ruling that repealed and annulled, *inter alia*, sections 129 and 138.I of the Code for Children and Young Persons.

**The Employer member of the Plurinational State of Bolivia** said that there were two aspects to non-compliance with the Convention, one of form and the other of substance. Regarding the problem of form, the ruling of the Constitutional Court, based on the provisions of the Convention, had ensured conformity with the Convention by maintaining the minimum age for admission to employment. He drew attention to the fact that the Government had not taken such measures when formulating the provision or when the international community had expressed criticism. Such conduct called into question the Government's willingness to implement and comply with the international Conventions, as it implied that it only observed them when they were in keeping with its ideology, jeopardizing even sensitive issues, such as childhood development. With regard to the basic problem, the absence of effective policies against child labour in the informal economy was also a matter of concern. This sector represented over 70 per cent of the economy, and was a space which concealed forms of work that were not decent and impeded proper access to decent working conditions from the first years of work. The Code for Children and Young Persons was nothing more than a vehicle for the implementation of the public policies adopted by the Government. The initial provision allowing work by children under the age limit set out in the Convention therefore regrettably disregarded the spirit of international standards which protected children and preserved their right of access to opportunities to develop and grow. Lastly, he expressed concern that a provision had been adopted which clearly did not correspond to the shortcomings and structural needs of children. In that context, the Government should commit to generating the institutional structures and conditions necessary to: (i) fill the legislative gap revealed by the ruling of the Constitutional Court; (ii) establish state schemes to eliminate child labour fully and effectively; and (iii) design mechanisms for the protection of children's rights and allowing for the development and growth, in decent conditions, of the population of some 800,000 children.

**The Government member of Bulgaria**, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Georgia, Montenegro, Norway, the former Yugoslav Republic of Macedonia and Ukraine, indicated that every girl and boy deserved a childhood and proper education, regardless of their ethnicity, gender, religion, and their place of residence. The elim-

ination and prevention of child labour constituted an important priority for the EU. Respect for the rights of the child was embodied in the Treaty on the EU and the Charter of Fundamental Rights. Furthermore, core labour standards were explicitly mentioned in all recently negotiated trade agreements between the EU and partner countries. The EU and the Plurinational State of Bolivia had very close bilateral cooperation. The Plurinational State of Bolivia was the largest recipient of bilateral EU development assistance in Latin America. It also benefited from the Generalised Scheme of Preferences (GSP+), under which, in return for preferential tariffs, it had committed to ratify and effectively implement fundamental ILO Conventions and other international instruments. This case had already been discussed by this Committee in 2015, following the adoption of the Code for Children and Young Persons that allowed children to work for an employer from 12 years of age, and in self-employment from 10 years of age. The Committee of Experts had concluded that these new provisions were not in conformity with the Convention. It had stressed that self-employed children should be guaranteed at least the same legislative protection as children in an employment relationship, particularly as many of these children were working in the informal economy under hazardous conditions. The Government had consequently been urged to: repeal these provisions; immediately prepare a new law in consultation with the social partners; and provide labour inspectors with greater human and technical resources. The Government had not taken any measures in this respect, despite the fact that child labour was a persistent phenomenon in the country, especially in rural areas and in the agriculture and mining sectors. She recognized the progress made by the Government in eradicating poverty and improving access to education, health, food and housing, and in effectively implementing human rights commitments. The Constitution, together with the Patriotic Agenda 2025 and the National Plan for Human Rights 2014–18, would provide a solid basis to better promote and protect human rights. The Code for Children and Young Persons also set out a wide range of measures for the protection of children, but the provisions allowing exceptions to the minimum age for admission to employment or work were of great concern. She referred to the decision of the Constitutional Court that declared these provisions unconstitutional, and looked forward to its swift implementation. The Government should be urged to prepare new legislation in consultation with the social partners increasing the minimum age for admission to employment or work. The Government could avail itself of the ILO's technical assistance for this purpose. The Government should also be encouraged to reinforce the labour inspection services and to continue its efforts to invest in social services in order to effectively detect child labour and protect children in both the formal and informal sectors. The EU would continue to cooperate with the Plurinational State of Bolivia to achieve the sustainable elimination of all forms of child labour.

**The Government member of Paraguay**, speaking on behalf of the group of Latin American and Caribbean countries (GRULAC), welcomed the information provided by the Government representative with regard to the application of the Convention. The 2030 Agenda for Sustainable Development, and in particular Goal 8.7 on eradicating child labour in all its forms by 2025, represented a unique opportunity to speed up the elimination of inequality and poverty. The continued existence of child labour perpetuated inequality and the exclusion of large sectors of the population, jeopardized sustained growth in the region and threatened the productivity of future adults by restricting their opportunities to obtain decent work. As a result, the region had promoted a series of initiatives with the aim of reducing child labour faster. She expressed satisfaction at the steps taken by the Government and at reports that, through

the binding ruling of the Constitutional Court, the provisions on which the Committee of Experts had commented had been rendered void and overturned. Observing that the legislation had been brought into line with the Convention, GRULAC considered that the Conference Committee should express satisfaction at the case. It should also highlight the progress that the Government had made in reducing poverty and inequality and tackling the structural causes of child labour, and it should encourage the Government to continue its efforts to eradicate child labour.

**The Worker member of Spain** deplored the adoption of the new Code for Children and Young Persons which, by amending former section 129 and reducing the minimum working age for children, was manifestly incompatible with the Convention. The existence of child labour was not acceptable under any circumstances and was a feature of societies where the inequality gap was growing. The consequences when children had to work were irreversible. She recalled the commitment made in the Buenos Aires Declaration on Child Labour, Forced Labour and Youth Employment of 16 November 2017, in which governments, the social partners and civil society were urged to be decisive in demanding the elimination of child labour. Lastly, in view of the information provided by the Government relating to the ruling of the Constitutional Court to suspend that section of the Code for Children and Young Persons, she concluded that it was necessary to enact a new law in line with the provisions of the Convention which established clear age criteria for admission to employment and had the goal of eliminating child labour.

**The Government member of the Bolivarian Republic of Venezuela** supported the statement made by GRULAC and welcomed the progress achieved by the Government, in particular with regard to the Economic and Social Development Plan and the ruling issued by the Constitutional Court, which had declared unconstitutional the provision of the Code for Children and Young Persons criticized by the Committee of Experts. In accordance with the ruling, the legislation of the Plurinational State of Bolivia was in line with the Convention. Based on the explanations provided by the Government representative, there was no doubt that the Government would pursue its protection policies in order to definitively eradicate child labour. He therefore considered that, in its conclusions, the Committee should note with satisfaction the progress made in the case.

**The Worker member of Uruguay**, while expressing appreciation for the social inclusion of and respect for different ethnic minorities demonstrated in the political process carried out in the Plurinational State of Bolivia, said that the adoption of a law that was in violation of a fundamental Convention showed inconsistencies. As a result of the exercise of full democracy, the law had been repealed. Nevertheless, social divisions continued to exist in the country which had resulted in many years of exclusion. It was necessary to address the causes of the situation and eradicate child labour in accordance with the provisions of the Convention. He was confident that the Government would establish the necessary mechanisms to hold consultations with the social partners for the purpose of developing legislation that allowed children to receive an education in order to ensure the development of the country.

**The Government member of Ecuador** endorsed the statement made on behalf of GRULAC and thanked the Government representative for the information provided. Ecuador considered the elimination of both inequality and poverty to be a priority and therefore attached great importance to combating child labour. The care, protection and development of children were some of the drivers of the comprehensive development to which nations so greatly aspired. Welcoming the progress and action taken to guarantee the best interests of the child, she encouraged the Government of the Plurinational State of Bolivia to continue

working hard to address the structural causes of child labour.

**The Government member of Egypt** indicated that the application of the Convention was a matter of significant importance as it was one of the fundamental Conventions. He noted the Government's efforts for the effective eradication of child labour, including: amending the legislation to bring it into conformity with the Convention; the ruling by the Constitutional Court on certain provisions of the Code for Children and Young Persons; the economic measures for the eradication of poverty, which was one of the main causes of child labour; improved health care for children; and measures to improve the schooling of children. The Committee of Experts should take account of these positive measures. Technical assistance should be provided to the Government to improve the implementation of the Convention.

**The Government member of the United States** welcomed the ruling by the Constitutional Court that declared unconstitutional certain provisions of the Code for Children and Young Persons that allowed the employment of children under the age of 14 and contrary to the country's international legal obligations. He encouraged the Government to take all appropriate action to implement laws and practice in line with the Convention, availing itself of the ILO technical assistance.

**The Government member of Algeria** noted with satisfaction the efforts made by the Government of the Plurinational State of Bolivia to enhance the implementation of policies to reduce the structural causes of child labour, such as poverty, which had decreased from 38.6 to 16.8 per cent, the school drop-out rate, which had been reduced from 4 to 2 per cent between 2006 and 2014, and the generalization of education, with coverage reaching 80 per cent. The commitment of the Government and the action taken to adapt the national legislation and to implement economic and social policies aimed at combating child labour should be supported. He considered that the progress made in that area should not be ignored and that the efforts made and the results achieved should be taken into account.

**The Employer member of Chile** regretted that the Government had not brought national law and practice into conformity with the Convention, despite a specific request from the Committee to that effect in 2015. Although the Government indicated that the exceptions to the minimum age of 14 years provided for in the Code for Children and Young Persons only applied on the condition that basic rights, such as the right to education, were not prejudiced, it was clear that the exceptions undermined that right, particularly considering that the period of compulsory schooling was 12 years, or at least until the age of 16 years. Furthermore, it should be noted that the Code had been adopted without first consulting workers' and employers' organizations, which was another regrettable error. Since the ruling of the Constitutional Court, there had been a regulatory gap and it was still necessary for the Government, in consultation with employers' and workers' organizations, to bring its legislation into conformity with the Convention without delay.

**The Government member of the Dominican Republic** acknowledged the good intentions of the Plurinational State of Bolivia and the action it had taken, which bore witness to the State's duty to safeguard the best interests of children and young persons. The information provided by the Government regarding the Constitutional Court ruling, which was binding, demonstrated its commitment. The ruling was an appropriate response to the recommendations of the Committee on the Application of Standards.

**The Government member of Canada** referred to the IV Global Conference on the Sustained Eradication of Child Labour of 2017 where the parties had committed to work towards the eradication of child labour. Already in

2015, the Government had been requested to take immediate measures to amend the provisions of the Code for Children and Young Persons concerning the minimum age for admission to employment or work for self-employment and for work in an employment relationship in order to bring them into line with the Convention. Welcoming the information provided by the Government concerning the judicial ruling declaring these provisions unconstitutional, she urged the Government to amend the Code without delay to ensure that the appropriate minimum age was clear for all constituents. The Government was also urged to strengthen its labour inspection capacity and its efforts to apply the law, and to prevent the inappropriate use of child labour, particularly in the informal economy.

**The Government member of Switzerland** expressed concern at the fact that the Code for Children and Young Persons was still not in conformity with this fundamental Convention. It was regrettable that some of its provisions, which were in force provisionally, allowed for the minimum age for admission to work to be reduced to below 14 years. That was not compatible with the conditions required for adequate schooling and did not allow young persons to attain full mental and physical development. Switzerland had already expressed concern in the Committee in 2016 at the provisions of section 129 of the Code, which allowed children to work from the age of 10 years. It was therefore appropriate to call on the Government once again to bring its legislation into conformity with the Convention, promote high-quality schooling and education, continue combating poverty and eliminate child labour and the exploitation of children.

**The Government member of Nicaragua** supported the statement made on behalf of GRULAC and welcomed the information provided by the Government representative. The eradication of poverty and inequality was fundamental, and it was therefore to be welcomed that, in the context of national economic and social development policies, the Plurinational State of Bolivia had established general policies for the comprehensive development of the country in line with the "living well" vision. It should also be emphasized that the Government's efforts to achieve progress towards the goals included in its pillars the eradication of extreme poverty, socialization, the universalization of services, health and education, productive and food sovereignty with a view to eradicating child labour by 2025. He also welcomed the ruling issued by the Constitutional Court, which rendered void the provisions criticized by the Committee of Experts, and the introduction of socio-economic policies which had reduced several of the structural causes of child labour, such as extreme poverty. He encouraged the Government to continue implementing policies for the control, follow-up and application of measures to contribute to the eradication of child labour by 2025.

**The Government member of Cuba** welcomed the information provided by the Government representative and the progress made in reducing inequality and poverty, which had fallen from 38.6 per cent to 16.8 per cent in recent years. It was also important to recognize the changes made regarding structural causes, which had created better conditions for children and their families. The Government's focus on education had been instrumental in making structural changes, and as a result, the number of children attending school had doubled. The social progress that had been made, as reflected by the reduction of poverty, the inclusion of vulnerable groups in the life of the country and the emphasis on children, young persons and women, were undeniable. Concerning labour issues in general, the Plurinational State of Bolivia had said that it was continuing to work towards the eradication of the worst forms of child labour, and the exceptional measures adopted previously had been set aside. She expressed confidence that the necessary efforts would be made to eliminate the causes of

child labour, through a multisectoral and protective approach, taking as a premise the “best interests of the child” and adapting the regulatory framework.

The Government representative emphasized that in its ruling the Constitutional Court had removed the points raised in the observation of the Committee of Experts, for which reason it was no longer necessary to amend the legislation with a view to bringing it into conformity with the Convention. The Code for Children and Young Persons now set a minimum age for admission to work of 14 years, in accordance with Article 2(4) of the Convention and the General Labour Act of the Plurinational State of Bolivia. Further legislative measures on the minimum age for admission to employment were not therefore required. On the other hand, the public policies adopted by the Government were solid and progress had been made in reducing the structural causes of poverty and in the abolition of child labour. In that regard, in 2008 over 700,000 children had been in a situation of child labour and hazardous work, while the number had fallen to 437,000 in 2012. According to the latest data from the Survey of Children and Young Persons of the INE, there were currently 323,000 children in that situation, meaning that the number of children engaged in child labour had been reduced by over 50 per cent in recent years. All of that demonstrated the will of the Government not only to comply with the provisions of the Convention, but also to transform the situation of poverty experienced by the children of the country. With reference to the alleged absence of public policies for the eradication of child labour in the informal economy, as a result of the policies implemented by the Government, he emphasized that the number of salaried workers had increased between 2005 and 2017 and was now 1,500,000. The number of workers covered by social security had also risen from 2,600,000 in 2005 to 4,200,000 in 2017. The numbers of the population entitled to retirement benefits had also increased from 660,000 in 2006 to 1,600,000 at present. It was clear that the economic policies that were being implemented were creating a structural basis with a view to offering the population the right to dignity, which presupposed not only access to work, but also the right to social security and pensions.

Finally, he reaffirmed the commitment of the Plurinational State of Bolivia to making the necessary efforts for the eradication of child labour. To that effect, the Patriotic Agenda 2025 included among its objectives the eradication of child labour by the year 2025. The progress made was significant, but not sufficient, for which reason it was necessary to continue the transformations that were being made for the benefit of children and young persons. On that basis, the Committee should recognize the efforts that were being made.

The Employer members emphasized that, despite the ruling of the Constitutional Court, all the issues had not been resolved, and that there was still a lack of conformity with international rules, and especially with the Convention. For example, reference had been made to the register of child workers, which was provided for in the Convention as an instrument to monitor child labour. Similarly, despite the amendments made as a result of the ruling of the Constitutional Court, it was still not clear how sections 132 and 133 of the Act would be applied. The lack of a process of tripartite consultations with the most representative organizations of employers and workers was also a problem. The Plurinational State of Bolivia still needed to design and adopt policies for the abolition of child labour, in consultation with the social partners in the country, and to bring its legislation more fully into line with the Convention, as it had been requested to do since 2015. State intervention was crucial in two important areas. Firstly, for the strengthening of labour inspection, both regarding material and human resources, and in terms of the training of inspectors on

child labour in general and child labour in the informal economy, where child labour was prevalent and most violations occurred. Secondly, the Government was urged to accept ILO technical assistance, which had been proposed in the past, so that the country could overcome the legislative issues and develop a plan for the eradication of child labour, in continuous consultation with the tripartite partners. In conclusion, considering the gravity of the case under discussion, the Employer members called for the case to be included in a special paragraph of the Committee’s report.

The Worker members recalled that, on the two occasions that the Committee had discussed the application of the Convention, the case had been double footnoted. On both occasions, it had been clear that the decision to lower the age for admission to employment to ten years was not in line with the Convention. While the Government had taken some positive measures to eradicate child labour and provide protection for children, legislative reform was imperative. They noted the information provided by the Government in its concluding remarks that section 129 of the Code for Children and Young Persons had been revoked by the Constitutional Court and then modified by the Government. They welcomed this decision as a positive step, and invited the Government to communicate this information to the Office and to the Committee of Experts. They called on the Government to progressively increase the minimum age for admission to employment in collaboration with the social partners. Depriving children of opportunities for education and training would keep them unskilled, and thus perpetuate the poverty of a society. If the minimum age for admission to work or employment was lower than the school-leaving age, children could be encouraged to leave school, as it would mean legally authorizing children of the age of compulsory schooling to work. The Government should therefore ensure that the minimum age for employment was set higher than the age of completion of compulsory schooling. As the limited number of labour inspectors might make it difficult for them to cover the informal economy and agriculture, where most child labour was to be found, the Worker members called on the Government to strengthen the capacity and expand the reach of the labour inspectorate. They suggested that the Government could benefit from ILO technical assistance.

### **Conclusions**

The Committee took note of the information provided by the Government representative of the Plurinational State of Bolivia on the issues raised by the Committee of Experts and the discussion that followed regarding the articles of the Code on Children and Adolescents that are not in line with the provisions of ILO Convention No. 138.

It is also noted that the Constitutional Decision 0025/2017 of 21 July 2017 declared the unconstitutionality of several of the provisions of the Code for Children and Adolescents (Act No. 548 of 17 July 2014), taking, as a reference and legal basis for this articles 1, 2 and 7 of ILO Convention No. 138. As a result of that decision, the following sections of the Code have been declared unconstitutional: 129.II; 130.III; 131.I, III, IV; 133.III, IV; 138.I.

The Government stated that following the decision of the Constitutional Court, no legislative amendments were needed, given the repealing effects of the constitutional decision on the aforementioned provisions.

Taking into account the Government’s submissions and the discussion that followed, the Committee urged the Government to:

- adapt national legislation, in consultation with the most representative employers’ and workers’ organizations, following the repeal of the provisions of the Code for Children and Adolescents by the Constitutional Court of



the Plurinational State of Bolivia, in line with Convention No. 138 and inform the Committee of Experts on these measures;

- make available to labour inspection increased human, material and technical resources and training, especially in the informal sector, to provide a more effective implementation of Convention No. 138 in law and practice;
- avail itself of technical assistance from the ILO, to review the National Plan for the Eradication of Child Labour in consultation with the most representative organizations of employers and workers; and
- submit to the Committee of Experts the final draft of provisions of the Code on Children and Adolescents before 1 September 2018; and report in detail on the progress made in the application of Convention No. 138 in law and practice to the next meeting of the Committee of Experts in 2018.

The Government representative clarified that the Constitutional Court's declaration of unconstitutionality referred to section 129.II of the Code. However, in the case of sections 130.III; 131.I, III and IV; 133.III and IV; and 138.I, it only applied with respect to the provisions establishing the exception to the minimum age of 10 years for light work. It was important to take that situation into account, as the first bullet point seemed to suggest, erroneously, that all of the above provisions had been derogated.

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

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##### EL SALVADOR (ratification: 1995)

A Government representative, Minister of Labour and Social Welfare, acknowledged the professionalism and objectivity with which the Director of the International Labour Standards Department had chaired the direct contacts mission that had taken place in July 2017. In its report, the Committee of Experts recognized El Salvador as a case of progress regarding observance of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), as a result of the actions taken to activate the Higher Labour Council (CST) and move forward in terms of effective compliance with the Convention. The Government had therefore been surprised to see itself included once again in the shortlist of individual cases of the Committee on the Application of Standards, since the Government had not only expressed its commitment to find solutions to activate the CST and promote dialogue, but had also taken the corresponding actions. With the same determination and on the basis of the principles of democratic orientation and transparency which directed the workings of the Government, it had accepted the direct contacts mission, which had thus been given the opportunity to observe in situ the actions and commitments of the government bodies directly connected with ensuring observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Convention No. 144. With regard to the recommendation of the direct contacts mission relating to the inactivity of the CST and taking up again the suggestions of the mission, a request had been made to the ILO in October 2017 for technical cooperation, which had been accepted. ILO assistance had been requested with three processes to be launched with the workers and employers in relation to: (i) the reform of the CST regulations; (ii) the formulation of proposals for legislative reforms to expand the right to freedom of association; and (iii) action to be taken in the area of training and the promotion of social dialogue. Despite delays in the coordination of the cooperation, a first round of consultations had been held with the workers to initiate a proposal for reform of the Labour Code. It was regrettable that representatives of the federations which were the complainants

in Case No. 3054 before the Committee on Freedom of Association did not attend that first meeting, even though they had been invited to do so. In that regard, and with the expectation of effective coordination with the technical cooperation of the ILO, the actions taken as part of the follow-up to the conclusions of the direct contacts mission would continue in the coming months.

With regard to the reports to be presented under article 22 of the ILO Constitution and the consultations regarding these, despite the fact that the reports were sent each year to the employers' and workers' organizations for consultation, the Ministry of Labour and Social Welfare (Ministry of Labour) had not received inputs or evaluations from those organizations. Moreover, the reports contained public information so they were available to anyone requesting them through the relevant channels. Furthermore, and irrespective of the constant complaints from the National Business Association (ANEP) and its affiliated federations and confederations, the Government, in line with its commitment to the workers, was taking steps to ensure decent living conditions and access to decent work. In this regard, progress had been achieved and decisions had been taken in tripartite forums that maintained an active work agenda and in which ANEP was constantly represented. The progress achieved included the approval of the increase in the minimum wage by the National Minimum Wage Council (CNSM), as a result of which over 240,000 workers, of which 45 per cent were women, had enjoyed an increase in income and an improvement in the standard of living of their families. Furthermore, the Salvadoran Social Security Institute (ISSS) had approved two new special social security schemes for informal economy workers and migrants and their families. Furthermore, as a result of action taken by the Government and the conditions generated by productive investment, there had been an increase in the number of jobs. In particular, between 2009 and 2018, a total of 138,293 formal jobs had been created, 79 per cent of them in the private sector. According to the 2017 Multi-Purpose Household Survey (EHPM), there had been an 11 per cent reduction in the poverty rate, with a drop in the number of households concerned from 40 to 29 per cent in 2017. Measures were being adopted through the Housing Social Fund (FSV), such as the opening of credit lines, to ensure entitlement to decent housing for workers and their families. Furthermore, the Salvadoran Vocational Training Institute (INSAFORP) was innovating training processes to enable the workforce to gradually adapt to the needs of the labour market. Lastly, the Government representative supplied statistical information highlighting the progress achieved in labour matters in the previous four years, such as: the placement of 70,170 persons in jobs (33,369 women and 36,801 men); the realization of 119,316 inspections and re-inspections at 9,367 workplaces which had been fined for non-observance or violation of the labour legislation; and cooperation with over 20,000 private companies to promote employment through the National Employment System (SisNE). All of the above bore witness to the fact that the Government had been constantly engaging in dialogue and coordinating and driving joint initiatives with workers and employers and all stakeholders committed to the development of the country. However, social dialogue through the CST, and in view of its competencies for ensuring observance of international labour standards, required political will on the part of ANEP, its member associations and its affiliated federations and confederations. El Salvador had the openness, the conviction and the historic perspective to realize that social dialogue was the cornerstone of democracy and peace. However, tripartism required the participation of three parties, and if one of the parties had neither the political will nor the democratic orientation to engage in it, it was impossible for tripartism to

be implemented and consolidated. Consequently, the Government representative appealed to the employers' organizations to join the CST, taking account of the fact that they were entitled to do so under the regulations in force and they did not need to be elected. Their participation in the CST was crucial, considering the desire and the duty that they had as ILO constituents to ensure that international labour standards were applied in El Salvador. She thanked the Office once again for the support given with technical cooperation in the context of compliance with Conventions Nos 87 and 144, and the promotion of the Maternity Protection Convention, 2000 (No. 183), and the Domestic Workers Convention, 2011 (No. 189). Lastly, she reiterated the Government's commitment to social dialogue aimed at achieving the progress and development of the country and ensuring that the workers had access to a decent life.

**The Worker members** recalled that this was the fourth consecutive year that the case was being examined by the Committee. In 2017, the Committee had urged the Government to: (i) reactivate, without delay, the CST; (ii) ensure concrete positive developments with regard to the freedom and autonomy of employers' and workers' organizations to appoint their representatives in compliance with the Convention, without intimidation; (iii) ensure adequate protection for the premises of the representative workers' and employers' organizations from violence and destruction; and (iv) report in detail on the application of the Convention in law and practice to the Committee of Experts. They welcomed that the Government had in the meantime accepted a direct contacts mission, which had taken place in July 2017. The mission had suggested that the Government avail itself of ILO technical assistance to implement the Committee's recommendations. It was to be welcomed that the Government had now requested technical assistance and was collaborating with the ILO to give full effect to the Convention. The current comments of the Committee of Experts focused on two elements: effective tripartite consultations and adequate procedures for the election of representatives of the social partners to the CST. It was regrettable that, despite repeated discussions in the Committee, the Government had failed to hold tripartite consultations with respect to the matters concerning the activities of the ILO. The ratification of ILO Conventions was no compensation for the absence of consultations, which had to start without any further delay. While other tripartite bodies, such as the ISSS, the FSV and the CNS were fully functional and effective, the challenges with respect to the CST had not entirely been resolved. They understood that the main obstacles for the operationalization of the CST concerned the difficulties with respect to the procedures in relation to the procedures for electing representatives of the social partners.

While there were no complaints with respect to the election of employer representatives to the CST, there were still questions with respect to the election of worker representatives. They understood from the Government's submission before the Conference Committee that the Government had requested the trade unions to present their nominations for the worker representatives to the CST, that three relevant nomination proposals had been received in May 2017, and that the Government had subsequently determined the members of the CST based on criteria such as membership and number of collective bargaining agreements. Subsequently, by applying the representation criteria, the first list had been allocated with five titular representatives, the second list with two titular representatives and the third with one titular member. The worker members had been sworn in. The employer side had decided not to attend the first meeting of the CST due to its concern over the non-conformity of the workers' representation mechanism. While the concerns from the employer side

were understandable, that issue was really for the trade unions to decide. Appreciative of the attempts undertaken by the Government to resolve the impasse, it was important that the criteria for representativeness were transparent and objective. The procedure and the criteria chosen had to be based on the consensus of the workers and had to enjoy their trust. The Government had to take a proactive role in facilitating consensus seeking instead of unilaterally imposing criteria, which as presented did not in themselves seem particularly objectionable. In their view, the actions so far taken by the Government had been delayed and lacked the transparency needed for building trust with the social partners. The implementation of the recommendations of the 2017 direct contacts mission was crucial to achieve real progress. In particular, the mission had recommended that a working group might be set up with all the federations and confederations concerned, including those that were not represented by recently elected members, to determine procedures and representativeness criteria. As had been the case with the other tripartite structures functioning in El Salvador, they remained convinced that improving social dialogue would ease many disputes in the country.

**The Employer members** said that the Committee was examining the application of the Convention for a second consecutive year, and it had previously been examined in 2015 and 2016 under Convention No. 87. At the previous session of the Conference Committee, the Government had explained how it was applying the Convention; a number of recommendations had been made, and it had been decided to send a direct contacts mission. The task was now to assess how the recommendations made by the Committee the previous year and by the direct contacts mission were being followed. As a starting point, the Government had been urged to reactivate the CST without delay, a recommendation that had been further stressed by the direct contacts mission, with the comment that it should be done through social dialogue in order to ensure the full functioning of the CST. To date, the CST was still not in operation. However, the Government reported that it had appointed members. It was important to note that the Convention in question concerned social dialogue, which was part of the essence of the Organization. The fact of belonging to the ILO already constituted a commitment by States to hold consultations with the social partners in areas of interest. Such consultations should be held with legitimate representatives of workers and employers; that was an obligation assumed by States and a right enjoyed by the social partners. In the present case, the Government had appointed workers without revealing what criteria it had used to gauge representativeness, assuming it had any – so much so that the three majority groups of workers had told the direct contacts mission that they did not know what criteria the Government had used, and one group had contested the appointments. The workers held the Government responsible for paralysing the CST. Doubts had been raised by the employers, for whom consultations under such conditions would be problematic. At the root of the problem lay the fact that the appointment criteria, if they existed, had not been explained. Several months previously, the direct contacts mission had insisted that clear, transparent, lawful rules should be established for the reactivation and full operation of the CST. It had been reported to officials at the ILO Office in San José that a review would begin shortly. That gave rise to legitimate doubts about the Government's will to make progress in applying the recommendations of the supervisory bodies. Similarly, the Government had said that, as well as the CST, there were five other tripartite entities and 17 independent tripartite bodies that were fully operational. The information in the employers' possession seemed to contradict the Government's claim. In March

2018, ANEP and the International Organisation of Employers (IOE) had presented the ILO Director-General with a request for urgent action, specifically in relation to Government interference in elections for representatives to the CNSM, the Institute for Access to Public Information, the board of governors of the Independent Executive Committee for Ports and the board of governors of the Electricity and Telecommunications Regulatory Authority (SIGET). In that regard, attention should be drawn to the previous year's conclusions and to the comments of the direct contacts mission to the effect that the Government should guarantee freedom and independence in the election of workers' and employers' representatives. In all those institutions, delegates for the employer sector had been appointed not by the most representative organization (ANEP), but by the President of the Republic, on the basis of legislative decrees issued separately for each of the institutions with the aim of allowing the presidential appointments to pass without consultation. All the decrees displayed constitutional irregularities, as had been pointed out by the Constitutional Court. Regrettably, according to the Court's ruling, it was necessary to wait until the expiry of the term of office of the current directors – who were not representative of the employers – to appoint legitimate representatives in accordance with the original legislation. That had not happened either, because, once that term had expired in five of the organizations concerned, the Government had taken different steps that clearly constituted interference, in flagrant breach of the recommendation of the direct contacts mission and the ruling of the Constitutional Court, with the aim of avoiding participation by the employers' sector. In some cases, the Government had simply not appointed anyone, while in others it had gone to extremes that should be brought to the Committee's attention so as to dispel any doubt regarding the lack of governmental will to meet the obligations arising from membership of the ILO and ratification of its Conventions. With regard to the case of SIGET, the law stipulated that its board of directors should include one director and one substitute elected by private sector trade union associations legally established in the country. The Government, knowing that ANEP was the most representative organization of employers – a fact recognized and undisputed by all previous governments and by every other employers' organization in the country – had facilitated the swift and irregular creation of a series of so-called associations that had stood in the election for employer representatives, ensuring a majority that would succeed in returning delegates loyal to the Government. The events had been brought to the attention of the prosecution authorities so that those responsible for offences committed in the preparation of fake minutes and the falsification of documents needed for creating the so-called employers' organizations could be punished. At the same time, the issuing of credentials to associations belonging to ANEP had been blocked, thereby preventing them from participating in the vote, which went against the requirements of the direct contacts mission. The facts presented demonstrated the Government's obvious disregard for social dialogue and disinclination to meet the obligations arising from ratification of the Convention, which promoted tripartite consultation as one of its fundamental pillars and was aimed at improving governance and ensuring the smooth functioning of labour relations at national level. Biased actions such as those in the present case undermined trust between the social partners and the Government and furthered the Government's autocratic mode of action. The ILO could not remain indifferent to such a reality, which was clearly harmful to social dialogue and the legitimate right to organize of the country's employers. No matter what the occupational organization involved and whether it represented employers or workers, the ILO should act with the same rigour; not to do so would be to

undermine the credibility of the system. Lastly, the Employer members urged the Government to implement without delay the recommendations of the direct contacts mission, particularly with regard to reactivating the CST; to guarantee the freedom and independence of employers' and workers' organizations in appointing representatives to social dialogue forums; and to refrain from any kind of interference in that process.

The Worker member of El Salvador recalled that the country had suffered a civil war whose origins lay in the marginalization, extreme poverty and exploitation suffered by the majority of the population and the total breakdown of democratic procedures and social expression. The peace agreements had come at the cost of over 80,000 deaths, as well as disappearances and summary executions. During the 1980s and 1990s, in accordance with the recommendations of the international financial institutions, economic restructuring had been undertaken consisting of the approval and implementation of neo-liberal policies. Under those policies, many sectors had been privatized, including the financial sector, telecommunications, energy and the pensions system. The dollar had also been promoted as the official currency and free trade agreements had been adopted. The result had been the mass dismissal of men and women workers, the deterioration of living conditions, an increase in migration and a loss of social security entitlements which had been acquired through union action. In that context, tripartite mechanisms had been used by the Government and employers' organizations to serve their own interests, and the only workers' organizations to participate in such mechanisms had been those close to the Government and employers, with the most representative workers' organizations being sidelined. Nevertheless, since 2009, the most representative workers' organizations in the public sector had succeeded in participating in the adoption of policies that were contributing to an improvement in the quality of life of workers. One example was the approval of the access to social security of workers in the informal economy and migrants under special schemes and the adoption in 2017 of an increase in the minimum wage, which had benefited over 250,000 workers. That wage increase, obtained as a result of the participation of the unions and their commitment to social justice, was a coherent and just response to the requirements of the Constitution and the real economic situation of the country. In view of such progress, ANEP was opposed to the operation of tripartite mechanisms with the active and pluralist participation of unions and partners who were not close to the employers. Biased practices for the election of the representatives of workers' organizations to tripartite mechanisms had also been eliminated and an effective process of pluralist participation involving the various union movements had commenced. However, the employers were endeavouring to remove the most representative workers' organizations from decision-making in tripartite bodies. Employers' organizations were therefore refusing to participate in the CST and the CNSM, thereby failing to give effect to the provisions of the Convention. He emphasized the low number of unions in the private sector and referred to various cases in which employers' organizations had harassed, dismissed and called for the detention of trade union leaders. In one of the cases, the enterprise had refused to reinstate all of the dismissed members of the executive committee of the enterprise union, despite an order issued by the Supreme Court of Justice. With regard to the functioning of tripartite mechanisms in El Salvador, such as the ISSS, he indicated that they were all operating correctly with the exception of the CST, due to the refusal of employers' organizations to participate in the latter. Employers' organizations, and particularly ANEP, must not interfere in any way in the decisions of workers concerning the

election of their representatives. In contrast with the previous procedures for the election of representatives to tripartite bodies, the current procedure was participatory and democratic and based on universal criteria of representativeness. Moreover, with a view to ensuring that the country followed on the path of being governable and of sustainable development, it was necessary to strengthen social dialogue, bargaining and consensus, as well as compliance with the national legislation and ILO instruments. He therefore called on the Government to continue giving effect to the requests made by the Committee of Experts to: (i) promote the participation of employers and workers in decision-making; and (ii) activate procedures for interaction in tripartite mechanisms as soon as possible, despite the refusal of private enterprises to participate in them. He also called on the Government, through the Ministry of Labour, to which a higher budget should be allocated, to give greater emphasis to the effective enforcement of labour legislation in the public and private sectors and to ensure a higher number of enterprise inspections. Lastly, private enterprise, as an important pillar of the economy, needed to make efforts to reach agreement in tripartite bodies, while respecting the independence of workers' organizations, pluralism, democracy and diversity of opinion. The basic values of humanism, solidarity and mutual respect required workers, employers and governments to act in conformity with the Constitution, which reaffirmed that labour was not a commodity, and to combat precarious work, the deterioration of the environment and the exploitation of children.

**The Employer member of El Salvador** recalled that the Committee had been examining the repeated violations of various Conventions by the Government for four consecutive years. The previous year, it had been examined as a double-footnoted case and the Committee had urged the Government to accept a direct contacts mission, which showed the gravity of the reiterated violations of the Convention. The present Convention, which concerned social dialogue and tripartite consultation, was given effect in El Salvador through a tripartite body entitled the CST. The CST had not been functioning since 2013 as a result of a unilateral decision by the Government to require unanimity among workers' organizations for the election and designation of their representatives. However, the real reason was that the Government did not want to engage in social dialogue or tripartite consultation. The previous year, after noting the absence of effective consultations with representative and independent organizations of workers and employers, the Committee had urged the Government to: (i) reactivate without delay the CST; and (ii) ensure concrete positive developments with regard to the freedom and autonomy of employers' and workers' organizations to appoint their representatives, without intimidation. The Committee had also once again requested the Government to accept a direct contacts mission to the country. In July 2017, the direct contacts mission had been carried out and certain tripartite meetings had been held. In one of the meetings, the workers' representatives designated by the Government as members of the CST had acknowledged that they were not aware of the criteria that had been adopted by the Government for their appointment. That interference by the Government was recorded in the final report of the mission. In its final report, the mission had also recommended that the Government: (i) reactivate the CST; and (ii) ensure in law and practice the freedom and independence of employers' and workers' organizations in the election of their representatives. One year after the Committee had adopted its conclusions, the Government had not only failed to give effect to any of the recommendations, with the exception of the direct contacts mission, but had acted in a manner that was contrary to the recommendations. For example, it had prepared a Decent Employ-

ment Policy, which had been launched in public in September 2017 without prior consultation of the social partners. One week before the launching of the policy, without having had any occasion to participate in its preparation and not being aware of its contents, ANEP had received a note from the Government requesting it to comment on the document with a view to securing its support for the public launch of the employment policy. In that regard, he emphasized that the Government could not develop an employment policy without consulting the most representative organizations of employers and workers with a view to taking fully into account their experience and views, and securing their full collaboration in the preparation of the policy and the necessary support for its implementation. Another example had been in May 2018, when ANEP had been invited, with less than two hours' notice, to participate in the review of a document entitled the National Employment Pact, which would be submitted in public the day following its review. The lack of notice was a clear indication not only of the lack of respect for the social partners, but also for social dialogue, tripartite consultation and the Government's obligations as a Member of the ILO. Moreover, at the same time that the direct contacts mission was being carried out, the Government had adopted a series of measures intended to prevent the employers from designating, in accordance with the law, a titular and a substitute director of SIGET, the regulatory body for electricity and telecommunications in the country. Over a short period, 60 associations had been created, composed of young persons between 18 and 20 years of age living in 17 municipal areas characterized by poverty and a high rate of informality. The associations were created on the basis of a model document prepared by lawyers who were also public employees of the state enterprises regulated by SIGET. The 60 associations had participated in the elections and had won. The Government was therefore not only refusing to engage in dialogue with the legitimate representatives of the employers, but was also creating fake associations to replace the legitimate partners. In light of those events, the employers' organizations had appealed to the Constitutional Chamber of the Supreme Court, which had ordered precautionary measures, and to the Office of the Public Prosecutor to undertake the corresponding criminal investigations. In January 2018, in accordance with the provisions of the legislation, ANEP had designated a director of the Road Conservation Fund (FOVIAL) and proposed a shortlist for the El Salvador Tourism Corporation (CORSATUR). Five months later, the Government had not made appointments to those positions or convened meetings. With reference to the election of representatives to the Institute for Access to Public Information and the CNSM, the employers' organizations were pursuing appeals under the Constitution. With regard to the Autonomous Port Executive Commission, the situation was more complex. The Government was refusing to give effect to the ruling by the Constitutional Chamber of the Supreme Court which had found unconstitutional the Decrees of 2012, as a result of which employers' organizations had recovered the capacity to designate and appoint directors of autonomous public bodies freely and independently. In brief, there was a long list of violations of the Convention by the Government, including the fact that ANEP had been waiting for a year to receive its official credentials.

**The Government member of Bulgaria**, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro, Norway, Serbia and the former Yugoslav Republic of Macedonia, recalled the commitment undertaken by the Government under the trade pillar of the EU–Central America Association Agreement to effectively implement the fundamental ILO Conventions. It was regrettable that the case had already been discussed at the Committee in 2017, at

which time the Committee had urged the Government to reactivate the CST and ensure positive developments on the right of the social partners to appoint their representatives. However, it had to be welcomed that a direct contacts mission had taken place in July 2017, and that the Government had attempted to reactivate the CST during an inaugural meeting in June 2017, in which the employers had, however, not participated, alleging non-conformity of the workers' representation mechanism. The social partners had the right to freely appoint the representatives of their choice in joint and tripartite bodies without interference from the Government. As an essential measure to build trust among the different stakeholders, she urged the Government to take measures to include all social partners in consultations related to employment and labour policies, in a transparent manner, before a decision was taken. The Government should reconstitute the CST as a matter of urgency. To this end, it should promptly establish, in consultation with the social partners, clear and transparent rules for nomination of their representatives to the CST, based on the criteria of representativeness of organizations and in compliance with the Convention. Furthermore, the Government should explore all possible ways to promote social dialogue, and all social partners should engage in tripartite dialogue in a constructive manner. She strongly encouraged the Government to continue to avail itself of ILO technical assistance, and emphasized the commitment of constructive engagement with the country, including through EU and Member States cooperation projects, which were aimed to strengthen the Government's capacity to address all issues raised in the observation of the Committee of Experts.

**The Government member of Paraguay**, speaking on behalf of the group of Latin American and Caribbean countries (GRULAC), welcomed the information provided by the Government regarding compliance with the Convention. Furthermore, she referred to the report of the Committee of Experts with regard to: (i) the inclusion of El Salvador as a case of progress, in which the Committee had expressed satisfaction at some of the positive measures adopted by the Government in reply to its comments; (ii) the holding of a direct contacts mission in June 2017, in response to the Conference Committee's conclusions from the previous year; (iii) the Government's demonstration, during the direct contacts mission, of its willingness to carry out the actions indicated and agreed upon in the context of the mission, in order to continue to promote social dialogue and the agreements between the sectors, thus contributing to the activation of the CST; and (iv) the Government's request for technical assistance in October 2017, which was already being provided by the San José Office. She was confident that the Government would continue to comply with the Convention.

**The Government member of Panama** supported the statement made by GRULAC, and said that he had listened closely to the information provided by the Government and the points raised by the Employer members and the Worker members, from which diverging opinions could be observed. In the current conditions, the establishment of dialogue was difficult. However, the Government had made efforts to reactivate the CST, which was the mechanism created in order to put tripartism into practice. It was hoped that such a mechanism would be able to function, respecting the will of the Salvadorean people and without interference by outside parties. He congratulated the ILO for the backing given on the ground, and reiterated his support for the Government in its efforts to create social justice and comply with the provisions of the Convention.

**The Worker member of Guatemala** expressed concern at developments in labour relations in El Salvador, in particular when social partners questioned the representativeness of others. In El Salvador, as in Guatemala, there had been

too many years of war, deaths and victims, and immense value was therefore attached to peace and the need to change ways of relating within a context of democracy and respect. For there to be freedom of association and representativeness of employers' and workers' organizations, it was first necessary to consolidate a legal and social framework to enable the organizations to exist, develop and perform their activities without them or their members being persecuted. Organizing a workers' trade union, especially in the private sector, still implied a major risk, since the reaction from the enterprise was likely to be dismissals or reprisals, as had been communicated time and again to the national authorities and the ILO. In some cases, trade union activities implied a risk to life, as had been demonstrated by the murders of trade unionists from El Salvador and Guatemala, whose cases remained open for years without the authorities shedding light on the perpetrators and instigators of their deaths. He supported the recommendations made by the direct contacts mission in 2017, in which the competent authorities had been encouraged to ensure that the necessary measures were taken, in consultation with the employers' and workers' organizations concerned, to ensure full respect for the autonomy of employers' and workers' organizations to appoint their representatives. Furthermore, social dialogue was too important to be paralysed by procedural aspects. Where one or more of the sectors participating in or invited to consultation forums had internal difficulties in being considered representative, that issue should be resolved among the sectoral organizations themselves, in what was considered an appropriate manner and time. Lastly, he called on all parties to overcome difficulties and resume the social dialogue processes that had been promoted, since that was the only possible way to carry out the fundamental task of improving the living and working conditions of millions of Salvadoreans who were currently enduring difficult personal situations, far removed from the decent work recommended by the ILO.

**The Government member of Honduras** reaffirmed the support shown for the Government in the GRULAC statement regarding the application of the Convention. The Government had taken action in response to the Committee's requests from the previous year and the recommendations of the direct contacts mission of July 2017. For example, it had held institutional consultations and validated labour procedures, and had also invited representatives of the three sectors to attend the inaugural meeting of the CST. He expressed regret that the meeting had not taken place and urged the Government to continue its efforts to promote tripartite dialogue so that the CST could soon be restored and fully operationalized. It would also be an opportunity to implement good practices that enabled consultation with social partners, thereby ensuring full tripartite participation. In a spirit of constructiveness, the mandatory nature of tripartite consultations continued to result in effective procedures for promoting the application of international labour standards. Hence, any decisions taken regarding the due observance of fundamental, governance and technical Conventions not only required a clear willingness on the part of the Government to carry out the steps specified and agreed, but also commitment on the part of the tripartite constituents and technical assistance from the ILO. Lastly, the Government should continue its efforts to implement the necessary measures and establishing dialogue mechanisms which contributed to consultation with the social partners leading to tripartite solutions.

**An observer representing the World Organization of Workers (WOW)**, speaking on behalf of the National Union of Workers of Venezuela (UNETE), the Democratic Union Alternative for the Americas (ADS) regional confederation and several Salvadorean trade unions, said that in the previous nine years, El Salvador had experienced a clear regression in terms of tripartism, social dialogue, freedom of

association and the conclusion of collective agreements. In July 2017, the direct contacts mission had made a series of recommendations, which had not been implemented by the Government, given that the CST had still not met a year after it had been established. No consultations had been held with trade union federations or confederations to determine procedures for electing CST representatives, until 17 May 2018, when the Ministry of Labour had invited the trade union representatives to a meeting with an advisor to discuss the reform of the regulations, maintaining that it was thereby complying with the recommendations of the direct contacts mission, which showed that it only aimed to deceive the Committee, given that no actions had been carried out in that regard since the previous session of the Conference. The situation in the country had deteriorated. For example, the procedure to legally register various organizations had been made more complicated, imposing requirements not laid down in the legislation. Various comments had been made on the records of union assemblies of organizations which were considered by public officials to be unsound. There had been delays of 60 to 90 days in issuing the respective credentials, thereby hampering trade union representation because the organizations did not have the necessary accreditation. Additional requirements placed only on trade unions identified as not being compliant constituted discriminatory treatment. Public sector agreements were not implemented and tactics had been employed to prevent collective bargaining, such as in the cases of the Health Solidarity Fund (FOSALUD). Lastly, there was constant interference in trade union autonomy by the Ministry of the Interior and Territorial Development and the Ministry of Labour, which affected the independence and free exercise of trade union rights. The Government had not taken any steps to ensure the full application of the Conventions in law and practice, and had not initiated the process for the submission of the Conventions for ratification by the relevant bodies. Social dialogue was notably absent, as exemplified in the adoption of a national employment agreement and policy, without consultation with all the workers' organizations. In addition, there were plans to adopt an Act on the public service, which essentially did away with trade unions, denied them the right to collective bargaining, eliminated public servants' employment stability and was a flagrant breach of the ILO Conventions. The Government should reform national legislation with a view to removing obstacles to freedom of association. For example, it should take action to reduce the number of members required to establish a trade union, as municipal and central government workers employed in institutions with fewer than 35 employees, who were also unable to establish unions at enterprise level, were prevented from exercising their right to organize. Moreover, it was necessary to remove the requirement that trade union leaders must be Salvadorean by birth, because this excluded migrant workers from other countries who worked in construction and agriculture. It was also necessary to remove the rule that allowed workers to join only one trade union, even if they worked in two different economic sectors, and remove the obligation to elect the executive committees of trade union federations and confederations on an annual basis.

**The Government member of the Dominican Republic** endorsed the statement by GRULAC, and expressed her support for the information provided by the Government regarding the application of the Convention. She acknowledged the positive measures adopted by the Government, which clearly demonstrated its determination to encourage and strengthen social dialogue and consensus between the sectors, thus facilitating the activation of the CST. She also thanked the ILO for its contribution to strengthening the capacity of governments through technical cooperation, which was currently being provided to the Government.

**The Worker member of the Bolivarian Republic of Venezuela** indicated that the determination of the Government and the workers to promote social dialogue through the CST was noticeable. Dialogue should be honest, sincere and responsible, but it was being used as a tool to undermine the rights that workers had fought to obtain. In this case and others, the desire of the employers to destroy social dialogue could be observed, at a time when some governments were finally engaging in it and complying with the ILO Conventions. When they suffered defeat, the employers denied that they had been consulted and avoided dialogue, accusing governments of interfering. In cases of murders of trade unionists, students, teachers, environmentalists and journalists, the same forcefulness was not seen. It was necessary to protect trade unionists, activists and environmentalists and to impose severe penalties on those who violated, for example, the human rights to decent work, life, education, health and housing. It was also necessary to acknowledge that governments, along with their workers and honest employers, were surpassing and improving the ILO Conventions.

**The Government member of Cuba** expressed support for the statement made by GRULAC and welcomed the information provided by the Government. The points made in the report by the Committee of Experts, which examined the implementation by El Salvador of the Conference Committee's 2017 conclusions, must be taken into consideration. The report included the country on the list of cases in relation to which the Committee of Experts had expressed satisfaction at the measures adopted and the processes implemented by the Government relating to tripartism and social dialogue. The Government had expressed its willingness to comply with the Convention. ILO technical assistance and cooperation could contribute to such a process.

**The Worker member of Paraguay**, speaking on behalf of the National Confederation of Workers (CNT) and the ADS, expressed concern at the Government's lack of willingness to adopt the measures needed to promote and guarantee effective consultations and social dialogue with the workers' and employers' organizations, and its failure to observe the rules used as a basis for the development of mature dialogue, thus violating the right to freedom of association. The situation in the country was alarming, as the Government did not comply with the Convention and transgressed and violated the spirit and principles of social dialogue and effective consultation, which were pillars of the ILO and the work of the Committee. The Government had not supported the processes of social dialogue and tripartite participation which had been carried out, which had thereby had an adverse impact on the workers' and employers' organizations, and on the international community. It was important to have national and international bodies within which governments could ensure inclusive and effective consultations and collaboration for the proper development of common interests. Such bodies should be free from discriminatory practices and guarantee the respect of freedom of association and tripartism in order to make improvements at national level that would transform labour relations in a successful and positive manner. Social dialogue played a crucial role in the promotion of dignified and decent work with the necessary guarantees, freedom, security and dignity. The Government must transform its willingness into a powerful driving force.

**The Employer member of Honduras** recalled that the case had been examined last year as a double-footnoted case and the Committee had once again urged the Government to accept a direct contacts mission before the end of 2017. This was an indication of the seriousness of the Government's repeated violations, both of the Convention and of the principles of the ILO. Furthermore, the Committee, having noted a lack of genuine consultation with repre-

sentative and independent workers' and employers' organizations, had urged the Government to: (i) immediately reactivate the CST; and (ii) ensure that tangible progress was made with regard to the freedom and independence of the employers' and workers' organizations to appoint their representatives, without being subject to intimidation. The final report of the direct contacts mission recommended that the CST should be reactivated and the freedom and independence of the elections of representatives of workers and employers should be guaranteed. It also called on the Government to guarantee, in law and in practice, full respect for the independence of employers' and workers' organizations in appointing their representatives. It was a source of concern that the Government had not adopted any of the recommendations of the Committee or the direct contacts mission, and that it was ignoring the shortcomings of its own constitutional oversight bodies, thus violating labour standards and destroying the trust that should prevail in social dialogue. The Committee had a duty to promote compliance with international labour standards through the relevant mechanisms. In view of the Government's repeated omissions, the speaker asked that: (i) a firm demand should be made for compliance with the recommendations of the Conference Committee and the direct contacts mission; (ii) the Government should bring together the legitimate representative social actors; and (iii) reports detailing compliance with the Committee of Experts' recommendations should be presented within two months.

**The Worker member of Brazil** voiced his solidarity with the workers of El Salvador and expressed the hope that the Government would ensure the application of the Convention, establishing and guaranteeing all the conditions for doing so in a pluralistic, transparent and democratic manner. The participation of trade unions had been fundamental in the country when it came to improving minimum wages and access to social security for informal and migrant workers. It was therefore necessary to strengthen the presence of trade unions in the private sector. Employers must not support tripartism only when they derive a benefit from this, and should allow more representative workers' organizations to be incorporated into all tripartite bodies. It was necessary for those bodies to operate with the active and pluralistic participation of trade unions, governments and employers in pursuit of social dialogue and in a spirit of tripartism, with the goal of good governance, social justice, sustainable development and continued progress.

**The Government representative** said that she had listened carefully to the statements made concerning the case and emphasized that various initiatives had been introduced and would continue to be pursued until a solution was reached to reactivate the CST. The Government would continue to request technical cooperation and mediation from the Office, principally because the employers' unions only responded to invitations to discuss the topics raised when invited by the Office to talk to the Ministry of Labour. The arguments made concerning an election process in the complaint submitted by ANEP and in the statement of the Employer member regarding SIGET were baseless and reflected a divergence of sectoral interests. In El Salvador, it was not a crime to establish organizations or unions, as it had been for a decade under military rule, resulting in armed conflict. The Government stood guarantor for freedom of association, freedom of expression and civil and political rights, which were constitutional rights because they were part of the results of the dialogue and negotiation enshrined in the Peace Accords. The Supreme Court had even issued a protection order halting the election, not on account of the organizations created but because there was a conflict of interest between one of the individuals elected and the functions of SIGET. The Supreme Court had ordered the Legislative Assembly to issue

an interim provision amending the act on the creation of SIGET to reappoint the directors whose term had expired in December 2017. SIGET was acting accordingly pending a ruling in the constitutional protection (*amparo*) proceedings brought before the Supreme Court. It was therefore necessary for all parties to respect due process. Irregularity in the participation of organizations not sympathetic to the employer sector did not mean that those organizations must be illegal or that they had failed to observe the precepts of the Convention. Moreover, electricity and telecommunications were not the sole preserve of the employers' sector but matters of national interest, as they were not only an economic resource but also a resource for the development and well-being of the population. As such, various sectors had a legitimate interest in participating, expressing their views and being listened to in the decision-making process. With regard to the Employer members' comments on government interference in election processes, it was important to note that the criteria considered in appointing representatives of the workers' sector had been taken from international custom and were intended to ensure the objective application of the conclusions of the ILO concerning: (i) the reactivation of the CST without delay; and (ii) the ruling of the Constitutional Chamber of the Supreme Court stating that the Ministry of Labour was obliged to establish and maintain processes of social dialogue and tripartite participation to tackle the circumstances that were stopping the CST from functioning. In the same ruling it was stated that forums should be provided for dialogue among the trade union organizations involved, which should be given the necessary means to agree on and apply clear and permanent procedures for electing their representatives, so as to ensure that workers' representatives were appointed and participated in the aforementioned consultative body. In that respect, criteria such as the number of union members, number of member unions and number of collective agreements for each of the lists submitted were what had guided the appointments. The criteria had been assessed on the basis of data registered with the Ministry of Labour and the information supplied by the registered trade unions. The Government must guarantee that the measures ordered by the Legislative Assembly through legislation and by the Supreme Court were implemented. It followed that there had been no modification of the CST regulations of the CST, but the procedural gaps concerning the workers' delegation had persisted since 1994, resulting in the CST becoming inactive. Furthermore, the Government had given the employers an absolute guarantee of participation. The Government had respected the law and had not introduced any election procedures whatsoever that served specific interests.

**The Employer members** welcomed once again the agreement reached in the Conference Committee on the importance of social dialogue and respect for the independence of workers' and employers' organizations. However, it was a source of concern to hear the accounts of self-employed workers who claimed to have been subject to acts of discrimination, such as those pointed out by the Employers, which was a reminder of the gravity of this case. The Committee had underscored the importance of social dialogue, which was an essential building block of the Organization. For social dialogue to be fruitful, it was necessary for the legitimate representatives of employers' and workers' organizations to participate in good faith, and for the Government to acknowledge the need to facilitate such dialogue and attempt to reach consensus. Ultimately, a great deal depended on the Government's having a true democratic orientation, with a view to meeting, in good faith, its obligations arising from its international commitments and, more importantly, with the intention of enriching the vision on issues of national interest and achieving governance. It was not a case of complying with a mere formality, let

alone claiming to do so by convening bodies which were not at all representative or, even worse, which had been arbitrarily established for the purpose, suggesting a commitment to dialogue that it did not have. The statements made by the Government minutes earlier were a matter of concern, as they clearly recognized such bodies as representative employers' organizations. The Employer members reiterated that the Government could not shirk its obligations solely because negotiations with one or both of the social partners might become uncomfortable if they defended their legitimate interests. The Conference Committee could not overlook a situation such as the one referred to in the strongest terms in the case, as it would contribute to the destruction of social dialogue and a loss of trust in the supervisory mechanisms. On this occasion, the employers of El Salvador were being discriminated against, on another occasion it could be workers or employers in any other part of the world. Since the discussion of the case in 2017 and the direct contacts mission had issued its recommendations, there had been no sign of the Government's willingness to comply fully and in good faith with its obligations emanating from the Convention. It was the Committee's duty to remind the Government in no uncertain terms of the need to modify its attitude and act in accordance with the law. In light of the above, the Employer members requested that: the seriousness of the social dialogue situation in the country should be highlighted in the conclusions of this case; the Government should be urged to immediately reactivate the CST, through social dialogue with the most representative workers' and employers' organizations, in order to ensure its full operation; and the Government should be urged to develop, in consultation with the social partners, clear and stable rules in conformity with the law for the reactivation and full operation of the CST. The Government must also be urged: (i) to refrain from interfering in the composition of the employers' organizations and to facilitate, in accordance with the law, the proper representation of legitimate employers' organizations, emitting the required credentials; (ii) to immediately appoint representatives of legitimate employers' organizations to the social dialogue forums for which such appointments were pending; and (iii) to accept the technical assistance of the Office. Lastly, given the seriousness of the case, the Employer members asked for the conclusions to be included in a special paragraph of the Committee's report.

The Worker members recognized the efforts made by the Government to comply with the Convention. In previous years, the technical assistance provided by the ILO and a direct contacts mission had indeed contributed to build trust and strengthen tripartite social dialogue in El Salvador. However, there were still significant shortcomings that needed to be overcome without delay. Unfortunately, social partners in the country had been deprived for too long of the opportunity to have their views heard in relation to the instruments adopted by the ILO. They therefore urged the Government to immediately create the conditions to allow such consultations to take place. Despite some positive engagement from the Government, there were still real doubts with respect to the criteria and procedures for the election of the worker representatives in the CST. The direct contacts mission that had visited the country in July 2017 had produced recommendations to the Government that were fully supported by the Workers' group. The mission had indicated the need for effective consultation with the confederations and federations concerned for the determination of stable election procedures with precise, objective, and pre-established representativeness criteria. In addition, the mission had recommended the establishment of a working group open to all registered confederations and federations, to agree jointly clear and permanent criteria and procedures for the appointment of their representa-

tives. ILO technical assistance was currently being provided in order to set up consultations with the social partners for the reform of the CST's regulations to implement those recommendations. Both the employers and government authorities should respect this process and the choices made by the workers to allow the CST to finally start functioning. In this regard, all necessary steps should be undertaken, as recommended by the Committee of Experts, to investigate and resolve all the allegations of interference in the CST. The Employers' group had highlighted the challenges they were experiencing with regard to various bodies at national level and the allegations of interference by the Government. They expressed the hope that the Government would engage with the employers swiftly in order to find a satisfactory resolution. However, it had to be pointed out that those bodies did not deal with the matters listed under Article 5 of the Convention and should therefore not distract from the other very important issues discussed. They once again urged the Government to work with the ILO through technical assistance in order to establish long overdue progress on that matter.

### **Conclusions**

**The Committee took note of the oral statements made by the Government representative and the discussion that followed.**

**The Committee noted with concern the dysfunctional operation of social dialogue and the current non-compliance with the provisions of the Convention.**

**Taking into account the Government's submissions and the discussion, the Committee called upon the Government to:**

- **refrain from interfering with the constitution of employers' organizations and to facilitate, in accordance with national law, the proper representation of legitimate employers' organizations by issuing appropriate credentials;**
- **develop, in consultation with the social partners, clear, objective, predictable and legally binding rules for the reactivation and full functioning of the Higher Labour Council (CST);**
- **reactivate, without delay, the CST, through the most representative organizations of workers and employers and through social dialogue in order to ensure its full functioning;**
- **appoint without delay representatives of the most representative employers' organizations in the CST where such appointments are still pending; and**
- **avail itself of ILO technical assistance.**

**The Committee recommends that the Government submit a detailed report to the Committee of Experts before its next session in November 2018.**

A Government representative, Minister of Labour and Social Welfare, noted the conclusions and reiterated that the Government was firmly committed to due compliance with the Convention. The Government had fostered tripartite social dialogue as part of the national agenda in order to achieve social and labour justice and would continue with technical cooperation to ensure that the social partners had the technical tools to engage in it. In El Salvador, there was freedom of association; nobody was denied that right; and the unions representing the employers' sector enjoyed active and guaranteed participation in all tripartite forums and in almost all bipartite forums. In the case of the Higher Labour Council (CST), the regulations provided for the participation of the ANEP unions (the Chamber of the Construction Industry (CASALCO), the Chamber of Agriculture (CAMAGRO), the Chamber of Commerce and the Salvadoran Industry Association (ASI)) and ANEP itself, which, despite not having attended the inaugural meeting, had already sent their representatives to participate in the CST. Unlike for the workers' sector, which did not have an



election procedure, there were no obstacles for the employers' delegation. She welcomed the existence of the supervisory bodies, which supported countries in achieving compliance with the Conventions. Moreover, those bodies should not be used as forums for addressing disagreements which, precisely, could be resolved through active and effective participation in the bodies that had been set up for that purpose. She thanked the speakers who had acknowledged the action taken by the Government to make progress regarding compliance with the Convention and also expressed gratitude for the technical cooperation received from the Office.

#### SERBIA (ratification: 2005)

A Government representative indicated that social dialogue at the national level was a tripartite process between representatives of employers, workers and the Government, and that collective bargaining and the work of social and economic councils were the most important forms of social dialogue. The foundation of social dialogue had been set out in the Labour Code, primarily with respect to the establishment of trade unions and employers' associations, as well as the method of and requirements for determining their representativeness. The establishment of the Social and Economic Council of the Republic of Serbia (SEC) in 2004 had created the conditions for a more successful social dialogue at the national level. Social dialogue was promoted by regular staff meetings and the SEC sessions. Four sessions of the SEC had been held in 2018, and eight in 2017. With respect to the remarks made by the social partners that draft laws had not been submitted for consultations, the speaker explained that in 2017, the following laws and other acts, which had been prepared by the Ministry of Labour, Employment, Veteran and Social Affairs (the Ministry of Labour), had been communicated to the SEC for its consideration and opinion: (1) the Draft Law on Amending the Law on Peaceful Settlement of Labour Disputes; (2) the Draft Law on Amending the Labour Code; (3) the Proposal for a Rulebook on Amending the Rulebook on previous and periodical medical examinations of employees in employment at increased risk; and (4) the Proposal for a Rulebook on acquiring new knowledge relating to occupational health and safety. In addition, also in 2017, the following draft laws prepared by the Ministry of State Administration and Local Self-Government had been considered by the SEC: (1) the Draft Law on Salaries of Civil Servants and State Employees in Autonomous Province Authorities and Local Government Units; (2) the Draft Law on Employees in the Public Service; and (3) the Draft Law on Amending the Public Sector Wage System Law. Apart from the SEC established at the national level, there were social and economic councils at the level of the autonomous territories and the local government. There were 19 councils in the registry maintained by the Ministry of Labour. One of the most important forms of social dialogue was collective bargaining. The amendments to the Labour Code made in July 2014 aimed to encourage social dialogue and collective bargaining for the purpose of concluding collective agreements at all levels (enterprise, industry, local government unit, as well as at the national level). Government representatives were involved in the negotiation procedures for collective agreements covering public enterprises and corporations funded by the Republic, and for special collective agreements for public enterprises and public services. Seventeen special collective agreements and five collective agreements covering economic sectors were currently registered by the Ministry of Labour and published in the Official Gazette. For instance, special collective agreements had been concluded covering institutions in the areas of health, culture and social protection; employees in elementary and sec-

ondary schools and student homes; police officers; state authorities; and pre-school institutions. Collective agreements covering economic sectors had been concluded for such industries as: chemistry and non-metals; agriculture, food, tobacco and water management; construction and construction materials; and road maintenance.

With respect to the observation that the social partners were excluded from the process of drafting labour and social legislation, the speaker reiterated that social dialogue was a very important part of the law-drafting process. In line with the Government's workplan for 2016–18, a legal framework on strike and peaceful settlement of labour disputes was in the process of development. The working group had consisted of representatives of trade unions and of employers' associations at national level and members of the SEC. At the session on 28 December 2017, the Government had finalized a draft Bill on Amending the Law on Peaceful Settlement of Labour Disputes, and had communicated it to the National Assembly for adoption. Public discussion on the Draft Law on Strikes had been finalized on 10 May 2018, and further activities had been undertaken for this Bill to be adopted by the Government. In response to the observations made by the social partners that the Representativeness Committee had ceased to function in May 2017, the speaker stated that since the new Government had been formed on 29 June 2017, new Government representatives to the Committee had to be nominated by the Ministry of Education, Science and Technological Development, the Ministry of Labour and the Ministry of Health. Following nominations on 19 April 2018, the Representativeness Committee had held its first session on 7 May 2018. With respect to the observations made by the social partners that no consultations on international labour standards had taken place, she stated that such consultations had been regularly held. The most obvious example of the consultation results was the ratification of the Maternity Protection Convention, 2000 (No. 183). This Convention had been ratified after the meeting between the Government representatives and the trade union representatives. The ratification procedure had started at the initiative of the Trade Union Confederation "Nezavisnost", with the support of the Confederation of Autonomous Trade Unions of Serbia, and employers' associations. All reports on the implementation of ILO Conventions had been regularly communicated to the social partners on a yearly basis for their opinion and comments. All comments received were forwarded to the ILO by the Government in a timely manner. In order to prepare the delegation of the Republic of Serbia to the International Labour Conference, the Government had delivered the following documents to the SEC: the invitation letter, information on the Conference and the guidelines for participation and a request to the SEC to transmit to the Government information on the social partners' delegates to the Conference. Furthermore, the Government had delivered the following ILO documents to the social partners: the text of the newly adopted Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205); and a questionnaire on the implementation of the Social Protection Floors Recommendation, 2012 (No. 202). The SEC had met twice, in March and April 2018, concerning the participation in the International Labour Conference.

The Worker members recalled the need to organize social dialogue effectively to cover all of the problems that could arise in the context of the implementation of international labour instruments. Indeed, social dialogue was present in a cross-cutting manner in all ILO instruments, and particularly in the present Convention, which directly addressed the question of social dialogue within the context of tripartite consultation relating to international labour standards. The Convention benefited from broad support from ILO member States, as it had so far received 140 ratifications.

They recalled that a ratification campaign had been launched with the aim of achieving universal ratification of the Convention for the ILO Centenary. States which had not yet done so should initiate the process to ratify the Convention. Indeed, while the ratification of the Convention was essential, compliance with it in law and practice was just as important. The application by Serbia of the Convention which it had ratified in 2005 had been problematic. As it was a relatively recent ratification, the failings were perhaps due to the relatively short period for which the Convention had been in force in the country. It appeared difficult to find an echo in Serbia of the Convention, which set out fundamental principles of social dialogue. According to the social partners, in practice social dialogue had been reduced to the strict minimum at all levels. Although the Convention was intended to promote effective tripartite consultation, it was clear that this was far from being the case in Serbia at present. It was not by reducing social dialogue to a minimum that effective consultations could be established in accordance with the requirements of the Convention. In that regard, the social partners reported that, in general, draft legislation on social and labour issues was not always submitted to the competent consultation mechanism. It was difficult to imagine how it could be otherwise for all of the items that had to be submitted for consultation with the social partners under Article 5 of the Convention. In practice, all draft legislation was submitted directly to the Legislative Assembly without any prior consultation in the competent tripartite advisory body. Article 2(1) of the Convention provided that each member State should undertake to establish procedures to ensure effective consultation, but this did not appear to be the case in Serbia. If the Government needed to establish or re-establish such procedures, it would need to consult the representative organizations of workers and employers in this regard, in accordance with Article 2(2) of the Convention. In this respect, the representative organizations of workers indicated that their representative was no longer allowed to participate in the drafting of legislative texts in the field of social and labour legislation. This situation was compounded by the lack of dialogue with the social partners, particularly with workers' organizations. A Representativeness Committee had been established to determine the representativeness of workers' and employers' organizations, but had ceased functioning in May 2017. According to the social partners, the non-functioning of the above Committee had strongly affected social dialogue in that the Government was now determining the representativeness of organizations. The decisions taken by the Government in relation to representativeness were adopted without consulting the Committee. It was evident that this procedure, probably applied in response to the non-functioning of the competent body, should have been the subject of consultation with the social partners.

Contrary to Article 5(2), no schedule appeared to have been determined in consultation with the social partners in order to ensure tripartite consultation at regular intervals on the matters covered by the Convention. The absence of regular consultations meant that, in practice, consultations were held too late, or not at all. The Government should therefore be called upon to review the applicable procedures, in dialogue with the social partners. In light of the difficulties observed, it would appear to be useful for the Government to invite the competent authority to produce an annual report on the working of the consultation procedures, in accordance with Article 6 of the Convention. It was the responsibility of the Government to ensure that the competent authority had all the necessary resources for the preparation of the report. The report would make an assessment of the situation and would provide a basis for reviewing all of the elements which were paralysing social dialogue in the country. Serbia was already benefiting from an

ILO technical assistance programme, which was intended to strengthen the capacities of the competent authority in relation to tripartite consultation. It was important to assess the progress achieved in their context and to encourage recourse to such assistance. A tripartite workshop had also been organized by the ILO in Belgrade in 2017 to train the tripartite partners on the implementation of the Convention. Despite this assistance, it was clear from the comments of the Committee of Experts that there remained many shortcomings in the application of the Convention. The Worker members considered that the situation could be improved significantly if the Government made efforts to this end. The measures that needed to be taken to resolve the difficulties noted and re-establish effective tripartite consultation were not excessively complex and required only a minimum of political will.

**The Employer members** emphasized the importance of States complying with this governance Convention. Serbia had ratified the Convention on 13 May 2005 and, to date, the Committee of Experts had already issued seven comments, the last three dating from 2012, 2015 and 2017. In 2001, the SEC had been created as a tripartite advisory body. The legislation provided for the representation of the social partners and the Government on an equal footing. The SEC therefore appeared to be the competent national authority par excellence to assume an advisory role on ILO instruments. It seemed, however, to be well established that it was rarely consulted by the authorities, particularly with regard to the obligations laid down in the Convention. The content, procedure, time limits for consultation, outcome and frequency of the consultations were clearly still posing problems. The Employer members had expressed their concern with regard to the comments of the Committee of Experts. Having taken note of the Government's explanations, they considered that specific action was needed to apply the Convention at the national level.

The Employer members attached great importance to the Convention, given that, as stated in the ILO Constitution, tripartism was one of the pillars of the Organization. It was what distinguished the ILO from other international organizations. The Convention had the merit of flexibility, leaving it to national practice to determine the nature as well as the form of consultation procedures. Very different tripartite consultation procedures and methods could therefore satisfy the aims of the Convention. Nevertheless, to be meaningful, consultations must not be simply a matter of form, but should command the full attention of representative employers' and workers' organizations so as to assist the Government in decision-making. In that respect, tripartism was not an easy road to travel. It required appropriate means of keeping organizations informed so that they had a sufficient basis for consultation, the exchange of information on different points of view and the settlement of disputes, taking into account the positions of the social partners before any final decision was made. It was essential for final Government decisions concerning their obligations towards the ILO to take into account the points of view expressed by employers and workers. Article 5(2) of the Convention provided that consultations should be held at least once a year. It was difficult to envisage consultations being held less frequently, bearing in mind the diversity of issues warranting consultation at different times of the year. However, Governments were under no obligation to publish annual reports on how the procedure was functioning; they were required to hold consultations on whether such a report was appropriate. That being said, the burden of government reporting obligations was heavy and sometimes delayed or reduced the time available for tripartite consultation, or even prevented consultations from taking place within the time limits. The Employer members supported any initiative that eased the administrative burden of governments, while maintaining the quality of the

information they communicated. Such rationalization would facilitate the holding of tripartite consultations. With regard to the observations made by the Committee of Experts, the Employer members recalled that tripartite consultations by the Government could not be confined to draft legal texts or a purely formal consultation. It was not enough to organize the travel for employer and worker delegates to participate in the International Labour Conference, nor to provide them pro forma, selectively or at the last minute with general notes that were not conducive to meaningful consultation. Instead, a basic process of effective consultation needed to be established. Certain issues examined by the Committee of Experts had been raised on many occasions. It was therefore important for the Government to provide full, detailed and useful information in writing on the effective functioning of the SEC.

**The Worker member of Serbia** indicated that the Law on the Social and Economic Council had defined the SEC as an independent body, composed of representatives of the Government, representative employers' associations and representative trade unions. Pursuant to the Law, the SEC should take positions on issues such as development and improvement of collective bargaining, impact of economic policy and measures for its implementation with regard to social development and stability, employment policy, wage and price policies, competition and productivity, privatization and other structural adjustment issues, protection of working and living conditions, education and vocational training, health care and social welfare, demographic trends and other issues. These positions should be taken by consensus of the members of the SEC. Regarding the implementation of the Convention, the speaker regretted that draft laws in the area of labour and social legislation or those that regulated the right to work were not submitted to the SEC for review. Instead, the Government had directly submitted these bills to the National Assembly. In the course of 2017, 18 bills had been submitted to the National Assembly without having first consulted the SEC. With respect to representativeness, the speaker indicated that, pursuant to section 224 of the Labour Code, representativeness of a trade union at national level was determined by the Minister on the recommendation of the Representativeness Committee. The Committee should be composed of three representatives of each group: the Government; the trade unions; and the employers' organizations. The Committee had ceased to function from May 2017 to April 2018, due to the Government's failure to nominate its representatives. Moreover, section 229 of the Labour Code had been amended in July 2014, to provide that the Representativeness Committee could only operate and adopt proposals if at least two-thirds of its members were present at the meeting (prior to the amendment all decisions had to be taken by consensus). As a result, the representative trade union, as one of the social partners, did not have equal status in the Committee, since the Government, together with the representative employers' organizations, could make decisions and proposals even without the trade union, which was contrary to the Convention. Pursuant to section 229(7) of the Labour Code, as amended, the Government had taken over the determination of representativeness, as the Minister could take decisions in this regard without seeking the Representativeness Committee's views. With regard to sectoral collective agreements, he regretted that these were non-existent in the industrial sector. Moreover, those that were signed were not implemented or failed to obtain approval for extending its application. The speaker added that there were no employers' organizations in Serbia that met the representativeness requirement prescribed by the Labour Code as amended (more than 50 per cent of employees in a specific sector), and collective agreements could not be implemented without extending its application. The speaker therefore called on the Government to:

(i) introduce a provision in its Rules of Procedure to the effect that a draft law could not be submitted to the Government for review unless it was accompanied by an opinion of the SEC; and (ii) ensure the full implementation of the Convention through an amendment of the relevant laws.

**The Employer member of Serbia** highlighted that the Convention called for "effective consultations" for the purpose of exchanging opinions before the Government took a final decision. The Serbian Association of Employers (SAE) had never been provided with information regarding the majority of the topics covered by the Convention. There had been no exchange of opinions or consultations with employers. For example, the Convention had been ratified by Serbia in 2005, and since then, six additional Conventions had been ratified without consulting the social partners on the benefits of ratification, the improvements expected, or the changes required in national legislation. The laws related to ratification were submitted directly to the National Assembly. Hence, the employers were not given the opportunity to express their opinion on matters concerning ILO activities. The allocation of sufficient time to examine the information provided was also an important element. The Government's requests for comments from the workers' and employers' organizations on ratified Conventions were usually accompanied by an extremely short deadline for within which to reply. In response to complaints made by the social partners in this regard, the Government had introduced the practice of approving additional time where requested. Subsequently, the Government had stopped requesting comments. In 2017, bearing in mind the deadline set by the ILO, the SAE had prepared its comments in a timely manner and had sent them directly to the ILO. The scope of issues that should be subject to tripartite consultations had been selectively implemented. The Government's comments on proposed texts to be discussed by the Conference were in the form of a document called "Platform". However, this document contained only general notes and short descriptions about the Conference agenda and the relevant committees, without including any remarks on the Government's position regarding any issue on the agenda. There was nothing to comment on or add to. This year's Platform had been received by the social partners only on 25 May 2018, and no information had been included about Serbia being on the preliminary list of cases to be discussed by the Committee. The Conference was put on the agenda of the SEC, the national tripartite body, but only for formal approval of the composition of the delegation. Furthermore, there had been no requests for consultation from the Government on the denunciation of ratified Conventions, even in the case of automatic denunciation, for example, when the Maritime Labour Convention (MLC, 2006), had been ratified in 2006. There had been no consultations on examining non-ratified Conventions or Recommendations to which effect had not yet been given. With regard to reports on ratified and non-ratified Conventions, apart from the typically short deadline, which could occur during the holiday season, the speaker was not aware of any "questions arising out of reports to be made" to the Office, as required under Article 5(d) of the Convention. The employers had never been given the opportunity to read all of the comments provided by the Government, trade unions and employers in one document. In addition, they had never received the final copies of the reports that had been sent to the ILO, either on ratified or on non-ratified Conventions, pursuant to article 23, paragraph 2, of the ILO Constitution. Furthermore, no consultations had ever been held after the Conference, related to the Conference Committees' conclusions and decisions, not even when Serbia had been the subject of the discussion. In 2017, the SAE had filed a complaint to the Credentials Committee.

However, a discussion on the Credential Committee's request to the Government to act in accordance with the ILO Constitution had taken place only upon the employers' initiative, during a meeting of the SEC. The Government's comments had revealed that it had not taken the request into consideration, and that it did not intend to do so in the future.

The nature and form of consultations would have to be determined according to national practice. As the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), explained in more detail, the Government was free to organize consultations in the most time-efficient and non-bureaucratic manner, taking into consideration cost-effectiveness. Consultations would have to be related to ILO standards, be effective and be held before a decision could be taken, and should take place at least once a year. In Serbia, there was a national tripartite body with an equal representation of government, trade unions and employers, the SEC, which had been established in 2001 based on an agreement signed by all three social partners. The SEC's purpose was to enable the development of tripartite dialogue at the national level. Considering the purpose and composition of the SEC, the speaker believed that it should be considered as the body where the discussions and consultations should be taking place among the social partners, in line with the Convention, and should not be used only for the formal approval of the composition of the delegation to the Conference. With regard to the absence of determined intervals for consultations on issues related to the Convention, the administrative capacity of all three constituents did not correspond to the scope and variety of their tasks. For this reason, it would be useful to establish such intervals. This would enable sufficient time for planning and preparation, particularly bearing in mind that, on the one hand, the reporting cycle and deadlines introduced by the ILO, as well as the items on the Conference agenda, were well known in advance and, on the other hand, that the SEC met on a regular basis. Serbia was fully equipped with an excellent framework to implement the Convention and Recommendation No. 152, but there was a lack of will to use this framework.

**The Worker member of Sweden**, speaking on behalf of the Worker members of the Nordic countries and the United Kingdom, highlighted the importance of tripartite consultations, which enabled the full inclusion of workers' and employers' representatives in legislative processes and in the implementation of international labour standards. Tripartite consultations, as set out in the Convention, were the cornerstone of the ILO and its supervisory mechanisms. Tripartite consultations could take place in various forms, but had to meet the preconditions established in the country concerned. The speaker referred to the European Economic and Social Committee (EESC), a European Union (EU) advisory body made up of representatives of workers' and employers' organizations, which delivered opinions on relevant EU legislative projects and policy initiatives. Moreover, one of the priorities of the EU was to promote social dialogue, as evidenced by the European Pillar of Social Rights, which included the promotion of social dialogue among its 20 principles. According to this pillar, social partners had to be consulted on the design and implementation of economic, employment and social policies, and were encouraged to negotiate and conclude collective agreements. In this context, the EU had identified closer cooperation with the Western Balkans, including Serbia, as one of its priorities. Serbia had recently committed to such closer cooperation as part of the measures taken toward EU accession. Highlighting that social dialogue was one of the fundamental values of the EU, the speaker urged the Government to comply with international labour standards,

particularly this Convention, thus demonstrating its true commitment in practice.

**An observer representing Education International (EI)** recalled that the Convention lay at the heart of tripartism. The Teachers' Union of Serbia (TUS) was affiliated to Education International and wanted the claims and expectations of its members to be taken into account in collective bargaining. Collective agreements had been concluded in all education sectors, apart from higher education where bargaining had begun in 2015 and had not yet been concluded. Higher education teachers did not therefore enjoy the same rights as their colleagues. The situation was problematic from the point of view of democracy and equality. According to the TUS, various ministers involved in the negotiations were obstructing the agreements, namely the Minister of Education and the Ministers of Labour and Finance, who had referred to financial difficulties. However, high-quality education was vital to economic and social development and required State investment, as recognized in the 1966 and 1997 ILO/UNESCO recommendations. Furthermore, the TUS had not been consulted on various draft laws. That had been the case, for example, with the Education Act adopted at the end of 2017. Teachers' trade unions had been consulted initially, and then excluded from negotiations. They had also been excluded from discussions on the reform of the school system, despite the inevitable consequences on the status and rights of the staff. In fact, the majority of teachers were employed under precarious conditions, especially on short-term contracts. Teachers' salaries had been reduced by 10 per cent in 2014 and, although they had increased since that time, they remained 16 per cent below the national average. With regard to the Bill on the right to strike, the TUS regretted that its voice had not been heard and questioned the functioning of the Social and Economic Council and the Representativeness Committee, which had not been operational since May 2017. Similarly, the TUS was concerned at the criteria established by the Government to assess representativeness. In conclusion, she called for full and permanent dialogue to be restored with the TUS so that its voice could be heard on those issues on an equal footing with other parties.

**The Government representative** thanked all participants in the discussion for their comments and indicated that the Government had already tackled most of the issues that had been mentioned. A new meeting of the Representativeness Committee, the authority responsible for determining the representativeness of workers' and employers' organizations, would be held on 6 June 2018. Referring to the intervention of the Worker member of Serbia in relation to a law in the field of education, the speaker stated that she was not in a position to provide concrete answers at this time, but that the Government would provide information on this matter in its next report under article 22 of the ILO Constitution, or in a separate letter to the ILO. The next report on the application of the Convention would contain a copy of the request that had been sent to the social partners. The Ministry of Labour, which was the authority responsible for drafting the report, would do its best to respond to all comments made by the Committee of Experts.

**The Employer members** reiterated that tripartism was one of the pillars of the ILO. It was fundamental for tripartism to be implemented effectively at the national and international levels. If a government was envisaging the ratification of an ILO Convention, it should examine not only its own capacity to implement the Convention in law and practice at the national level, but also its capacity to fulfil the administrative obligations arising out of ratification, particularly those relating to reporting on the implementation of the Convention and the related tripartite consultations. Taking into account this administrative burden, governments were, however, free to organize the consultations in the most effective manner possible to avoid unnecessary

bureaucracy, on condition that the following requirements of the Convention were respected: (i) the consultations had to cover all ILO standards, as indicated in Article 5(1), but there was no obligation under the Convention to consult the social partners on general economic and social matters; (ii) under Article 2(1), the consultations needed to be effective, or in other words be organized in such a way that the views of the respective organizations were taken into consideration by the Government before it took any decisions; and (iii) pursuant to Article 5(2), tripartite consultations should be held at least once a year. Having taken due note of the explanations provided by the Government, the Employer members recommended that the national authorities take the necessary and appropriate measures to ensure effective and efficient tripartite consultations with the national social partners, as required by the Convention. More specifically, they called on the Government to: (i) take the necessary measures to ensure meaningful, effective and timely consultations on all the questions covered by the Convention; (ii) take the opportunity offered by the existing tripartite social dialogue body, the SEC, to organize the tripartite consultations required by the Convention, without having to establish other bodies; and (iii) provide in writing all relevant information on the outcome of such tripartite consultations. Finally, they called on the Government to continue availing itself of ILO technical assistance in relation to their recommendations.

The Worker members thanked the Government representative for the information provided to the Committee. It was essential for the Government to take decisive measures to bring its law and practice into line with the Convention. While the ILO had set the objective of achieving universal ratification of the Convention, the Government's concern lay elsewhere: that of ensuring the respect and effective application of the Convention. Indeed, the recommendations made to the Government could easily be implemented if the political will existed. The Government should establish or re-establish procedures to hold effective consultations between its representatives and the social partners, particularly within the SEC. It was essential to hold consultations with the social partners with a view to establishing or re-establishing such procedures so that they could express their views. In that regard, it was important for the Representativeness Committee to resume its activities so that it could discuss issues of representativeness and advise the Government accordingly. The Government could not, without the advice of an independent body, make valid decisions on the representativeness of organizations. This situation could not continue. The Worker members welcomed the Government's indication that the Committee had held its first meeting on 7 May 2018, following the appointment of the Government representatives. The Government was invited to ensure the operation of the Committee in future, even if a new government was being formed. It was also important for the Government to ensure that regular consultations were established or re-established on the items covered by Article 5(1)(a) to (e) of the Convention and to establish an annual schedule for the tripartite consultations. A report on the situation, as provided for in Article 6 of the Convention, could inform the Government and the social partners with regard to compliance with the procedures set out in the Convention. The Government was requested to make every effort to ensure that the SEC had the resources to produce such a report. As the Government had benefited from an ILO technical assistance programme (the ESAP Project), it should also report on the progress achieved by the programme. Following that such an assessment, and in view of the persistent difficulties in the implementation of the Convention, the Worker members called on the Government to participate more actively in the technical assistance programme.

## Conclusions

The Committee took note of the oral statements made by the Government.

Taking into account the Government's submissions and the discussion that followed, the Committee recommends that the national authorities take the necessary and appropriate measures to ensure effective and efficient tripartite consultation of the national social partners in implementation of Convention No. 144. It further recommends the Government to:

- take the necessary steps to ensure that meaningful, effective and timely consultations on matters concerning international labour standards take place including within the framework of the Social and Economic Council of the Republic of Serbia; and
- report on the issues discussed and the frequency of tripartite consultations to the Committee of Experts before its November 2018 session.

The Committee invites the Government to avail itself of ILO technical assistance in relation to these conclusions.

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

SAMOA (ratification: 2008)

The representative of the Secretary-General informed the Committee that the delegation of Samoa was not accredited to the Conference this year. The Government had sent a communication to the Committee of Experts relating to its compliance with Convention No. 182 in which it also explained that the absence of its delegation at the 107th Session of the International Labour Conference was due to financial difficulties. The Government also communicated its commitment to provide a full report to the Committee of Experts by the end of August 2018.

The Chairperson of the Committee announced that, as specified in Part VII of document D.1, on the last day of the discussion of individual cases, the Committee dealt with the cases in which governments had not responded to the invitation of being before the Committee. The refusal by a government to participate in the work of the Committee was a significant obstacle to the attainment of the core objectives of the International Labour Organization. In the case of governments that were not present at the Conference, the Committee would not discuss the substance of the case, but would draw attention in its report to the importance of the questions raised. In such a situation, a particular emphasis would be put on the measures to be taken to resume dialogue.

The Worker members expressed regret at the absence of the Government delegation at the current session of the Conference, which prevented the Committee's examination of the case. Governments' participation at the Conference was essential to the effective functioning of the ILO supervisory system. The Worker members highlighted the key aspects of the Committee of Experts' comments that required follow-up action by the Government to redress the situation of child labour in the country. An ILO pilot study had revealed that around 38 per cent of child labour in Samoa was performed by under 15-year-olds, which compromised children's development and called into question the Government's capacity and commitment to address the worst forms of child labour. Child protection laws were inadequate and the absence of any protection for young persons between 16 and 18 years put them at particular risk of exploitation. Institutions for the protection of children did not function properly and legislative reforms had stalled. The legislative process had not advanced, for example, for bills drafted in accordance with the Optional Protocols to the United Nations Convention on the Rights of the Child, which the Government had ratified in 2016. More needed to be done to address the concerns regarding the worst forms of child labour. The Worker members urged the

**Worst Forms of Child Labour Convention, 1999 (No. 182)**  
*Samoa (ratification: 2008)*

Government to provide a detailed report on the application of the Convention to the Committee of Experts at its next session. The Government should avail itself of ILO technical assistance to comply with its reporting obligations and tackle the worst forms of child labour.

**The Employer members** echoed the Worker members' statement and expressed regret that the Government had not attended the Conference. Non-compliance with the Convention was a serious concern and the Committee of Experts had identified three main aspects in that regard: the disparity between the ratifications of the Optional Protocols to the United Nations Convention on the Rights of the

Child and the real protection of children in the country; the absence of a list of hazardous work in which the employment of young persons is prohibited; and the prevalence of under 15-year-olds exploited as street vendors and subjected to other abusive practices. The Government's failure to submit replies to those issues to the Committee, irrespective of its absence, was a matter of deep concern. The Employer members urged the Government to provide replies and commit to participating fully at the next session of the International Labour Conference.

**Appendix I. Table of Reports on ratified Conventions due for 2017 and received since the last session of the CEACR (as of 8 June 2018)**

(articles 22 and 35 of the Constitution)

*The table published in the Report of the Committee of Experts, page 615, 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.*

**Albania** **11 reports requested**

*(Paragraph 34)*

- All reports received: Conventions Nos. 29, 97, 102, 105, 122, 138, 143, 168, 176, 181, 182

**Bahamas** **10 reports requested**

*(Paragraph 34)*

- 9 reports received: Conventions Nos. 12, 17, 19, 29, 42, 97, 105, 138, 182
- 1 report not received: Convention No. MLC

**Belize** **30 reports requested**

*(Paragraph 28)*

- 15 reports received: Conventions Nos. 11, 12, 26, 42, 81, 87, 94, 95, 98, 99, 108, 135, 141, 144, 151
- 15 reports not received: Conventions Nos. 19, 29, 88, 97, 100, 105, 111, 115, 138, 150, 154, 155, 156, 182, (MLC)

**Burundi** **14 reports requested**

- 13 reports received: Conventions Nos. 1, 12, 17, 19, 29, 42, 62, 64, 90, 101, 105, 138, 182
- 1 report not received: Convention No. 27

**Cabo Verde** **10 reports requested**

- 7 reports received: Conventions Nos. 29, 87, 98, 105, 138, 182, (MLC)
- 3 reports not received: Conventions Nos. 17, 19, 118

**China** **7 reports requested**

- All reports received: Conventions Nos. 19, 27, 32, 122, 138, 182, (MLC)

**Croatia** **31 reports requested**

- 26 reports received: Conventions Nos. 11, 12, 13, 14, 19, 24, 25, 27, 29, 45, 87, 90, 100, 102, 103, 105, 111, 113, 119, 121, 122, 132, 138, 148, 155, 161
- 5 reports not received: Conventions Nos. 32, 98, 106, 156, 182

**Democratic Republic of the Congo** **27 reports requested**

*(Paragraph 34)*

- 19 reports received: Conventions Nos. 11, 12, 19, 26, 29, 62, 81, 87, 88, 98, 100, 102, 105, 111, 118, 121, 135, 138, 182
- 8 reports not received: Conventions Nos. 27, 94, 95, 119, 120, 144, 150, 158

**Eritrea** **7 reports requested**

*(Paragraph 34)*

- 4 reports received: Conventions Nos. 87, 98, 100, 111
- 3 reports not received: Conventions Nos. 29, 105, 138

<b>Estonia</b>	<b>6 reports requested</b>
<i>(Paragraph 34)</i>	
· All reports received: Conventions Nos. 27, 29, 105, 122, 138, 182	
<b>France</b>	<b>16 reports requested</b>
· 15 reports received: Conventions Nos. 11, 12, 27, 29, 36, 97, 105, 122, 124, 138, 141, 152, (181), 182, MLC	
· 1 report not received: Convention No. 137	
<b>Germany</b>	<b>8 reports requested</b>
· All reports received: Conventions Nos. 27, 81, 87, 97, 98, 129, 152, MLC	
<b>Greece</b>	<b>21 reports requested</b>
· All reports received: Conventions Nos. 11, 17, 19, 27, 42, 77, 78, 81, 87, 90, 95, 98, 100, 102, 111, 122, 124, 126, 141, 156, 160	
<b>Ireland</b>	<b>13 reports requested</b>
· 10 reports received: Conventions Nos. 11, 27, 32, 100, 111, 121, 122, 139, (MLC), (189)	
· 3 reports not received: Conventions Nos. 81, 87, 98	
<b>Italy</b>	<b>9 reports requested</b>
<i>(Paragraph 34)</i>	
· All reports received: Conventions Nos. 27, 81, 87, 97, 98, 129, 137, 143, 152	
<b>Jamaica</b>	<b>8 reports requested</b>
<i>(Paragraph 34)</i>	
· 6 reports received: Conventions Nos. 11, 19, 81, 87, 98, 152	
· 2 reports not received: Conventions Nos. 94, 97	
<b>Lao People's Democratic Republic</b>	<b>8 reports requested</b>
· 7 reports received: Conventions Nos. 29, 100, 111, 138, 144, (171), 182	
· 1 report not received: Convention No. 6	
<b>Lebanon</b>	<b>15 reports requested</b>
· 14 reports received: Conventions Nos. 17, 19, 59, 77, 78, 90, 95, 98, 100, 111, 122, 131, 150, 152	
· 1 report not received: Convention No. 81	
<b>Libya</b>	<b>10 reports requested</b>
<i>(Paragraph 34)</i>	
· 8 reports received: Conventions Nos. 81, 87, 95, 98, 102, 118, 121, 131	
· 2 reports not received: Conventions Nos. 53, 130	
<b>Madagascar</b>	<b>12 reports requested</b>
<i>(Paragraph 34)</i>	
· All reports received: Conventions Nos. 6, 26, 81, 87, 88, 95, 97, 98, 124, 129, 159, 173	
<b>Malawi</b>	<b>18 reports requested</b>
· 9 reports received: Conventions Nos. 11, 12, 19, 87, 98, 100, 111, 158, 159	
· 9 reports not received: Conventions Nos. 26, 45, 81, 97, 99, 129, 144, 150, 182	
<b>Mexico</b>	<b>15 reports requested</b>
· All reports received: Conventions Nos. 27, 87, 90, 95, 100, 102, 111, 123, 124, 131, 134, (138), 152, 155, 173	
<b>Nepal</b>	<b>4 reports requested</b>
· All reports received: Conventions Nos. 98, 100, 111, 131	



<b>Netherlands - Aruba</b>	<b>15 reports requested</b>
<i>(Paragraph 34)</i>	
<ul style="list-style-type: none"> <li>· 12 reports received: Conventions Nos. 17, 25, 81, 87, 90, 95, 113, 114, 118, 121, 122, 131</li> <li>· 3 reports not received: Conventions Nos. 94, 140, 142</li> </ul>	
<b>Netherlands - Curaçao</b>	<b>8 reports requested</b>
<i>(Paragraph 34)</i>	
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos. 10, 33, 81, 87, 90, 94, 95, (MLC)</li> </ul>	
<b>Pakistan</b>	<b>7 reports requested</b>
<i>(Paragraph 34)</i>	
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos. 27, 32, 90, 98, 100, 111, 144</li> </ul>	
<b>Paraguay</b>	<b>12 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos. 26, 59, 77, 78, 79, 90, 95, 99, 100, 111, 123, 124</li> </ul>	
<b>Rwanda</b>	<b>17 reports requested</b>
<ul style="list-style-type: none"> <li>· 16 reports received: Conventions Nos. 11, 12, 17, 19, 26, 29, 81, 87, 94, 100, 105, 111, 118, 123, 138, 182</li> <li>· 1 report not received: Convention No. 42</li> </ul>	
<b>Saint Vincent and the Grenadines</b>	<b>19 reports requested</b>
<i>(Paragraph 28)</i>	
<ul style="list-style-type: none"> <li>· 1 report received: Convention No. (102)</li> <li>· 18 reports not received: Conventions Nos. 11, 12, 19, 26, 29, 81, 94, 95, 100, 105, 108, 111, 122, 129, 138, 144, 182, (MLC)</li> </ul>	
<b>San Marino</b>	<b>19 reports requested</b>
<i>(Paragraph 34)</i>	
<ul style="list-style-type: none"> <li>· 5 reports received: Conventions Nos. 100, 103, 111, 143, 150</li> <li>· 14 reports not received: Conventions Nos. 29, 105, 119, 138, 140, 142, 144, 148, 151, 156, 159, 160, 161, 182</li> </ul>	
<b>Slovenia</b>	<b>17 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos. 27, 29, 32, 90, 95, 97, 100, 105, 111, 114, 131, 143, 144, 156, 173, 182, (187)</li> </ul>	
<b>The former Yugoslav Republic of Macedonia</b>	<b>10 reports requested</b>
<i>(Paragraph 34)</i>	
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos. 27, 32, 90, 94, 97, 100, 111, 131, 143, 144</li> </ul>	
<b>Tunisia</b>	<b>19 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos. 26, 29, 77, 81, 90, 95, 99, 100, 107, 111, 114, 118, 124, 138, (144), (151), (154), 182, (185)</li> </ul>	
<b>United Kingdom</b>	<b>7 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos. 32, 97, 100, 111, 124, 144, MLC</li> </ul>	
<b>Viet Nam</b>	<b>12 reports requested</b>
<i>(Paragraph 29)</i>	
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos. 6, 27, 29, 81, 100, 111, 123, 124, 138, 144, 182, (187)</li> </ul>	
<b>Yemen</b>	<b>21 reports requested</b>
<i>(Paragraph 28)</i>	
<ul style="list-style-type: none"> <li>· 5 reports received: Conventions Nos. 81, 87, 98, 138, 182</li> <li>· 16 reports not received: Conventions Nos. 16, 19, 29, 58, 59, 94, 95, 100, 105, 111, 122, 131, 144, 156, 158, 185</li> </ul>	
<b>Zambia</b>	<b>10 reports requested</b>
<ul style="list-style-type: none"> <li>· All reports received: Conventions Nos. 95, 97, 98, 100, 111, 124, 131, 138, 144, 173</li> </ul>	

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## **Grand Total**

A total of 2,083 reports (article 22) were requested, of which 1,543 reports (74.08 per cent) were received.

A total of 159 reports (article 35) were requested, of which 147 reports (92.45 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 8 June 2018**

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports registered for the session of the Committee of Experts		Reports registered 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 registered for the session of the Committee of Experts	Reports registered 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 were 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	2515	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%
<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>				
2012	2207	809 36.7%	1497 67.8%	1742 78.9%
2013	2176	740 34.1%	1578 72.5%	1755 80.6%
2014	2251	875 38.9%	1597 70.9%	1739 77.2%
2015	2139	829 38.8%	1482 69.3%	1617 75.6%
2016	2303	902 39.2%	1600 69.5%	1781 77.3%
2017	2083	785 37.7%	1386 66.5%	1543 74.1%

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### **Armenia**

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Part One: General Report, paras 161, 170  
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### **Belize**

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### **Bolivia, Plurinational State of**

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### **Botswana**

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Part One: General Report, paras 161, 170  
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### **Cambodia**

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### **Chad**

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### **Comoros**

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### **Congo**

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### **Cook Islands**

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### **Croatia**

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### **Djibouti**

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### **Dominica**

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### **El Salvador**

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### **Gambia**

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